TEXAS REGISTER

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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER H. LOW EMISSION FUELS

DIVISION 2. LOW EMISSION DIESEL

30 TAC §114.318

The Texas Commission on Environmental Quality (commission or TCEQ) proposes an amendment to §114.318.

The amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

In April 2000, the commission adopted rules establishing requirements for low emission diesel (LED), and requiring that only LED be sold for on-road and off-road use in the Dallas/Fort Worth (DFW) nonattainment counties as part of that area's ozone attainment demonstration SIP. These new diesel fuel standards were to go into effect May 1, 2002. In December 2000, the commission adopted amendments to the LED rules expanding their coverage to the entire state and made the diesel fuel content limits for sulfur more stringent than federal diesel fuel regulations for on-road vehicles. The commission submitted, as part of that SIP revision, a waiver in accordance with 42 United States Code (USC), §7545(C)(4)(c) for the on-road portion of the rules. The EPA granted the waiver on November 14, 2001 (66 FR 57197), as part of EPA's approval of the SIP revision. Subsequent to this adoption, the 77th Legislature, 2001, passed House Bill (HB) 2912, Article 15, which amended the Texas Clean Air Act (TCAA), §382.039(g) - (i) to restrict the commission from requiring distribution of LED as described in the revised SIP prior to January 1, 2005, and to allow the commission to consider, as an alternative method of compliance with LED standards, fuels to achieve equivalent emission reductions. In September 2001, the commission adopted amendments to the LED rules implementing the changes required by HB 2912, Article 15, and included new rules allowing the use of alternative emission reduction plans (AERPs) to demonstrate compliance with the LED control requirements. At the direction of the EPA and in order to reduce nitrogen oxide (NO_x) emissions necessary for the Houston/Galveston/Brazoria (HGB) area to demonstrate attainment with the one hour ozone national ambient air quality standards (NAAQS), these amendments also limited the coverage area of the LED rules from statewide to those counties previously included in the regional air pollution control strategy for the HGB nonattainment area. On March 9, 2005, the commission adopted revisions to the LED rules, extending the initial compliance date for LED from April 1, 2005, to October 1, 2005, and also strengthening registration requirements and improving the rules' enforceability, and submitted them as a SIP revision to the EPA on March 23, 2005. This action was in response to an August 2004 petition by the Texas Petroleum Marketers and Convenience Store Association for rulemaking to extend the compliance date for LED to October 1, 2006, and to June 1, 2007, for the ultra low sulfur requirement. Subsequently, the EPA raised concerns with certain provisions of the revised rules that were problematic in regard to EPA's approval of the rule and SIP revision. Under the LED rules adopted in March 2005, the AERPs were required to be approved by both the executive director and the EPA. The EPA had determined that the commission must submit the AERPs in the form of a SIP revision in order to obtain EPA approval, requiring public review of each AERP. However, many of the diesel fuel producers considered their AERPs to be confidential business information. Furthermore, the commission would also be required to submit a new SIP revision any time a producer amended its AERP. On April 26, 2006, the commission adopted revisions to the LED rules to address the EPA's issues with the rules adopted in March 2005, including the issues raised by EPA regarding its consideration of AERPs as allowed under §114.318. The April 2006 revisions amended §114.318 to establish a method by which all AERPs could be approved by the executive director and the EPA without a SIP revision and specified that all previously approved AERPs would expire December 31, 2006. Producers wishing to use an AERP for compliance with the LED rules were required to submit an AERP under the new protocol by no later than November 15, 2006, to be approved before December 31, 2006. In February 2006, the executive director also approved an AERP for biodiesel producers allowing them to blend biodiesel with LED compliant diesel fuel in the 110 central and eastern Texas counties affected by the LED regulation until December 31, 2006. The AERP for biodiesel producers was issued to provide biodiesel producers sufficient time to complete the testing of their biodiesel blended formations that is necessary to be approved by the executive director in accordance with §114.315 as alternative diesel formulations for LED. Under the current LED regulations, only those biodiesel blended formulations that were approved by the executive director as an alternative diesel formulation for LED in accordance with the testing provisions specified under §114.315 could be used for compliance with the LED regulations after the December 31, 2006, expiration date. As of December 8, 2006, the executive director has not yet received testing documentation sufficient to approve a biodiesel blended alternative diesel formulation for compliance with the LED regulations.

The commission is proposing in this rulemaking a revision to Chapter 114: Control of Air Pollution from Motor Vehicles, Subchapter H: Low Emission Fuels, Division 2: Low Emission Diesel, §114.318. Specifically, the commission is revising §114.318(c) to extend the December 31, 2006, expiration date for all AERPs approved by the executive director prior to December 16, 2005. This proposed revision will extend the expiration date by one year to December 31, 2007, in order to provide biodiesel producers additional time to complete testing necessary to ensure compliance with the LED regulations under Chapter 114, Subchapter H, Division 2. The commission is not soliciting comments on other subsections of §114.318, unless otherwise specified in the SECTION DISCUSSION section of this preamble.

SECTION DISCUSSION

The proposed change to §114.318(c) amends the expiration date of all AERPs approved by the executive director prior to December 16, 2005, by extending the expiration date by one year from December 31, 2006, to December 31, 2007, and applies this new expiration date to all AERPs approved by the executive director prior to May 17, 2006. The May 17, 2006, date is the effective date of the LED regulations adopted by the commission on April 26, 2006. This proposed change will provide biodiesel producers additional time to complete the necessary testing to ensure compliance with the LED regulations. In addition, the proposed change will also provide diesel producers additional time to finalize AERPs as well. The proposed change to §114.318(c) will also remove the exception that allowed a producer operating under an AERP that was attempting to obtain verification under the EPA's Environment Technology Verification Program and EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program to continue to operate under their AERP for a limited time beyond December 31, 2006. The proposed one year extension should provide sufficient time for producers that had met the exception conditions specified under §114.318(c)(1) - (4) to complete the EPA verification process.

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 rule is in effect, no 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 rule. The proposed rulemaking would amend the LED rules by extending, to December 31, 2007, the expiration date of AERPs approved by the executive director prior to May 17, 2006.

The proposed rulemaking would amend §114.318 by extending the expiration date for AERPs approved by the executive director prior to December 16, 2005. This proposed rule will extend the current expiration date of December 31, 2006 by one year to December 31, 2007 in order to provide biodiesel producers an additional year to complete testing necessary to ensure compliance with the LED regulations under Chapter 114, Subchapter H, Division 2. Extending the expiration date will not have fiscal implications on any producer or supplier of biodiesel or diesel fuel who may choose to change fuel formulations to meet LED standards for NO_x emissions.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be support for further development of methods by which biodiesel fuel producers can continue to provide alternate fuels to a tight fuel market and ensure that they meet required emission standards. Public health and environmental safety will be safeguarded by the development of AERPs that result in equivalent reductions in NO_x emissions. This proposed action will also provide citizens with economic flexibility to utilize non petroleum based fuels when it is cost effective.

Extending the expiration date of AERPs is not anticipated to have any fiscal implications for producers or suppliers of biodiesel, but the proposed extension should give these producers and suppliers more time to comply with LED regulations.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rule, which extends a deadline, is not anticipated to have a fiscal impact on those producers, but it will give these entities more time to comply with LED regulations.

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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of the proposed amendment to §114.318 is to provide biodiesel producers additional time to complete the necessary testing to ensure compliance with the LED regulations. In addition, the proposed change will provide diesel producers additional time to finalize alternative emission reduction plans as well. The amendment does not specifically protect human health or the environment. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

In addition, the proposed amendment to Chapter 114 is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rulemaking does not meet any of the four applicability requirements. Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 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.

Specifically, this rulemaking action, which is designed to extend the expiration date of approved alternative emission reduction plans, does not exceed an express requirement under state

or federal law. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is 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, §§382.012, 382.017, 382.019, and 382.202. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based on the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). The commission invites public comment on the draft regulatory impact analysis determination.

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% 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 assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of these revisions is to extend the December 31, 2006, expiration date for all AERPs approved by the executive director before May 17, 2006, by one year to December 31, 2007, to allow biodiesel producers additional time to complete the necessary testing to ensure compliance with LED regulations and thus help bring this area into compliance with the air quality standards established under federal law as NAAQS for ozone. The proposed amendment will not place a burden on 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 amendment will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendment is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed rulemaking will ensure that the amendment complies with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations: February 15, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 20, 2007, 2:30 p.m., Council Chambers, City Hall Annex, First Floor, 900 Bagby Street, Houston; and February 22, 2007, 10:00 a.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearings.

Persons planning to attend the hearings, who have special communication or other accommodation needs, should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, 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/*. All comments should reference Rule Project Number 2007-007-114-EN. The comment period closes March 2, 2007. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown of the Air Quality Division at (512) 239-1438.

STATUTORY AUTHORITY

The amendment is 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. The amendment is 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 control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, and 382.202.

§114.318. Alternative Emission Reduction Plan.

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

(c) All alternative emission reduction plans approved by the executive director prior to May 17, 2006 [~~December 16, 2005~~], will expire on December 31, 2007. [~~December 31, 2006, with the following exception. The executive director may allow a producer operating under an alternative emission reduction plan approved by the executive director prior to December 16, 2005, to continue to operate under that plan for a limited time beyond December 31, 2006, if all the following conditions are demonstrated to the satisfaction of the executive director:~~]

[~~(1) the producer's alternative emission reduction plan relied on the use of an alternative diesel formulation that has not been approved by the executive director under §114.315(c) of this title (relating to Approved Test Methods);~~]

[~~(2) the producer has submitted an application to the Air Pollution Control Technologies (APCT) Center, a center under the EPA's Environmental Technology Verification (ETV) Program, and the EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program to pursue verification of this alternative diesel fuel formulation to demonstrate that it will achieve at least a 5.78% reduction in NOx emissions when compared against a base diesel fuel with fuel properties within the ranges as described for nationwide average fuel in EPA's Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines and Vehicles (Revision No. 03, September 2003);~~]

[~~(3) the producer has a contract with the APCT Center to perform the verification testing that is signed by both parties and paid in full by September 1, 2006; and~~]

[~~(4) the emissions testing as specified under an ETV test plan approved by both the APCT Center and EPA is completed before December 1, 2006.~~]

(d) - (f) (No change.)

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

Filed with the Office of the Secretary of State on January 11, 2007.

TRD-200700103

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 25, 2007
For further information, please call: (512) 239-6087

♦ ♦ ♦

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 4. CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.247

The Texas Commission on Environmental Quality (commission) proposes an amendment to §115.247.

The proposed amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

For facilities used exclusively for the initial fueling and re-fueling of vehicles equipped with onboard refueling vapor recovery (ORVR) equipment, Stage II is an unnecessary expense because refueling emissions are captured via vehicle ORVR instead of the Stage II dispenser. The EPA estimates it costs about $40,000 to install a vacuum-assist system and $4,100 per year to maintain it. ORVR systems capture vapors otherwise vented to the atmosphere. ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed to a carbon-canister holding system and ultimately to the engine where they are consumed. EPA phased in ORVR systems for automobiles starting with model year 1998. All automobiles manufactured after 2000 must be equipped with ORVR. Phase-in of ORVR for light-duty trucks began in model year 2001, and by model year 2003, all new light-duty trucks were required to have ORVR systems.

SECTION DISCUSSION

The proposed amendment to §115.247, Exemptions, would add paragraph (3) for individual dispensers used exclusively for the initial fueling and/or re-fueling of vehicles equipped with ORVR equipment.

ANTI-BACKSLIDING DEMONSTRATION

The Stage II program was initiated as a volatile organic compound (VOC) control strategy for certain ozone nonattainment areas. Stage II vapor recovery equipment must be certified by EPA to achieve 95% control efficiency for VOC emissions. Furthermore, EPA states in their Stage II Vapor Recovery Systems-Options Paper dated February 7, 2006, that ORVR controls achieve 95% control efficiency. Therefore, exempting facilities that refuel only ORVR-equipped vehicles from the Stage II program will not result in increased VOC emissions.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rule would provide an exemption from Stage II vapor recovery requirements for facilities used exclusively for the initial fueling and/or re-fueling of vehicles equipped with ORVR equipment. The amendment is needed because Stage II controls are an unnecessary expense for facilities used exclusively for the fueling of vehicles equipped with ORVR equipment. Refueling emissions are captured via vehicle ORVR instead of the facility's dispenser. The proposed amendment is expected to have no effect on the amount of emissions released into the atmosphere at any facility affected by the proposed amendment. Further, it is estimated that the proposed rule will only affect one facility, a General Motors manufacturing plant in Arlington. The agency inspects automobile manufacturing plants for compliance with agency rules once every three years at a maximum and every five years at a minimum. Any cost savings for the agency due to any reduced inspection time is not considered significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be more efficient control of vehicle refueling emissions with continued protection of public health and the environment.

Some minor fiscal implications are anticipated for the General Motors manufacturing plant due to the implementation of the proposed rule. There may be other facilities affected by the proposed rule, such as large car rental businesses, but at this time agency staff are unable to identify other businesses or individuals that could be affected by the implementation of the proposed rule.

It is estimated that GM could save approximately $45,000 each year if they are exempt from having to use the current Stage II vapor recovery equipment which is no longer needed. The estimated cost savings include maintenance, parts, service, and energy costs. It is anticipated that if there are any other facilities affected by the proposed rule, similar cost savings would be realized.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. No small or micro-businesses are expected to be affected by the proposed rule.

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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. A "major environmental rule" is a rule which is specifically intended 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 intent of this proposed rulemaking action is to provide an exemption from Stage II vapor recovery requirements for facilities used exclusively for the initial fueling and/or re-fueling of vehicles equipped with ORVR equipment because use of both provides no net environmental benefit. The commission invites public comment on the draft regulatory impact analysis determination. Also, the amendment is proposed to continue to meet the requirements of 42 United States Code, §7511a(b)(3) and Texas Health and Safety Code (THSC), §382.019 and §382.208, but in a less financially burdensome manner on owners and operators of gasoline dispensing facilities.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to the proposed amendment because this action discontinues Stage II vapor recovery requirements for specific regulated activities. Promulgation and enforcement of the proposed amendment would be neither a statutory or constitutional taking of private real property. Specifically, the proposed amendment does not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the commis-

sion affirms that this rulemaking action is consistent with CPM goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARINGS

Public hearings will be held in Austin on February 27, 2007, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210, and in Arlington on February 28, 2007, at 2:00 p.m. at the City of Arlington Council Chambers located at 101 West Abrams Street. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, 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/*. All comments should reference Rule Project Number 2006-049-115-EN. The comment period closes March 15, 2007. 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*. For further information, please contact Koy Howard, Air Quality Planning, at (512) 239-2306.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, and 382.208.

§115.247. Exemptions.

The following are exempt from the requirements of this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities):

(1) gasoline dispensing equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture; [~~and~~]

(2) any motor vehicle fuel dispensing facility for which construction began prior to November 15, 1992, and which has a monthly throughput of less than 10,000 gallons of gasoline. For the purposes of this paragraph, the monthly throughput shall be based on the maximum monthly gasoline throughput for any calendar month after January 1, 1991. To maintain a facility's exempt status under this paragraph, the owner or operator must submit the facility's monthly gasoline throughput on an annual basis no later than January 31 of each year to the executive director or designated representative; and[~~,~~]

(3) any motor vehicle fuel dispensing facility used exclusively for the fueling and/or refueling of vehicles equipped with onboard refueling vapory recovery equipment.

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

Filed with the Office of the Secretary of State on January 11, 2007.

TRD-200700105
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 25, 2007
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.3

The Texas County and District Retirement System proposes an amendment to §103.3, concerning the beneficiary designations and payment elections requiring spousal consent. The proposed amendment deletes the requirement that a member not eligible for retirement certify to the member's current marital status on any document filed with the system on which the member makes a beneficiary designation or benefit payment election and deletes the requirement that a member not eligible for retirement obtain the consent of the member's spouse on any document with the system on which the member designates a person other than the member's spouse as sole primary beneficiary. The spousal consent requirements are unchanged with

respect to withdrawal or retirement applications filed by a member who is eligible for retirement.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the simplification of administrative procedures for collecting and maintaining member information. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §844.010, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules with respect to spousal consent requirements and § 845.102, which provides the board of trustees with the authority to adopt rules necessary or desirable for efficient administration of the system.

No Government Code is affected by this proposed rule.

§103.3. Beneficiary Designations and Payment Elections Requiring Spousal Consent.

(a) A member eligible for retirement must certify to the current marital status of the member on any withdrawal or retirement application [~~each document~~] filed with the system [~~after December 31, 1999, on which the member designates a primary beneficiary or selects the form of payment of a retirement benefit or survivor annuity, except for the designation of a beneficiary to receive a supplemental death benefit~~].

(1) A member eligible for retirement who is [~~currently~~] married may not [~~designate a primary beneficiary other than the member's spouse, or~~] select a form of payment of a retirement benefit [~~or a survivor annuity~~] other than as a qualified joint-and-survivor annuity[~~,~~] unless the member's spouse consents to the [~~designation or~~] selection.

(2) A member eligible for retirement [~~to apply for and receive a service retirement annuity~~] who is [~~currently~~] married may not withdraw from membership and receive a refund[~~,~~] unless the member's spouse consents to the refund.

(3) A member who is [~~currently~~] unmarried may designate any beneficiary and select any form of payment of a retirement benefit [~~or a survivor annuity~~] permitted under the Act.

(b) The consent of a spouse required by subsection (a) of this section must be in writing and either witnessed by an officer or employee of the system or acknowledged by a notary public.

(c) The consent required by subsection (a) of this section is not required if it is established to the satisfaction of the system that:

(1) there is no spouse;

(2) the spouse cannot be located;

(3) the spouse has been judicially declared incompetent in which case the consent may be given by the guardian or other ad litem;

(4) a duly licensed physician has determined that the spouse is not mentally capable of managing his or her own affairs and the director is satisfied that a guardianship of the estate is not necessary;

(5) the spouse and the member will have been married for less than one year as of the date the member files a valid application for a refund of the member's accumulated deposits, or as of the effective retirement date designated by the member on the member's valid application for retirement; or

(6) no service performed by the member as an employee of a participating subdivision and credited in the system was performed during the marriage of the member and the spouse.

(d) For the purposes of this section, the term "qualified joint-and survivor annuity" means a retirement annuity for the life of the member with a survivor annuity for the life of the member's spouse which is not less than 50% of the amount of the annuity which is payable during the joint lives of the member and spouse[~~, or, if the member dies before retirement, a survivor annuity for the life of the spouse which is not less than the amount of an annuity described by §103.2(a)(1) of this title (relating to Additional Optional Benefits) computed as if the member had retired on the last day of the month preceding the member's death~~].

(e) An unrevoked beneficiary designation on file with the system as of December 31, 1999, or filed thereafter [~~in accordance with this section~~] remains valid until revoked by the member, or, if the member's spouse is a designated beneficiary, until the member and the spouse become divorced.

(f) The system and employees of the system may rely upon the certification of the member filed under this section, and are not liable to any person for making payments of any benefits in accordance with the certification even though the certification is later shown to have been untrue on the date of execution.

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 January 12, 2007.

TRD-200700114
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Proposed date of adoption: March 1, 2007
For further information, please call: (512) 328-8889

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVERS LICENSE

SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §16.100

The Texas Department of Public Safety proposes amendments to §16.100, concerning Sanctions and Disqualifications.

Amendments to §16.100 are necessary in order to change the name of the title and to clarify to the courts that the information in the rule is necessary at the conviction level and not the citation level.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Bob Burroughs, Assistant Chief, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-2768.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§16.100. Information on Traffic Convictions Reported [~~Citations~~].

A conviction report resulting from a traffic citation issued to a person driving a commercial motor vehicle (CMV), or who is the holder of a commercial driver's license or commercial driver's learner's permit, for a violation of any law regulating the operation of vehicles on highways, must be on a form that contains the following information:

(1) the name, address, physical description, and date of birth of the party charged;

(2) the number, if any, of the person's driver's license;

(3) the registration number of the vehicle involved;

(4) whether the vehicle was a CMV as defined in Texas Transportation Code, Chapter 522;

(5) whether the vehicle was involved in the transporting of hazardous materials; and

(6) the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Texas Transportation Code, Chapter 522.

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 January 10, 2007.

TRD-200700100
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: February 25, 2007
For further information, please call: (512) 424-2135

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING

SUBCHAPTER A. PROCEDURES FOR VENDOR PROTESTS OF PROCUREMENTS

1 TAC §69.1, §69.4

The Office of the Attorney General adopts amendments to rules §69.1 and §69.4, governing vendor protests of procurements. The amendments are adopted without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9779) and will not be republished.

The amendments to §69.1 and §69.4 incorporate the name change of the General Services Commission to the Texas Building and Procurement Commission and eliminate the reference to Executive Management.

No comments were received regarding the adoption of the amendments.

The amendments to §69.1 and §69.4 are adopted under the Texas Government Code, Chapter 2155, §2155.076, which authorizes the Office of the Attorney General to develop and adopt rules regarding state agency protest procedures.

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 January 12, 2007.

TRD-200700109
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: February 1, 2007
Proposal publication date: December 8, 2006
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §69.25

The Office of the Attorney General adopts an amendment to rule §69.25, governing the Historically Underutilized Business Program. The amendment is adopted without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9780) and will not be republished.

The amendment to §69.25 incorporates the name change of the General Services Commission to the Texas Building and Procurement Commission.

No comments were received regarding the adoption of the amendment.

The amendment to §69.25 is adopted under the Texas Government Code, Chapter 2161, §2161.003, which authorizes the Office of the Attorney General to adopt rules regarding a state agency Historically Underutilized Business Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2007.

TRD-200700108
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: February 1, 2007
Proposal publication date: December 8, 2006
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.2, 3.5, 3.14, 3.25, 3.56, 3.58, 3.80

The Railroad Commission of Texas adopts amendments to §§3.2, 3.5, 3.14, 3.25, 3.56, 3.58, and 3.80, relating to Commission Access to Properties; Application To Drill, Deepen, Reenter, or Plug Back; Plugging; Use of Common Storage; Scrubber Oil and Skim Hydrocarbons; Oil, Gas, or Geothermal Resource Operator's Reports; and Commission Oil and Gas Forms, Applications, and Filing Requirements, with one change to the versions published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9175). The only change is in the table in §3.80, where the revision date for Forms L-1 and

ST-1 is changed to "1/07" to state the effective date of these amendments.

The Commission adopts the amendments to §§3.5, 3.14, 3.25, 3.56, and 3.58 to delete references to old Forms P-1 and P-2, which have been replaced with Form PR, Monthly Production Report. The amendment in §3.2 corrects a grammatical error, and an amendment at the end of §3.58(b) adds the wording "if requested by the transporter," which matches existing wording on the form. No substantive or procedural changes were proposed.

The Commission amends Table 1 in §3.80 to reflect changes to Form L-1, Electric Log Status Report, pursuant to recent amendments to §3.16, relating to Log and Completion or Plugging Report. The changes on Form L-1 replace language from §3.16 currently on the back of the form with the amended §3.16 language, which became effective on January 30, 2006. The Commission also amends the instructions on Form ST-1, Application for Texas Severance Tax Incentive Certification, to replace an obsolete reference to federal regulations with a reference to 16 TAC §3.101, relating to Certification for Severance Tax Exemption or Reduction for Gas Produced From High-Cost Gas Wells (Statewide Rule 101); to clarify dates associated with tax exemptions as opposed to tax reductions for high-cost gas; and to change a reference in paragraph 2 from "well gas" to "gas well gas." In the rows for Forms L-1 and ST-1 in the Table, the adopted revision date is shown as "1/07." In addition, the Commission adopts some minor clean-up changes in the rows for Forms H-1, H-1A, W-1, and W-14 to delete an old effective date, and on the row for Form PR to delete the statement that it is a new form.

The Commission received no comments on the proposed amendments or the two forms (which were published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9415).

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. Texas Natural Resources Code, §85.201 and §85.202, require the Commission to adopt and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas, generally, and specifically, for the drilling of wells and preserving a record of the drilling of wells; to require wells to be drilled and operated in a manner that will prevent injury to adjoining property; to require records to be kept and reports made; and to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste. Texas Natural Resources Code, §86.041 and §86.042, give the Commission broad discretion in administering the provisions of Chapter 86, and authorize the Commission, generally, to adopt any rule or order necessary to effectuate the provisions and purposes of Chapter 86. Texas Natural Resources Code, §91.552, directs the Commission by rule to establish criteria for electric logs to be filed with the Commission.

Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, and 91.551 - 91.556; and Texas Tax Code, §201.057, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, and 91.552.

Cross-reference to statutes: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, and 91.551 - 91.556; and Texas Tax Code, §201.057.

Issued in Austin, Texas, on January 10, 2007.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.
Figure: 16 TAC §3.80(a)

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

(1) Commission--The Railroad Commission of Texas.

(2) Electronic filing process--An electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions.

(3) Form--A printed or typed paper document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information.

(4) Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

(5) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility. The Commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a Commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the Commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the Commission relating to the violation or to the alleged violation have not been collected.

(e) Authorization and standards for electronic filing.

(1) An organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

(2) The Commission deems an organization that files electronically or on whose behalf is filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in and pertaining to:

(A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging);

(B) Texas Natural Resources Code, Title 5 (geothermal resources);

(C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

(D) Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities);

(E) Texas Water Code, §26.131 (discharge permits);

(F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells);

(G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

(H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and

(I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and Chapter 4 (Environmental Protection).

(3) All forms that an organization submits or that are submitted on behalf of an organization shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(4) The Commission may provide notice electronically to an organization of, and may provide an organization the ability to confirm electronically, the Commission's receipt of a form submitted electronically by or on behalf of that organization.

(5) The Commission deems that the signature of an organization's authorized representative appears on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

(6) The Commission holds each organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that are filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

(f) Other electronic transmissions. The Commission may at its discretion accept other documents or data electronically transmitted.

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 January 10, 2007.

TRD-200700085
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: January 30, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 475-1295

16 TAC §3.95, §3.97

The Railroad Commission of Texas adopts amendments to §3.95, relating to Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations, and §3.97, relating to Underground Storage of Gas in Salt Formations, with changes to the versions published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5723). The Commission adopts the amendments consistent with the Commission's wish to further the goals of safety and the prevention and control of pollution.

The Commission also adopts these amendments in order to reduce the possibility of explosion and fire at such facilities and enhance the safety of such facilities in light of the gas release and fire at the Moss Bluff Hub Partners, LP natural gas storage facility and incidents at several liquid hydrocarbon storage facilities. After considering the findings of the investigation of these incidents, the Commission determined that new safety requirements were necessary and, on December 7, 2004, directed staff to initiate rulemaking to establish such requirements. In January 2005, staff sent a questionnaire to all operators of underground hydrocarbon storage facilities to gather additional information concerning the current status of construction, maintenance, operations, and record keeping. In addition, in May 2005, staff held a workshop to review operator responses from the questionnaire and to gather input from affected operators to evaluate the advisability, cost, and effectiveness of potential new safety regulations. The Commission also published on its website a draft of the proposed amendments for informal comment. Staff used the input from these forums to draft the original proposed amendments and incorporate new requirements for integrity manage-

ment of surface piping, location of emergency shutdown valves, fire suppression capabilities, data acquisition, and record retention.

On February 24, 2006, the Commission published the original proposed amendments to §3.95 and §3.97 (Statewide Rules 95 and 97) in the *Texas Register* for a 30-day comment period. Two associations and seven companies submitted comments. Because the Commission incorporated substantive changes as a result of the comments, it withdrew the proposed amendments published on February 24, 2006, and published new proposed amendments on July 21, 2006 (31 TexReg 3157) for a second 30-day comment period.

The Commission received comments from two associations (Texas Oil and Gas Association and Texas Pipeline Association) and five companies (Atmos Pipeline-Texas; ConocoPhillips; Dow Chemical Company; and Kinder Morgan Pipeline and Kinder Morgan Tejas Pipeline, L.P., filing jointly).

Kinder Morgan, Atmos, Conoco Phillips, and TxOGA all commended the efforts of the Commission staff to evaluate the comments to previous versions of the proposed amendments and to revise the proposed rules accordingly. TxOGA also commended the Commission for recognizing that possibilities other than the defined acceptable standards exist for achieving a level of safety that equals or exceeds the requirements, including the option to petition for exceptions, will allow alternative solutions to piping configuration and other design features based on site-specific conditions. The Commission appreciates these comments.

Discussion of Changes Made Upon Adoption

One commenter requested that the Commission revise the proposed wording "Either within three years of the effective date of this section, or in conjunction with the next scheduled integrity test of the storage well, ..." in §3.95(h)(2)(B) to clarify whether the intent is to allow the operator three years to select the best time to install required emergency shutdown valves or whether the intent is to force the operator to install the required emergency shutdown valves in conjunction with the next mechanical integrity test if that test is less than three years away.

The Commission agrees that the proposed wording is confusing. As originally proposed, the language would have allowed an operator to delay compliance for at least three years or up to the date the next mechanical integrity test would have been scheduled after the three-year clock expires, for a maximum of five years. For example, if a permitted well is tested on the effective date of the rule, the operator would have had either three years to install the emergency shutdown valves or could have waited until the next mechanical integrity test for a maximum of five years. To eliminate the confusion, however, the Commission has revised the language to require that the emergency shutdown valves be in place within five years of the effective date of the rule. The Commission fully anticipates that many operators will install the emergency shutdown valves in conjunction with mechanical integrity testing.

One commenter noted that §3.95(h)(2)(B) states that emergency shutdown valves must be installed "between the storage wellhead and the product and brine surface piping . . . " and requested that the Commission clarify the classification of the piping between the two emergency shutdown valves in situations where the operator elects to install secondary emergency shutdown valves.

The Commission makes no change to the rule wording, but notes that a secondary emergency shutdown valve may be installed to allow an operator to maintain surface piping that is not rated for maximum wellhead operating pressure. All surface piping downstream of the wellhead and primary emergency shutdown valves must be rated for maximum wellhead pressure unless there is a secondary automated, fail-closed, pressure control valve separating the under-rated surface piping from piping connected to the primary emergency shutdown valve.

One commenter recommended that the Commission add language in §3.95(h)(2) to allow the Commission to authorize the removal of the emergency shutdown valves and suspend the testing program during brine mining when no hydrocarbons are being stored in the caverns until the caverns are in the process of being put back into hydrocarbon storage service. This commenter recommended that the Commission add as §3.95(h)(2)(E) the following language: "Upon prior approval of the Commission, the requirements of this paragraph do not apply during the time the well is not actively storing hydrocarbons."

The Commission disagrees with this comment. The current wording in §3.95(h) specifically exempts from the safety requirements of subsection (h) "any hydrocarbon storage well that is out of service and disconnected from all surface piping," which in this case is interpreted to mean "product" surface piping. There should be no product in storage except for that required to maintain a roof blanket. The Commission has made no change in response to this comment.

One commenter found confusing the language in §3.95(h)(3)(A) and concerning surface piping and recommended that the Commission either clarify the language or provide guidance to clarify the jurisdiction of the Oil and Gas Division and of the Safety Division at these facilities.

The Commission declines to make any changes in response to this comment. In §3.95(h)(3)(A), the Commission is clarifying the term "product surface piping." Because the pipeline safety rules do not apply to process piping and flowlines, the Commission has clarified that the product surface piping from the wellhead to the first pressure regulation device must be designed to withstand the permitted maximum operating pressure.

One commenter requested clarification in §3.95(h)(3)(C)(ii) as to whether or not an emergency shutdown valve is required on the fresh water line if an operator elects to install a secondary emergency shutdown valve on the brine surface piping and the fresh water line is connected between the two emergency shutdown valves.

The Commission finds that the wording in the rule is clear that all piping from the wellhead to the second emergency shutdown valve must be rated for the maximum allowable wellhead pressure.

Several commenters requested that the Commission revise the language in §3.95(h)(7) concerning fire suppression capability to provide additional instruction to allow an operator to determine whether or not the operator's design is in compliance. These commenters recommended that the Commission develop design standards that can be used by operators and Commission inspectors to determine sufficiency prior to the occurrence of an incident. The commenters requested that the Commission clarify the rule with respect to the length of time that fire suppression equipment should be able to provide the temporary protection for workers, the length of time the fire suppression equipment should be able to cool the wellhead equipment. In the alternative,

the commenters recommended that the Commission require operators to submit to the Commission their fire suppression plans within one year of the effective date of the rule amendments and to have the system operational within two years of the Commission's approval of such plan to allow some flexibility because each facilities' access to water and proximity to the public may vary, and there may be other circumstances unique to each location.

The Commission agrees in part with these commenters. Fire suppression capability need only be sufficient to keep the wellhead equipment cool enough to prevent further failure and to protect storage personnel long enough to safely evacuate the area. The Commission provided a fairly lengthy period of time (three years) for the operator to take into consideration the particulars of each of their facilities. The Commission's intent was that after carefully designing its plan, the operator would be able to ascertain compliance with the performance standard in the rule during annual drills designed to test the operator's emergency response plan required in paragraph §3.95(h)(8). Nevertheless, the Commission acknowledges the commenters' concern that the Commission review the plans before that time to provide some additional assurance that the proposal complies. Therefore, to clarify its intent, the Commission has added "fire suppression capability" to the list of items that the emergency response plans must address, and that the Commission will review and test during drills.

Two commenters recommended that the Commission revise §3.95(h)(7)(C) to exempt from the fire suppression requirements storage wells located at large distances from other wells or control facilities.

The Commission declines to make the suggested change because distance is not the only factor the Commission considered in determining the necessity of the fire suppression requirements. An operator may request an exemption under §3.95(h)(7)(C). A great distance between storage wells and control facilities would be taken into account as a mitigating factor in considering whether to grant such a request; however, the Commission would also consider other factors, including worker safety, in determining whether or not to grant an exemption.

Two commenters recommended that the Commission revise the good cause extension provided in §3.95(h)(9)(b) to provide for up to 60 days for completion of the root cause report to provide additional flexibility to address the analysis necessary in complex situations and allow a more comprehensive report. One commenter requested that the Commission consider accepting a preliminary report on the root cause to be followed by a final report after the well has been investigated.

The Commission agrees that 30 or even 60 days may not be a sufficient amount of time to adequately determine the root cause of an incident, particularly a major incident. Therefore, the adopted rule contains a provision for Commission approval of a reasonable additional amount of time for good cause.

One commenter recommended that the Commission limit the amount of information required by §3.95(n)(1) by replacing the term "all" with a clear statement that data recorded at least once per minute is sufficient.

The Commission agrees and has revised both the language and the structure of subsection (n)(1). Paragraph (1) has been divided into subparagraphs (A) and (B). Subparagraph (A) specifies the minimum frequency for recording of electronic data. The Commission has clarified that the hydrocarbon storage well pressures, flow rates, and hydrocarbon volumes injected into and withdrawn from each well and the hydrocarbon inventory of each cavern must be recorded at a frequency of at least once per minute and retained for a period of at least three months. In new subparagraph (B), the Commission has clarified that the maximum monthly wellhead pressures on the hydrocarbon and brine sides of each well and the monthly net volumes of hydrocarbons injected to and withdrawn from each storage well must be recorded at a frequency of at least once per day and retained for a period of at least five years.

One commenter recommended that the Commission allow flexibility in the requirement to inspect and test the storage wellhead under §3.95(o)(3). The commenter recommended that the Commission modify the language in subsection (o)(5) in both rules as follows: "(5) Alternative *testing* and monitoring. An operator may request the Commission or its designee to approve *an alternate means of testing the integrity of the storage wellhead. Approval may also be requested to* allow storage well pressure monitoring as an alternative to integrity testing for hydrocarbon storage wells that are out of storage service." An out-of-service storage well must be tested for integrity according to the procedures specified in subsection (o)(2) of this subsection before it may be returned to storage service.

The Commission declines to make the recommended change. The subsection already includes language that provides flexibility by allowing an operator to request Commission approval for storage well pressure monitoring as an alternative to integrity testing of storage wells that are out of storage service. The Commission finds that such an option is not appropriate for storage wells that are in active service.

Several commenters requested that the Commission reconsider implementing the proposed wellhead testing requirement in §3.97(o)(3), which includes a requirement to pressure test storage wellhead components to 125% of the maximum operation pressure at least once every 15 years. These commenters noted that, while the testing requirement was previously included in informally circulated draft proposed amendments for salt dome storage for liquid hydrocarbons (§3.95), it had not been included in any of the earlier informally circulated draft proposed amendments for natural gas salt dome storage facilities. The current rule provides for the testing of the wellhead in conjunction with the mechanical integrity test, which is required every five years to 100% of the maximum allowable operating pressure of the storage cavern. The commenters stated that, in order to comply with the testing requirement, natural gas storage cavern operators must select one of two possible methods, both of which are extremely burdensome and potentially dangerous. In the first method, because the pressure in the cavern cannot be brought up to 125% of the maximum working pressure using natural gas without exceeding permit and Commission rules, the cavern would have to be isolated from the wellhead.

The Commission agrees in part with these comments. The Commission proposed in §§3.95 and 3.97 a test pressure of 125% of the maximum operating pressure to be consistent with the general testing requirements for pipelines under the pipeline safety regulations understanding that it would require isolating the wellhead from the cavern. However, the Commission agrees that there may be methods other than such a pressure test that may be more appropriate in assessing the integrity of all storage well components and has changed the test pressure requirement. The new language in adopted §3.95(o)(1) and §3.97(o)(1) requires that each storage well be tested for integrity a minimum

of once every five years; therefore, the Commission has deleted the language in §3.95(o)(3) and §3.97(o)(3) regarding pressure testing to 125 percent of the permitted maximum allowable pressure and has clarified that each storage wellhead and cemented casing must be inspected for corrosion, cracks, deformations, or other conditions that may compromise integrity (and that may not be detected from the 5-year test) at least once every 10 years under §3.95 and at least once every 15 years under §3.97. This change provides the time and opportunity for an operator to propose alternative, and less costly, means of confirming storage well component integrity.

The Commission received no comments on the 10-year inspection requirement under §3.95. Two commenters recommended that the Commission carefully consider the benefits to be gained by the new gas storage integrity inspection requirement. These commenters provided a conservative estimate of approximately $2 million for the average facility, not including the impact of increased commodity costs as a result of having to refill the caverns or the lack of storage capacity. These commenters stated that, while the amendments only require testing once every 15 years, testing will most likely interrupt normal operation and use of a storage facility for up to a year. In addition, because several facilities are used to provide support for service to human needs customers in large metropolitan areas, removal of the facilities from service during testing could prevent the operator from honoring commitments to provide support to meet the demands of human needs customers during the winter.

The commenters stated that in most cases an operator must remove hanging pipe strings from the wellbore while maintaining normal storage pressure on the wellhead. Mechanical plugs are set in the cemented production casing to isolate the cavern from the wellhead in order to allow the wellhead to be tested at the proposed pressure while preventing overpressure of the cavern casing seat. The commenters stated that, in addition to the cost, there is a risk of well blowout during this process, which is exactly what the rule is seeking to eliminate. In other cases, the operator would have to remove the storage facility from active service for an extended period of time to empty the caverns of gas, fill the cavern with brine, empty the cavern of brine, test the cavern, and then refill the cavern with gas. This method assumes that sufficient quantities of brine and water are available and that brine dispose capacity is available. This method of preparing the cavern for testing is more expensive than snubbing since a hanging string may need to be extended below the brine interface in the cavern to allow fluid injection.

The Commission is aware of the possible difficulty, risk and cost that could result from the testing requirement, particularly if isolation of the casing from the wellhead is required, and has clarified and revised this requirement in both §3.95(o)(3) and §3.97(o)(3) in response to comments. The Commission anticipates that operators will devise less costly alternatives that accomplish the intended purpose. Under the current rules, operators always have been required to maintain the integrity of the wellhead, cavern, and ancillary equipment at any storage facility subject to these rules. Because of past incidents and because the current rules do not include a minimum inspection frequency, the Commission adopts a reasonable and prudent 15-year inspection cycle to ensure wellhead and casing integrity, assuring that every component of liquid and gas storage systems will be subject to periodic examination.

The Commission also notes that the potential cost in human lives and the cost of inventory loss and cleanup from only one catastrophic incident would dwarf the new inspection costs.

The commenters urged the Commission to investigate alternative means of determining the integrity of the wellhead-related components before adopting the amendments in §3.95(o)(3) and §3.97(o)(3). Testing of all wellhead related components other than the actual wellhead might provide an adequate safety check on components that have been shown to have previously failed without impacting those that have not been shown to fail in the past. These commenters stated that wellheads built to API 6a specifications are believed to be robust and adequate for prevention of wellhead failure. These commenters stated that the proposed testing requirements for testing of wellhead piping, which is easily isolated from the wellhead using wellhead valves and therefore can be tested at higher pressures if needed, will adequately protect the wellhead.

The Commission declines to make any change in response to these comments. Integrity testing of the wellhead components does not allow a determination of the integrity of the wellhead itself. In order to perform this testing, the operator must isolate the wellhead, fill with water or snub out the brine line. Gas storage testing is at least--if not more--important as testing liquid storage wells which have 5 to 10 year inspection requirements. While the Commission agrees that no one can predict how technology may evolve, it is important that rule is not open ended (with respect to inspection and testing).

Both §3.95 and §3.97 currently include requirements for conducting a mechanical integrity test (MIT) at least once every five years on storage wells. The MIT is designed to observe whether there is a measurable loss of stored product at the maximum allowable operating pressure. However, the MIT cannot detect corrosion, deformation or other problems that may signal an impending lack of integrity. For this reason, most liquid hydrocarbon storage wells completed in salt domes have been subject to periodic inspection requirements either by field rule or permit. For instance, all active liquid hydrocarbon storage wells in the Barbers Hill field must be inspected at least once every five years (Final Order No. 03-0223293). The permits for liquid hydrocarbon storage wells in other salt domes include similar inspection requirements with inspection intervals ranging from five to 10 years based on well-specific factors. Currently, there are no similar inspection requirements for gas storage wells.

Periodic inspection has been effective in detecting problems that the MIT cannot detect and that may signal an impending lack of integrity before failure occurs. Some examples are as follows.

1. A well operated in the Hull salt dome in Liberty County was equipped with a cemented casing liner after casing inspection conducted during an MIT indicated extensive corrosion damage (April 2002).

2. A well operated in the Barbers Hill salt dome in Chambers County was removed from storage service after inspection revealed extensive casing deformation (July 2002).

3. A well operated In the Tyler, East salt dome in Smith County was equipped with a cemented casing liner after inspection identified extensive corrosion (November 2003).

4. Three gas wells operated in the Boling salt dome in Wharton County have been found to have parted casing and undergoing further inspection and repair operations (September 2005 to present). The nature of the casing damage could not be deter-

mined without inspection even though the wells had successful MITs in 2001.

In addition, significant events have occurred at facilities outside of Texas and where inspection after the event revealed significant defects that may have been detected with adequate inspection prior to the events occurring.

The proposed rule amendments codify in §3.95 the inspection requirement that currently is required by permit or field rule for liquid hydrocarbon storage wells and add a new inspection requirement to §3.97 for gas storage wells.

One commenter recommended that, if the Commission retains the proposed wellhead testing requirement for gas storage wells, the Commission develop an implementation schedule spread out over several years--rather than all in a single year--in order to minimize the disruptions to the gas supply market and to the service and material suppliers necessary for the testing.

The Commission declines to make any changes in response to this comment. The Commission anticipates that the 15-year inspection cycle provides sufficient time to develop schedules that will prevent or minimize interruption of market supply.

The Commission considered well-specific factors when it determined appropriate inspection intervals to include in permits for liquid hydrocarbon storage wells. Although the Commission has required inspection of some liquid hydrocarbon storage wells every five years, in general permits for such wells require inspection every 10 years.

In determining the appropriate inspection interval for gas storage wells, the Commission considered the factors used in determining the inspection schedule for liquid hydrocarbon storage wells as well as factors unique to gas storage operations. The Commission adopts less frequent inspection of gas storage wells to account for the increased technical complexity, length of time, risk, impact on market demand, and cost required to perform an inspection on a gas storage well as compared to that required to inspect a liquid hydrocarbon storage well.

There are significant technical impediments to conducting the inspection of gas storage wells that are not present for liquid storage wells. Operators of liquid hydrocarbon storage wells routinely remove the product from the cavern and fill it with brine in order to conduct the required 5-year MIT. While the caverns are empty, the operators are able to remove the brine tubing, disassemble, test and inspect wellhead components, and run wireline inspection tools to examine the casing.

Gas storage caverns, once leached to full capacity, are filled with only gas and removal of the de-brining string in order to expose the casing to wireline inspection is a complex and risky process. The proposed inspection using current technology would require that the operator isolate the wellhead and casing.

An operator may isolate the wellhead and casing of a gas storage well from the normally pressurized, gas-filled, cavern by either snubbing out the brine tubing and inserting a temporary plug in the bottom of the casing or removing all of the gas, filling the cavern with brine, and then removing the tubing. Both of these methods have major drawbacks. A temporary plug poses a greatly enhanced risk of blowout or other failure because the temporary plug may leak or the casing may be damaged during plug installation and/or removal. If the operator chooses to isolate the wellhead and casing by emptying the cavern, the operator would have to remove the storage facility from active service for an extended period of time to empty the caverns of gas, fill the cavern with brine, test the cavern, and then refill the cavern with gas and dispose of the displaced brine. This method assumes that sufficient quantities of brine or water are available and that capacity is available for disposal of vast quantities of brine.

Both methods are very costly because the cavern must be removed from service for an extended period of time, the operator must empty the cavern, fill the cavern with brine, dispose of the brine after inspection, and refill the cavern with gas at an unknown price. In addition, in the second method of preparing the cavern for inspection, a hanging string may need to be extended below the brine interface in the cavern to allow fluid injection.

Furthermore, natural gas storage plays a vital role in maintaining a reliable supply of natural gas to meet the demands of consumers. Natural gas traditionally has been a seasonal fuel, with demand higher in the winter for heating; however, recent trends towards natural gas-fired electric generation has increased demand for natural gas during the summer months. Stored natural gas also plays a role as insurance against unforeseen supply disruptions and peak demand supplies.

Based on these factors, as well as the fact that gas storage facilities are relatively young compared to liquid storage operations, the Commission adopts a 15-year inspection interval for gas storage wells. The inspection interval is a multiple of the current five-year MIT schedule (ten years for liquid hydrocarbon storage wells and 15 years for gas storage wells). Regardless of the proposed inspection requirement, the Commission always has required that operators maintain the integrity of the wellhead, cavern, and ancillary equipment at any storage facility subject to its rules. The Commission finds that it is reasonable to allow sufficient time for operators of gas storage wells to develop the technology, plans and procedures for conducting the inspection as safely, effectively, and efficiently as possible. The Commission anticipates that these operators will devise less costly alternatives that accomplish the intended purpose.

One commenter recommended that the words "stored gas" be used in the definition of "leak or fire detector" at §3.97(a)(7) to focus only on the contents of the storage well because the use of the word "gas" or "hydrocarbon vapor" can be applied broadly to many substances while the intent is to detect a leak of whatever gas is stored in the cavern.

The Commission agrees with this comment for the most part and has replaced the existing terms "vapor" and "hydrocarbon vapor" in §3.97 with the term "stored product."

One commenter requested that the Commission revise the proposed wording "Either within three years of the effective date of this section, or in conjunction with the next scheduled integrity test of the storage well, ..." in §3.97(h)(2)(B) to clarify whether the intent is to allow the operator three years to select the best time to install required emergency shutdown valves or whether the intent is to force the operator to install the required emergency shutdown valves in conjunction with the next mechanical integrity test if that test is less than three years away.

The Commission agrees that the proposed wording is confusing. The intent of the language is to allow an operator to delay compliance for at least three years or up to the date the next mechanical integrity test is scheduled after the three-year clock expires for a maximum of five years. For example, if a permitted well is tested on the effective date of the rule, the operator has either three years to install the emergency shutdown valves or may wait until the next integrity test for a maximum of five years. In order to eliminate the confusion, the Commission has revised

the language to require that the emergency shutdown valves be in place within five years of the effective date of the rule. The Commission fully anticipates that many operators will install the emergency shutdown valves in conjunction with mechanical integrity testing.

One commenter noted that §3.97(h)(2)(B) states that emergency shutdown valves must be installed "between the storage wellhead and the product and brine surface piping . . . " and requested that the Commission clarify the classification of the piping between the two emergency shutdown valves in situations where the operator elects to install secondary emergency shutdown valves.

The Commission makes no change to the rule wording, but notes that a secondary emergency shutdown valve may be installed to allow an operator to maintain surface piping that is not rated for maximum wellhead operating pressure. All piping downstream of the wellhead and primary emergency shutdown valves must be rated for maximum wellhead pressure.

One commenter requested that the Commission revise the proposed wording "Either within three years of the effective date of this section, or in conjunction with the next scheduled integrity test of the storage well, ..." in §3.97(h)(2)(B) to clarify whether the intent is to allow the operator three years to select the best time to install required emergency shutdown valves or whether the intent is to force the operator to install the required emergency shutdown valves in conjunction with the next mechanical integrity test if that test is less than three years away. If the Commission wants to "provide an operator with the flexibility to choose the most appropriate alternative," as indicated in the preamble, then it is unclear how requiring installation in conjunction with the next scheduled mechanical integrity test provides flexibility. The commenter recommended removing the words "or in conjunction with the next scheduled integrity test of the storage well."

The Commission acknowledges the confusion. The intent of the language is to allow an operator to delay compliance for at least three years or up to the date the next mechanical integrity test is scheduled after the three-year clock expires for a maximum of five years. The language is intended to provide an operator with the flexibility to select the most appropriate and efficient alternative. In many cases, if the operator must empty a cavern to perform a mechanical integrity test, it may be more efficient to install the necessary emergency shutdown valves at that time because the wellhead may be in a more favorable operational status for a workover. However, the rule requires that the required emergency shutdown valves be installed no later than five years after the effective date of this rule.

One commenter found confusing the language in §3.97(h)(3)(A) concerning surface piping and recommended that the Commission either clarify the language or provide guidance to clarify the jurisdiction of the Oil and Gas Division and of the Safety Division at these facilities.

The Commission declines to make any changes in response to this comment. The pipeline safety rules do not apply to process piping and flowlines. The Commission is amending the rules to ensure maximum safety for all piping.

The Texas Pipeline Association commented that, because its members have been unable to identify any natural gas storage facility in Texas, whether intrastate or interstate, with a salt dome cavern that is not subject to the Safety Division's authority, the Commission should eliminate the requirement in §3.97(h)(5)(A) to install leak or fire protection devices in "structurally enclosed compressor sites." The Commission justified this requirement by stating that "not all storage facilities are subject to the Safety Division's authority." However, the pipeline safety regulations enforced by the Safety Division already require gas detectors to be installed at enclosed compressor sites. See 49 CFR 192.736.

The Commission disagrees with this comment. The current rule requires heat and fire detectors at each wellhead and each structurally enclosed compressor site, but only for facilities within 100 yards of public areas. Because of the extensive fire damage associated with the wellhead failure of a gas storage well, the Commission has determined that it is appropriate to require heat and fire detectors at each wellhead and each structurally enclosed compressor site for all facilities whether or not they are located within 100 yards of public areas. Although in some instances the requirements may duplicate the pipeline safety regulations in 16 TAC Chapter 8 (relating to Pipeline Safety Regulations), they do not conflict. In addition, for facilities regulated under §3.95, the pipeline safety rules do not apply to brine piping. Including the requirement in these rules ensures that it will apply to storage facilities that are not subject to pipeline safety regulations (*e.g.*, not connected to transmission pipelines).

One commenter recommended that the Commission revise the good cause extension provided in §3.97(h)(8)(B) to provide for up to 60 days for completion of the root cause report since the longer time period would provide additional flexibility to address the analysis necessary in complex situations and allow a more comprehensive report. Another commenter expressed concern that the proposed 30-day deadline (or the 60-day deadline if an extension is granted) in §3.97(h)(8)(B) for submitting the report on the root cause of an incident would not allow sufficient time to determine the root cause. The commenter requested that the Commission consider accepting a preliminary report on the root cause to be followed by a final report after the well has been investigated. The TPA recommended that the good cause extension be revised to provide for up to 60 days for completion of the root cause report to provide additional flexibility to address the analysis necessary in complex situations and allow for a more comprehensive report after completion of the analysis of the incident.

The Commission agrees that 30 or even 60 days may not be a sufficient amount of time to adequately determine the root cause of an incident, particularly a major incident. Therefore, the Commission has added a provision for Commission approval of a reasonable additional amount of time for good cause.

Several commenters requested that the Commission revise the language in §3.97(h)(11) concerning fire suppression capability to provide additional instruction to allow an operator to determine whether or not the operator's design is in compliance. These commenters recommended that the Commission develop design standards that can be used by operators and Commission inspectors to determine sufficiency prior to the occurrence of an incident. The commenters requested that the Commission clarify the rule with respect to the length of time that fire suppression equipment should be able to provide the temporary protection for workers, the length of time the fire suppression equipment should be able to cool the wellhead equipment. In the alternative, the commenters recommended that the Commission require operators to submit to the Commission their fire suppression plans within one year of the effective date of the rule amendments and to have the system operational within two years of the Commission's approval of such plan to allow some flexibility since each

facilities' access to water and proximity to the public may vary, and there may be other circumstances unique to each location.

The Commission agrees in part with these commenters. Fire suppression capability need only be sufficient to keep the wellhead equipment cool enough to prevent further failure and to protect storage personnel long enough to safely evacuate the area. The Commission provided a fairly lengthy period of time (three years) for the operator to take into consideration the particulars of each of their facilities. The Commission's intent was that after carefully designing its plan, the operator would be able to ascertain compliance with the performance standard in the rule during annual drills designed to test the operator's emergency response plan required in paragraph §3.97(h)(7). Nevertheless, the Commission acknowledges the commenters' concern that the Commission review the plans before that time to provide some additional assurance that the proposal is on compliance. Therefore, to clarify its intent, the Commission has added "fire suppression capability" to the list of items that the emergency response plans must address, and that the Commission will review and test during drills.

Three commenters recommended that the Commission reconsider the provisions of §3.97(l)(3)(a), which require individual metering of each wellhead. One of these commenters stated that most operators calculate individual well injections from data from a master meter and that this method of determination of individual well injection rates and pressures generally is sufficient to meet market needs and provide a general overview of facility operations. Individual wellhead meters will suffer from some level of inaccuracy depending upon the type of meter used and the effort made to stabilize flow for accurate measurement. In addition, accurate metering of individual wellhead injection will require an expenditure of approximately $250,000 per wellhead. In the alternative, one commenter recommended that the impose the individual metering requirement only on new facilities because the cost could be factored into the initial business plan.

The Commission disagrees with these comments. While master meters may be adequate for "business related purposes," the common meter is subject to significant inventory inaccuracies, which are unacceptable for the purposes of safety. In addition, §3.97(l)(3)(b) provides for approval of an alternate method of determining volumes.

Several commenters urged the Commission to reconsider imposition of costly wellhead testing requirements in §3.97(o)(3) in light of the fact that the only incidents cited by the Commission in the proposal preamble all involved failure of wellhead related equipment and the Commission cited no instances where a storage wellhead failed. The commenters requested that the Commission allow testing of such equipment without the need to subject the wellhead to the proposed pressure. Installation of valves between the wellhead and the downstream components would allow an operator to test the wellhead equipment without subjecting the well or the wellhead to these significantly larger pressures. In addition, it is rare that a salt dome storage facility would operate at its maximum permitted operating pressure except during testing periods.

The Commission agrees in part. Testing of the wellhead equipment will not allow an operator to determine the integrity of the wellhead. However, the Commission's intent is to require periodic inspection of the wellhead and cemented casing to determine integrity and has made changes in response to comments.

Other Proposed Amendments Adopted without Changes

The Commission adopts amendments to §3.95(a), relating to definitions, to amend the definition of "emergency shutdown valve" to substitute the term "wellhead" for "well." The Commission also amends the definition of "hydrocarbon storage well or storage well" to clarify that the well includes the storage wellhead, casing, tubing, borehole, and cavern.

The Commission adopts two new definitions. The Commission defines the term "storage wellhead" as "equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges." In addition, the new definition limits the length of spool pieces to less than six feet to allow the operator flexibility in aligning wellheads, emergency shutdown valves, and surface piping. The limitation on length is necessary because investigation results indicate that long spool pieces are subject to failure by water hammer effects. Industry input suggested limiting spool piece length to six feet.

The Commission adopts a new definition for the term "surface piping" as "any pipe within a storage facility that is directly connected to a storage well, outboard of the wellhead emergency shutdown valve and used to transport product, brine, or fresh water to or from a storage well whether such pipe is above or below ground level."

New definitions for "storage wellhead" and "surface piping" were needed because other proposed rule amendments specify that an emergency shutdown valve must be located between the storage wellhead and surface piping and such terms are not defined in the current rule.

The Commission adopts amendments to §3.95(c)(4) to specify that a permit application must be filed for storing saltwater or brine in a pit, as well as for disposing of saltwater or other oil and gas waste arising out of or incidental to the creation, operation, or maintenance of an underground hydrocarbon storage facility.

The Commission adopts amendments to §3.95(d), relating to standards for underground storage zone, to change the heading of subsection (d)(1) from "Impermeable salt formation" to "Geologic, construction, and operating performance," to more accurately describe the subject matter of this subdivision.

The Commission adopts substantive amendments to §3.95(h), relating to safety. The Commission adopts amendments to §3.95(h) to specify that active storage wells must possess a functional emergency shutdown valve when the well is in service, notwithstanding compliance time periods for configuring the emergency shutdown valve on the wellhead. The adopted amendments change the heading of §3.95(h)(2) from "Emergency shutdown valves" to "Storage wellhead" to reflect the fact that the Commission is adopting safety requirements for the entire storage wellhead, not just the emergency shutdown valves. The Commission re-designates subsection (h)(2)(A) as subsection (h)(2)(D) and adds a new subsection (h)(2)(A), which requires that a storage wellhead be designed, operated, and maintained to contain the contents of the storage well and protect against the loss of stored product.

The Commission adopts amendments to §3.95(h)(2) to require that, within five years of the effective date of this rule, the operator must install, as required, emergency shutdown valves in a position between the storage wellhead and the product and brine surface piping of each of hydrocarbon storage well and, if required, between the storage wellhead and fresh water surface piping of the well. The Commission adopts the revised language in response to comments that the proposed language was con-

fusing. The adopted amendment also allows an operator to file a request, within one year of the effective date of the section, for an exception to the storage wellhead configuration requirement or the compliance date of this subparagraph and to propose an alternative configuration for approval by the Commission or its designee.

The adopted amendment mandates locating the wellhead emergency shutdown valve directly between the wellhead and surface piping. This change in location of the wellhead emergency shutdown valve is intended to increase the safety of the emergency shutdown system. The current rule does not address the physical position or location of the emergency shutdown valve. Experience has shown that the emergency shutdown valve is most effective when the valve is flanged directly to the wellhead. The recent gas release and wellhead failure at a gas storage facility resulted, in part, from the location of an emergency valve on surface piping approximately 35 feet from the wellhead. After the emergency shutdown valve closed as designed, a pressure transient, believed related to water hammer, fractured the brine surface piping, allowing gas to escape and ignite. A water hammer-induced pressure transient also is implicated in at least two release incidents associated with the failure of surface piping at liquid hydrocarbon storage facilities operating at Mont Belvieu.

The Commission adopts amendments to change the heading of §3.95(h)(3) from "Brine and fresh water piping" to "Product, brine, and fresh water surface piping" to expand the requirements to address all surface piping and to clarify that specific requirements in the paragraph apply to specific types of surface piping. The adopted amendments also add a new subparagraph (A), which requires that the product surface piping be designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. The adopted amendments also specify that, for facilities under the administrative authority of the Commission's Safety Division, product surface piping extends from the wellhead emergency shutdown valve to the first point of downstream pressure regulation. This identifies the boundary between the respective administrative authorities of the Safety Division and of the Oil and Gas Division for hazardous materials piping for those facilities under the administrative authority of both divisions. The Oil and Gas Division has administrative authority over all fresh water and brine surface piping at hydrocarbon storage facilities under the jurisdiction of the Railroad Commission of Texas. In addition, the Oil and Gas Division has administrative authority over all product surface piping directly connected to storage wells at those hydrocarbon storage facilities not under the administrative authority of the Safety Division, such as underground hydrocarbon storage facilities physically located within oil refineries. The Safety Division does not have administrative authority over storage facilities located within facilities that are not under Railroad Commission jurisdiction, such as oil refineries. The Safety Division also does not have administrative authority over piping that does not transport hazardous materials, such as fresh water or brine piping.

The Commission adopts amendments to add a new §3.95(h)(3)(B) to require that brine surface piping be designed for the maximum operating pressure on the brine side of the well and designed to transport, under emergency conditions, product to the brine system vapor control system, unless protected by a secondary emergency shutdown valve and unless the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well.

The Commission amends §3.95(h)(3)(C) (re-designated from subparagraph (B)) and adds new §3.95(h)(3)(D) to clarify that the requirements in the subparagraph pertain to fresh water surface piping, and to clarify the requirement that such piping must be protected by an emergency shutdown valve, unless certain standards or design configurations are employed. For instance, fresh water surface piping that is disconnected from the wellhead or is connected to brine surface piping outboard of the emergency shutdown valve need not be protected by an emergency shutdown valve. Similarly, fresh water piping need not be protected by an emergency shutdown valve if it has a small internal diameter (less than two inches) and is designed to withstand the permitted maximum allowable operating pressure of the hydrocarbon side of the well and is monitored by an onsite attendant when in use. An emergency shutdown valve on small diameter (less than two inches) fresh water piping also is exempt from the requirement that the valve be located on the wellhead or separated from the wellhead by no more than a six-foot spool.

The Commission amends §3.95(h)(4)(C), regarding overfill detection and automatic shut-in methods, to require that, within one year of the effective date of the proposed amendments, each storage cavern shall have at least two required devices or methods of overfill detection. Previously, the rule did not specify that the devices or methods must be redundant. It has always been the intent of the Commission that in the event of the failure of some component, another method of overfill detection would remain functional. The Commission intends to insure that the failure of a single device does not disable both methods of overfill detection. The Commission amends subsection (h)(4)(C)(ii) to allow operators the flexibility of using pressure transducers on the brine piping in addition to pressure switches.

The Commission amends §3.95(h)(5) and (6), relating to leak detectors and brine system gas vapor control, respectively, to delete references to deadlines that already have already passed.

The Commission amends subsection (h)(7), relating to fire detection devices or methods, to add requirements for fire control systems and to delete a reference to a deadline that has already passed. The Commission adds new subparagraph (C) to require that, within three years of the effective date of the amendment, fire suppression capability, designed for personnel rescue and equipment protection and cooling, be available at each storage wellhead in active storage service. The new subparagraph allows an operator to request Commission approval of an exception to this schedule or to the fire suppression requirement, as long as the request includes a proposal for an alternate schedule or means of protection from wellhead fire, and provided the request is made within one year of the effective date of the amendments.

The fire suppression requirement is intended to provide protection for rescue personnel and equipment cooling. The absence of such fire control systems contributed to the complete wellhead failure of a gas storage well and damage to adjacent structures associated with the gas release and fire at Moss Bluff Hub Partners. The fire suppression capability is not necessarily directed toward capacity sufficient to extinguish a wellhead fire. Extinguishing such a fire could be an imprudent course of action, unless the source of the leak was found and repaired. Rather, the fire suppression capability should be sufficient to provide for short-term protection for emergency personnel and for cooling of structures and wellheads potentially affected by a fire at a wellhead or surface pipe.

The Commission amends §3.95(h)(8), relating to emergency response plan, to delete a reference to a deadline that already has passed.

The Commission amends §3.95(h)(9)(B), relating to notification of emergency or uncontrolled release, to require that, within 30 days of any emergency, significant loss of fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release, an operator file with the Commission a written report on the root cause of the incident, and, within 90 days of an incident, file with the Commission a written report describing the operational changes, if any, that will be implemented to reduce the likelihood of the recurrence of a similar incident. For good cause, the Commission may allow a reasonable amount of additional time for an operator to file a report on the root cause of the incident. The provision of a "reasonable amount of additional time" replaces the additional 30-day extension proposed on July 21, 2006. The current rule requires only written confirmation of an event within five working days of the event. The adopted amendments will make hydrocarbon storage operations safer in the future by better helping the Commission and operators identify causes of uncontrolled releases and make corrections to prevent or reduce releases.

The Commission amends §3.95(h)(10) relating to public education, §3.95(h)(12) relating to employee safety training, §3.95(h)(13), relating to warning systems and alarms, and §3.95(h)(14), relating to wind socks, to delete references to deadlines that already have passed.

The Commission amends §3.95(h)(15), relating to Barriers, to delete reference to a deadline that already has passed and to require barriers around above ground hydrocarbon piping, process equipment and storage vessels in areas within 100 feet of a public road, in addition to the previous requirement that barriers be placed where vehicles normally may be expected to travel. The Commission makes this amendment because there has been at least one incident in which a driver lost control of a vehicle on a public road, causing the vehicle to leave the roadway and hit surface piping at a gas storage facility.

The Commission adds new §3.95(h)(16), relating to wellhead, surface piping, and associated valves, to require that such piping and equipment be designed, installed, and operated in accordance with engineering standards appropriate to the expected service conditions to which the piping and equipment will be subjected.

The Commission amends §3.95(i)(6) to make a conforming change.

The Commission amends §3.95(k)(1) to clarify that the operating pressure of each hydrocarbon storage well may not exceed the permitted maximum allowable operating pressure. This change is intended to conform the rule language generally accepted use of the phrase "maximum allowable operating pressure."

The Commission amends §3.95(l), relating to monitoring requirements, to add a new paragraph (5) on data recording. The new paragraph requires that, within three years of the effective date of the amendments, operators have in place and functioning a system to electronically record all liquid and gas pressures, injection volumes, and rates at least once per minute and that operators record all emergency actuations of the emergency shutdown valve. This increased frequency of data recording is needed to insure that the operator records sufficient information relating to the physical conditions that immediately precede an accident or incident to help diagnose the root cause or causes of an incident. Experience with several incidents at hydrocarbon storage facilities has revealed that operators did not record operational data at a sufficient frequency to help diagnose the root cause of the incident.

The Commission amends the heading of §3.95(n) from "Records retention" to "Operations, construction, and maintenance records retention." In conjunction with a change the Commission made in response to a comment, the Commission revised this paragraph to include subparagraphs (A) and (B). The amendments to subsection (n)(1)(A) require that operators retain electronic records of well pressures, flow rates, and hydrocarbon volumes for three months instead of five years. The amendment also adds flow rates and hydrocarbon volumes to the record keeping requirement for each well, and would delete interface levels from the recording requirement. Because these operational data are primarily intended to diagnose accidents and incidents, long-term retention is unwarranted. In response to a comment, the Commission clarified that the electronic data must be recorded at a frequency of at least once per minute. The adopted amendments in subsection (n)(1)(B) also clarify that the records of maximum wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well which the operators are required to report to the Commission under subsection (m) must be retained for five years. In response to comment, the Commission also clarified that the electronic data must be recorded at a frequency of at least once per day.

Adopted amendments in subsection (n)(2) clarify that records associated with testing and performance measurement, required under subsection (l)(4), and testing of safety devices, required under subsection (h), must be retained for five years. The Commission amends the heading of subsection (n)(3) from "Equipment data" to "Construction and maintenance data," and to require an operator to retain for the life of the facility documents and records pertaining to drilling, mining, and completion of storage wells, testing of storage well integrity, and major repairs on and workovers of the well. The extension of the retention period is prudent and necessary to insure that critical information on well construction, workovers, repairs, and testing is retained for the life of the facility. It is often necessary to examine the results of original completion, workovers, and testing procedures to properly interpret current test results, particularly for tests that have recurrence intervals of five years, such as mechanical integrity tests. Obviously, in cases where these records are currently unavailable, the Commission does not intend for the new requirement to be applied retroactively. However, with the new requirement, the Commission intends to insure that if the records currently are available, they will be preserved for the life of the facility, and will pass to future owners or operators of the facilities with the transfer of ownership or operatorship.

The Commission amends the heading of §3.95(o) from "Testing" to "Testing and Maintenance." New paragraph (1) requires that all hydrocarbon storage wells drilled into salt domes with a single casing string cemented to the surface have the casing inspected by mechanical, ultrasonic, or magnetic methods at least once every five years and after each workover that involves physical changes to the cemented casing string. Previously, all operators of liquid hydrocarbon storage wells drilled into salt domes with a single casing string cemented to the surface are required by permit to have the casing inspected by mechanical, ultrasonic, or magnetic methods at least once every five years. Since the Commission and operators agreed to implement the permit con-

ditions requiring such testing, the tests have detected significant casing damage, allowing the operators at four facilities to repair the damage or remove the wells from service before a significant leak could occur. Nitrogen-brine mechanical integrity tests are not capable of detecting most classes of casing damage. The adopted amendment would insure that in the event of transfer of ownership of well facilities, the new operators are bound to the same requirements of previous owners.

The Commission adds a new paragraph (3) to subsection (o), relating to Storage wellhead and casing, to require operators to inspect the storage wellhead and casing at least once every ten years. In addition, upon a showing of good cause, an operator may request up to an additional five-year extension. The Commission further adds factors that the Commission may consider in determining good cause. Such factors include but are not limited to age, location, and configuration of the well, well and facility history, operator compliance record, operator efforts to comply with the section, and accuracy of inventory control. Although it is typical industry practice to test wellhead components in conjunction with a storage well mechanical integrity test, such tests currently are not mandated by rule. The Commission deleted the language in §3.95(o)(3) regarding pressure testing to 125 percent of the permitted maximum allowable pressure and has clarified that each storage wellhead and cemented casing must be inspected at least once every 10 years for corrosion, cracks, deformations, or other conditions that may compromise integrity and that may not be detected from the 5-year test. This change provides the opportunity for an operator to plan for the inspection, and to evaluate alternative means of confirming storage well component integrity.

The Commission adds new paragraph (4) to subsection (o), relating to Product, freshwater, and brine surface piping. The new paragraph requires, within three years of the effective date of this section or in conjunction with the storage well integrity testing, that all product, freshwater, and brine surface piping within a hydrocarbon storage facility be maintained according to a piping integrity management plan and that within one year, the operator must submit such a plan to the Commission for approval. This amendment aligns the requirements for the testing and maintenance of surface piping within storage facilities with current testing and maintenance requirements for pipelines transporting hazardous materials.

The Commission adopts amendments to §3.97, relating to Underground Storage of Gas in Salt Formations. The Commission adopts amendments to subsection (a) to amend the definitions of "emergency shutdown valve," "gas storage well or storage well," and "leak detector," and to add new definitions for the terms "storage wellhead" and "surface piping." The Commission amends the definition of "emergency shutdown valve" to substitute "wellhead" for "well." The Commission amends the definition of "gas storage well or storage well" to clarify that the term includes the storage wellhead, casing, tubing, borehole, and cavern. The Commission amends the definition of "leak detector" to include "fire" detectors. Leak detectors must be capable of detection by chemical or physical means the presence of stored product or the escape of stored product or the presence of flame or heat of a fire. References to "vapor" are deleted from the definition; the natural gas in a storage cavern is not technically a vapor, because there is no natural gas liquid in the system.

The Commission adds a definition of "storage wellhead" to mean the equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges. In addition, the new language limits the length of spool pieces to less than six feet to allow operators flexibility in aligning wellheads, emergency shutdown valves, and surface piping. The limitation on length is necessary to prevent the installation of unnecessarily long spool pieces, which are subject to failure by water hammer effects during closure of the emergency shutdown valve as was the case at the recent gas release and fire at the gas storage facility described above. The Commission adopts a new definition for "surface piping" as any pipe within a storage facility that is directly connected to a storage well and used to transport gas, brine, or fresh water to or from a storage well whether such pipe is above or below ground level. New definitions for "storage wellhead" and "surface piping" are needed because other proposed rule amendments specify that the emergency shutdown valve must be located between the storage wellhead and surface piping, and these terms are not defined in the previous rule.

The Commission amends the title of §3.97(d)(1) from "Impermeable salt formation" to "Geologic, construction, and operating performance" to more accurately describe the subject matter of this subdivision.

The Commission amends §3.97(e)(3), relating to notice and hearing, to correct a typographical error.

The Commission amends §3.97(h), relating to safety, to specify that active storage wells must possess a functional emergency shutdown valve when the well is in service, notwithstanding compliance time periods for configuring the emergency shutdown valve on the wellhead. The Commission amends §3.97(h)(2), relating to emergency shut down valves, to change the title of the paragraph to "Storage wellhead." The Commission adds a new subsection (h)(2)(A), which would require that a storage wellhead be designed, operated, and maintained to contain the contents of the storage well and protect against the loss of stored product. The Commission modifies subparagraph (B) (re-designated from subparagraph (A)) to require that, within three years of the effective date of these amendments or in conjunction with the next mechanical integrity test of the storage cavern, the operator install, as required, emergency shutdown valves in a position between the wellhead and the gas injection/withdrawal surface piping of each storage well and between the wellhead and any brine or fresh water surface piping. In addition, the Commission adds a requirement that there may be no gas, brine, or fresh water piping between the wellhead and the emergency shutdown valve. The new language allows an operator to request an exception to the storage wellhead configuration or compliance date and to propose an alternative configuration or workover schedule, provided that the request and alternative proposal are received within one year of the effective date of these amendments. The Commission or its designee must approve any such request. The Commission changes the designation of §3.97(h)(2)(B) to §3.97(h)(2)(C).

The amendment mandating the location of the emergency shutdown valve directly between the wellhead and surface piping is intended to enhance the safety of the emergency shutdown system. The previous rule did not address the physical positioning of the emergency shutdown valve. Experience has shown that the safest location for the emergency shutdown valve is flanged directly to the wellhead. The recent gas release and wellhead failure at a gas storage facility resulted, in part, from the location of an emergency valve on surface piping. After the emergency shutdown valve closed as designed, a pressure transient, be-

lieved related to water hammer, fractured the brine surface piping allowing gas to escape and ignite.

The Commission adds a new paragraph (3) to subsection (h), relating to gas, brine, and fresh water piping. New subsection (h)(3)(A) requires that gas surface piping be designed for the permitted maximum allowable operating pressure on the hydrocarbon side. The amendment also specifies that, for facilities under the administrative authority of the Commission's Safety Division, product surface piping extends from the wellhead emergency shutdown valve to the first point of downstream pressure regulation. This identifies the respective responsibilities of the Safety Division and of the Oil and Gas Division for hazardous materials piping for those facilities under the administrative authority of both divisions. The Oil and Gas Division is responsible for regulating all fresh water and brine surface piping at hydrocarbon storage facilities under the jurisdiction of the Railroad Commission of Texas. In addition, the Oil and Gas Division has administrative authority over all product surface piping directly connected to storage wells at those hydrocarbon storage facilities not under the administrative authority of the Safety Division, such as underground hydrocarbon storage facilities physically located within oil refineries. The Safety Division does not have administrative authority over storage facilities located within facilities that are not under Railroad Commission jurisdiction, such as oil refineries. The Safety Division also does not have administrative authority over piping that does not transport hazardous materials, such as fresh water or brine piping.

New subsection (h)(3)(B) requires that brine surface piping be designed for the maximum brine wellhead pressure unless protected by a secondary emergency shutdown valve and unless the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. New subsection (h)(3)(C) and (D) requires that fresh water surface piping be protected by an emergency shutdown valve unless certain standards or design configurations are employed. For instance, fresh water surface piping that is disconnected from the wellhead or is connected to brine surface piping outboard of the emergency shutdown valve need not be protected by an emergency shutdown valve. Similarly, fresh water piping need not be protected by an emergency shutdown valve if it has a small internal diameter (less than two inches) and is designed for the permitted maximum allowable operating pressure on the hydrocarbon side and is monitored by an onsite attendant when in use. An emergency shutdown valve on small diameter (less than two inches) fresh water piping is also exempt from the required location on the wellhead or separated from the wellhead by no more than a six-foot spool. This language is parallel to that adopted in §3.95(h)(3)(C) and (D) for liquid storage wells where fresh water surface piping is more commonly installed.

The Commission adopts amendments to renumbered subsection (h)(4), relating to cavern debrining and solution mining operations, to require that each storage well have two or more redundant devices or methods of overfill detection during cavern de-brining operations or solution mining operations conducted with gas in storage in the same cavern. It has always been the intent of the Commission that, in the event of the failure of some component, another method of overfill detection remains functional. The Commission intends to enhance the likelihood that the failure of a single device does not disable both methods of overfill detection.

The Commission adopts amendments to renumbered §3.97(h)(4)(i) and (ii) specifically to allow the use of pressure transducers in addition to pressure switches.

The Commission amends the title of renumbered subsection (h)(5) from "Leak detectors" to "Leak or fire detectors," and to require that, within two years of the effective date of these amendments, a leak or fire detector be installed and in operation at each gas storage well and each structurally enclosed compressor site. The Commission deletes the language in this paragraph concerning distance from a residence, commercial establishment, church, school, or small and well defined outside area as well as the definition of "well defined outside area." Previously, the rule required operators to install leak detectors only if a storage well or compressor station is within 100 yards of a residence, commercial establishment, church, school, or public area. The proposed change would require operators to install leak or fire detectors regardless of the distance to commercial or public facilities. A major release incident at one gas storage facility demonstrated that the potential for significant damage and risk to public heath and safety extends beyond 100 yards from a storage well or compressor station. The Commission also adopts conforming amendments to subparagraph (B).

The Commission adopts amendments to renumbered subsection (h)(6), relating to warning systems and alarms, to require that all leak or fire detectors or other methods that actuate the emergency shutdown valve be integrated with warning systems within two years of the effective date of these amendments.

The Commission adopts amendments to renumbered subsection (h)(7) to remove a reference to a deadline that has already passed.

The Commission adopts amendments to renumbered subsection (h)(8), relating to notification of emergency or uncontrolled release, to clarify that an operator must report to the Commission any significant loss of gas, as well as fluids. In addition, the amended language requires that within 30 days of an incident, the operator file with the Commission a written report on the root cause of the incident and within 90 days of an incident, the operator file with the Commission a written report that describes the operational changes, if any, that will be implemented to reduce the likelihood of a recurrence of a similar incident. For good cause, the Commission may allow a reasonable amount of additional time for an operator to file a report on the root cause of the incident. The provision of a "reasonable amount of additional time" replaces the additional 30-day extension proposed on July 21, 2006. This language replaces the requirement that the operator report a significant loss of fluids and confirm the report in writing within five working days.

The Commission adds a new paragraph (11) to subsection (h), relating to fire suppression capability, to require that, within three years of the effective date of these amendments, each operator have fire suppression capability installed at each wellhead and designed for personnel rescue and equipment protection and cooling, unless the operator requests, within one year of the effective date of these amendments and the Commission or its designee approves, an exception to the schedule or fire suppression requirement. The fire suppression requirement is intended to provide protection for rescue personnel and equipment cooling. The absence of such fire control systems contributed to the complete wellhead failure of a gas storage well and damage to adjacent structures associated with the gas release and fire at Moss Bluff Hub Partners. The fire suppression capability is not necessarily intended to be sufficient to extinguish a wellhead fire.

Extinguishing such a fire could be an imprudent course of action, unless the source of the leak was found and repaired. Rather, the Commission intends that the operator have capability sufficient to provide for short-term protection of emergency personnel protection and for cooling of structures and wellheads potentially affected by a fire from a well or surface pipe.

The Commission adds a new paragraph (12) to subsection (h), relating to wellhead piping and related equipment, to require that all wellhead equipment, gas, fresh water, and brine surface piping and associated valves be designed, installed, tested, maintained, and operated in accordance with engineering standards appropriate to the expected service conditions to which the piping and equipment will be subjected.

The Commission further adopts a new paragraph (13) to subsection (h), relating to barriers, which requires that, within one year of the effective date of these amendments, operators place barriers designed to prevent unintended impact by vehicles and equipment around above grade hydrocarbon piping, hydrocarbon processing equipment where vehicles normally may be expected to travel, or within 100 feet of a public road. There has been at least one incident in which a driver lost control of a vehicle on a public road, causing the vehicle to leave the roadway and hit above ground piping at a gas storage facility.

The Commission adopts other conforming amendments to §3.97(h) and to update the rule to indicate that requirements for which previous versions of the rule established deadlines are now current requirements because the deadlines have passed.

The Commission adopts amendments to §3.97(k), relating to Operating pressure, to insert "allowable" into the phrase "permitted maximum allowable operating pressure" and to specify that permitted maximum allowable operating pressure is that pressure identified on the Commission permit or order, or on the permit application.

The Commission adopts amendments to §3.97(l)(1), relating to Gas pressure, to make conforming amendments to clarify that pressure sensors must be integrated electronically with the emergency shutdown valve actuation system as required by the amendments adopted in §3.97(h). The Commission also adopts a new paragraph (5), relating to data recording. The new paragraph requires that, within three years of the effective date of these amendments, operators electronically record all liquid and gas pressures, injection volumes and rates at least once per minute, and that operators record all emergency actuations of the emergency shutdown valve. This amendment is designed to aid in the analysis of upset conditions by requiring operators to record operational data at relatively frequent intervals. The lack of electronically recorded data on operational conditions at a sufficient frequency has hindered the ability of operators and the Commission to understand operating conditions immediately preceding incidents at storage facilities.

The Commission adopts amendments to §3.97(n) to change the title from "Records retention" to "Operations, construction, and maintenance records retention," and to propose new records retention requirements. In conjunction with a change the Commission made in response to comment, the Commission revised paragraph (n)(1) paragraph to include subparagraphs (A) and (B). The Commission adopts amendments to change the title of paragraph (1) from "Gas injection and withdrawal data" to "Operations data." The Commission adopts amendments to subparagraph (n)(1)(A) (formerly part of subparagraph (n)(1)) to require that operators retain electronic records of well pressures, flow rates, and gas volumes for three months instead of five years. In response to comment, the Commission also clarifies that the electronic data must be recorded at a frequency of at least once per minute. Because these operational data are intended primarily to diagnose accidents and incidents, long-term retention is unwarranted. The Commission adopts new §3.97(n)(1)(B), which requires an operator to retain for at least five years the records reported to the Commission under subsection (m), relating to Reporting. In response to comment, the Commission also clarifies that these data must be recorded at a frequency of at least once per day.

There is a new paragraph (2), which would require an operator to retain for at least five years the records of measurement performance under §3.97(l)(4); and testing of safety devices under §3.97(h). The records of any test of a safety device required under subsection (h) must be available for on-site inspection within 10 days of the date of the test. The Commission amends the title of renumbered paragraph (3) from "Equipment data" to "Construction and maintenance data" and to amend this subsection to require that operators maintain documents and records on the drilling, mining, completion, major repairs, and workovers of storage wells and the testing of storage well integrity required under subsections (h) and (l) and that those records be retained for the life of the facility. The extension of the retention period is prudent and necessary to insure that critical information on well construction, repair, and workover and the testing of storage well integrity be retained for the life of the facility. It is often necessary to examine the results of past tests and procedures to properly interpret current tests, particularly tests that have recurrence intervals of five years, such as mechanical integrity tests. Obviously, in cases where these records currently are unavailable, the Commission does not intend that the new requirement be applied retroactively. However, the new requirement would insure that if the records are currently available, they will be preserved for the life of the facility and will pass for retention purposes to future owners and/or operators of the facilities with the transfer of ownership or operatorship.

The Commission adopts amendments to §3.97(o), relating to Testing, to change the title to "Testing and maintenance." The Commission adds a new paragraph (3), relating to "Storage wellhead and casing," that would require that testing or inspection of storage wellhead components be performed in conjunction with the integrity test schedule of the hydrocarbon storage well. The Commission deleted the language proposed in §3.97(o)(3) regarding pressure testing to 125 percent of the permitted maximum allowable pressure and has clarified that each storage wellhead and cemented casing must be inspected at least once every 15 years for corrosion, cracks, deformations, or other conditions that may compromise integrity and that may not be detected from the 5-year test. In addition, upon a showing of good cause, an operator may request up to an additional five-year extension. The Commission further adds factors that the Commission may consider in determining good cause. Such factors include but are not limited to age, location, and configuration of the well, well and facility history, operator compliance record, operator efforts to comply with the section, and accuracy of inventory control. This change provides the opportunity for an operator to plan for the inspection, and to evaluate alternative means of confirming storage well component integrity.

The Commission adds a new §3.97(o)(4), relating to "Fresh water, brine, and gas surface piping," to require that all gas, brine, and fresh water surface piping be maintained according to a piping integrity management plan within three years or in conjunc-

tion with the testing of storage well integrity. Within one year of the effective date of this section, the operator must submit a piping integrity management plan to the Commission for approval. This amendment aligns the requirements for the testing and maintenance of surface piping in a gas storage facility with current testing and maintenance requirements for pipelines transporting hazardous materials. Gas piping and fresh water and brine piping within storage facilities could, in emergency situations, transport hazardous materials.

The Commission adopts the amendments to §3.95 and §3.97 under (1) Texas Natural Resources Code, §81.051, which gives the Commission jurisdiction over all common carrier pipelines in Texas, oil and gas wells in Texas, persons owning or operating pipelines in Texas, and persons owning or engaged in drilling or operating oil or gas wells in Texas; (2) Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; (3) Texas Natural Resources Code, §85.041, which prohibits the purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the Commission under such a statute, and the purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the Commission under such a statute; (4) Texas Natural Resources Code, §85.042, which authorizes the Commission to promulgate and enforce rules and orders necessary to carry into effect the provisions of §85.041, and to prevent that section's violation, and, when necessary, to make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property; (5) Texas Natural Resources Code, §85.201, which directs the Commission to make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas; (6) Texas Natural Resources Code, §85.202, which authorizes the Commission to make rules and orders to prevent waste of oil and gas in drilling and producing operations and in the storage, piping, and distribution of oil and gas; to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata; for the drilling of wells and preserving a record of the drilling of wells; to require wells to be drilled and operated in a manner that will prevent injury to adjoining property; to prevent oil and gas and water from escaping from the strata in which they are found into other strata; to provide rules for shooting wells and for separating oil from gas; to require records to be kept and reports made; and to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the Commission's rules or orders for the prevention of waste, and authorizes the Commission to do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and to adopt other rules and orders as may be necessary for those purposes; (7) Texas Natural Resources Code, §86.041, which grants the Commission broad discretion in administering the provisions of this chapter and to adopt any rule or order in the manner provided by law that the Commission finds necessary to effectuate the provisions and purposes of this chapter; (8) Texas Natural Resources Code, §86.042, which directs the Commission to adopt and enforce rules and orders to conserve and prevent the waste of gas; prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas; require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata; provide for drilling wells and preserving a record of them; require wells to be drilled and operated in a manner that prevents injury to adjoining property; prevent gas and water from escaping from the strata in which they are found into other strata; require records to be kept and reports made; provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and otherwise accomplish the purposes of this chapter; (9) Texas Natural Resources Code, §211.011, which gives the Commission jurisdiction over all salt dome storage of hazardous liquids and over salt dome storage facilities used for the storage of hazardous liquids; (10) Texas Natural Resources Code, §211.012, which directs the Commission to adopt safety standards and practices for the salt dome storage of hazardous liquids and the facilities used for that purpose that require the installation and periodic testing of safety devices at a salt dome storage facility; the establishment of emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public; fire prevention and response procedures; employee and third-party contractor safety training with respect to the operation of the facility; and other requirements that the Commission finds necessary and reasonable for the safe construction, operation, and maintenance of salt dome storage facilities; (11) Texas Natural Resources Code, §211.013, which requires each owner or operator of a hazardous liquid salt dome storage facility to maintain records, make reports, and provide any information the Commission may require with respect to the construction, operation, or maintenance of the facility; and requires the Commission by rule to designate the records required to be maintained and the reports required to be filed by the owner or operator and shall provide forms for reports if necessary; (12) Texas Natural Resources Code, §117.012, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and (13) Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated §60101, *et seq*.

Texas Natural Resources Code, §§81.051, 81.052, 85.041, 85.042, 85.201, 85.202, 86.041, 86.042, 211.011, 211.012, 211.013, and 117.012, and Texas Utilities Code, §§121.201 - 121.210 are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.041, 85.042, 85.201, 85.202, 86.041, 86.042, 211.011, 211.012, 211.013, and 117.012, and Texas Utilities Code, §§121.201 - 121.210.

Cross-reference to statutes: Texas Natural Resources Code, §§81.051, 81.052, 85.041, 85.042, 85.201, 85.202, 86.041, 86.042, 211.011, 211.012, 211.013, and 117.012, and Texas Utilities Code, §§121.201 - 121.210.

Issued in Austin, Texas, on January 10, 2007.

§3.95. Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations.

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

(1) Affected person--A person who, as a result of actions proposed in an application for a storage facility permit or for amendment or modification of an existing storage facility permit, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Brine string--The uncemented tubing through which highly saline water flows into or out of a hydrocarbon storage well during hydrocarbon withdrawal or injection operations.

(3) Cavern--The storage space created in a salt formation by solution mining.

(4) Commission--The Railroad Commission of Texas.

(5) Emergency shutdown valve--A valve that automatically closes to isolate a hydrocarbon storage wellhead from surface piping in the event of specified conditions that, if uncontrolled, may cause an emergency.

(6) Fire detector--A device capable of detecting the presence of a flame or the heat from a fire.

(7) Fresh water--Water having bacteriological, physical, and chemical properties that make it suitable and feasible for beneficial use for any lawful purpose. For purposes of this section, brine associated with the creation, operation, and maintenance of an underground hydrocarbon storage facility is not considered fresh water.

(8) Hydrocarbon storage well or storage well--A well, including the storage wellhead, casing, tubing, borehole, and cavern, used for the injection or withdrawal of liquid or liquefied hydrocarbons into or out of an underground hydrocarbon storage facility.

(9) Leak detector--A device capable of detecting by chemical or physical means the presence of hydrocarbon vapor or the escape of vapor through a small opening.

(10) Liquid or liquefied hydrocarbons--Crude oil and products, derivatives, or byproducts of oil or gas that are:

(A) liquid under standard conditions of temperature and pressure;

(B) liquefied under the temperatures and pressures at which they are stored; or

(C) stored under conditions that necessitate the use of displacement fluids to withdraw them from storage.

(11) Operator--The person recognized by the Commission as being responsible for the physical operation of an underground hydrocarbon storage facility, or such person's authorized representative.

(12) Owner--The person recognized by the Commission as owning all or part of a storage facility, or such person's authorized representative.

(13) Person--A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(14) Pollution--Alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Process or transfer area--Any area at an underground hydrocarbon storage facility where hydrocarbons are physically altered by equipment, including dehydrators, compressors, and pumps, or where hydrocarbons are transferred to or from trucks, rail cars, or pipelines.

(16) Storage wellhead--Equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges. Spool pieces must have a length of less than six feet to be considered a part of the storage wellhead.

(17) Surface piping--Any pipe within a storage facility that is directly connected to a storage well, outboard of the wellhead emergency shutdown valve and used to transport product, brine, or fresh water to or from a storage well whether such pipe is above or below ground level.

(18) Underground hydrocarbon storage facility or storage facility--A facility used for the storage of liquid or liquefied hydrocarbons in an underground salt formation, including surface and subsurface rights, appurtenances, and improvements necessary for the operation of the facility.

(b) Permit required.

(1) General. No person may create, operate, or maintain an underground hydrocarbon storage facility without obtaining a permit from the Commission. A permit issued by the Commission for such activities before the effective date of this section shall continue in effect until revoked, modified, or suspended by the Commission, or until it expires by its terms. The provisions of this section apply to permits for underground hydrocarbon storage facility operations issued prior to the effective date of this section, except as specifically provided in this section.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a Commission order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application.

(1) Information required. An application for a permit to create, operate, or maintain an underground hydrocarbon storage facility shall be filed with the Commission by the owner or operator, or proposed owner or operator, on the prescribed form. The application shall contain the information necessary to demonstrate compliance with the applicable state laws and Commission regulations.

(2) Permit amendment. An application for amendment of an existing underground hydrocarbon storage facility permit shall be filed with the Commission:

(A) prior to any planned enlargement of a cavern in excess of the permitted cavern capacity by solution mining;

(B) when required in accordance with paragraph (3) of this subsection;

(C) prior to the drilling of any additional hydrocarbon storage wells;

(D) prior to any increase in the volume of liquid or liquefied hydrocarbons stored in the cavern in excess of the permitted storage volume; or

(E) any time that conditions at the storage facility deviate materially from conditions specified in the permit or the permit application.

(3) Increase in capacity. The owner or operator of a storage facility shall notify the Commission if information indicates that the capacity of a cavern exceeds the permitted cavern capacity by 20% or more. Such notification shall be made in writing to the Commission within 10 days of the date that the owner or operator knows or has reason to know that the cavern capacity exceeds the permitted capacity by 20% or more. The notification shall include a description of the information that indicates that the permitted cavern capacity has been exceeded, and an estimate of the current cavern capacity. Upon receipt of such information, the Commission or its designee may take any one or more of the following actions:

(A) require the permittee to comply with a compliance schedule that lists measures to be taken to ensure that conditions at the storage facility do not pose a danger to life or property, and that no waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water occurs;

(B) require the permittee to file an application to amend the underground hydrocarbon storage facility permit;

(C) modify, cancel, or suspend the permit as provided in subsection (f) of this section; or

(D) take enforcement action.

(4) Related activities. An application for a permit to store saltwater or brine in a pit or to dispose of saltwater or other oil and gas waste arising out of or incidental to the creation, operation, or maintenance of an underground hydrocarbon storage facility shall be filed in accordance with applicable Commission requirements.

(d) Standards for underground storage zone.

(1) Geologic, construction, and operating performance. An underground hydrocarbon storage facility may be created, operated, or maintained only in an impermeable salt formation in a manner that will prevent waste of the stored hydrocarbons, uncontrolled escape of hydrocarbons, pollution of fresh water, and danger to life or property. Natural gas storage operations are not authorized under the provisions of this section. A permit under §3.97 of this title (relating to Underground Storage of Gas in Salt Formations) is required to convert from storage of liquid or liquefied hydrocarbons to storage of natural gas in an underground salt formation.

(2) Fresh water strata. The applicant must submit with the application a letter from the Texas Commission on Environmental Quality or its successor agencies stating the depth to which fresh water strata occur at each storage facility.

(e) Notice and hearing.

(1) Notice requirements. The applicant shall, no later than the date the application is mailed to or filed with the Commission, give notice of an application for a permit to create, operate, or maintain an underground hydrocarbon storage facility, or to amend an existing storage facility permit, by mailing or delivering a copy of the application form to:

(A) the surface owner of the tract where the storage facility is located or is proposed to be located;

(B) the surface owner of each tract adjoining the tract where the storage facility is located or is proposed to be located;

(C) each oil, gas, or salt leaseholder, other than the applicant, of the tract on which the storage facility is located or is proposed to be located;

(D) each oil, gas, or salt leaseholder of any tract adjoining the tract on which the storage facility is located or is proposed to be located;

(E) the county clerk of the county where the storage facility is located or is proposed to be located; and

(F) if the storage facility is located or proposed to be located within city limits, the city clerk or other appropriate city official.

(2) Publication of notice. Notice of the application, in a form approved by the Commission or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county or counties where the facility is or is proposed to be located. The applicant shall file proof of publication prior to any hearing on the application or administrative approval of the application.

(3) Notice by publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A) - (D) of this subsection. The exercise of diligent efforts to ascertain the names and addresses of such persons shall require an examination of the county records where the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A) - (D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the Commission specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing required for new permits. A permit application for a new underground hydrocarbon storage facility will be considered for approval only after notice and hearing. The Commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission.

(5) Hearing on permit amendments.

(A) An application for an amendment to an existing storage facility permit may be approved administratively if the Commission receives no protest from a person notified pursuant to the provisions of paragraph (1) of this subsection, or from any other affected person.

(B) If the Commission receives a protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the Commission, or of the date of the third publication, whichever is later, or if the Commission determines that a hearing is in the public interest, then the applicant will be notified that the application cannot be approved administratively. The Commission will schedule a hearing on the application upon written request of the applicant. The Commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in

the application. After hearing, the examiner shall recommend a final action by the Commission.

(C) If the application is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the Commission.

(f) Modification, cancellation, or suspension of a permit.

(1) General. Any permit may be modified, suspended, or canceled after notice and opportunity for hearing if:

(A) a material change in conditions has occurred in the operation, maintenance, or construction of the storage facility, or there are material deviations from the information originally furnished to the Commission. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) fresh water is likely to be polluted as a result of continued operation of the facility;

(C) there are material violations of the terms and provisions of the permit or Commission regulations;

(D) the applicant has misrepresented any material facts during the permit issuance process; or

(E) injected fluids are escaping or are likely to escape from the storage facility.

(2) Imminent dangers. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the Commission or its designee may immediately suspend a storage facility permit until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All operations at the facility shall cease upon suspension of a permit under this paragraph.

(g) Transfer of permit. A storage facility permit may not be transferred without the prior approval of the Commission or its designee. Until such transfer is approved by the Commission or its designee, the proposed transferee may not conduct any activities otherwise authorized by the permit. The following procedure shall be followed when requesting approval for transfer of a permit.

(1) Request. Prior to transferring either ownership or operation of a storage facility, the permittee shall file a request for transfer of the permit with the Commission. Such request may not be filed unless a completed Form P-4, signed by both the permittee and the proposed transferee, has been filed with the Commission.

(2) Approval. The Commission, or its designee, shall approve the transfer of a storage facility permit, provided:

(A) the proposed transferee is not the subject of any unsatisfied Commission enforcement order at the time of the request for permit transfer; and

(B) there are no existing violations of any Commission regulation, order, or permit at the storage facility at the time of the request for permit transfer that have been documented by the Commission, or its employees, unless the proposed transferee agrees to correct the violations according to a compliance schedule approved by the Commission, or its designee.

(3) Good cause. Notwithstanding paragraph (2) of this subsection, for good cause shown the Commission or its designee may require public notice and opportunity for hearing prior to taking action on a request for transfer of a permit. Such request may be denied after notice and opportunity for hearing if the Commission or its designee finds that transfer of the permit would not be in the public interest.

(h) Safety. The following safety requirements shall apply to all underground hydrocarbon storage facilities, except as specifically provided otherwise, provided, however, that the provisions of this subsection shall not apply to any hydrocarbon storage well that is out of service and disconnected from all surface piping. Notwithstanding the compliance time periods specified in this subsection, a new storage facility permitted under this section must have all required safety measures and equipment in place before commencement of storage operations at the facility. All storage facilities that are permitted on the effective date of this section must have such safety measures and equipment in place within the period of time specified. Further, until such a facility has all the safety measures and devices required by paragraphs (2) - (7) and (13) - (16) of this subsection in place, the facility must have an attendant on site at all times. Notwithstanding the compliance time periods specified in paragraph (2)(B) of this subsection, no storage well in active service may be operated without a fully functional emergency shutdown valve unless in compliance with specified conditions of paragraph (2)(C) of this subsection.

(1) Monitoring of injection and withdrawal operations. All hydrocarbon injection and withdrawal activities shall be continuously monitored by an individual who is trained and experienced in such activities. Any facility that is unattended during injection and withdrawal activities shall have company personnel on call at all times. On-call personnel must be able to reach the facility within 30 minutes from the time a potential problem at the storage facility is noted by the individual monitoring the injection or withdrawal activities.

(2) Storage wellhead.

(A) The storage wellhead shall be designed, operated, and maintained to contain the contents of the storage well and protect against loss of stored product.

(B) Within five years of the effective date of this section, the operator shall have installed emergency shutdown valves between the storage wellhead and the product and brine surface piping of each hydrocarbon storage well and, if required under paragraph (3) of this subsection, between the storage wellhead and fresh water surface piping of the well. Within one year of the effective date of the section, an operator may request an exception to the storage wellhead configuration or compliance date of this subparagraph and propose an alternative configuration or workover schedule for approval by the Commission or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for active hydrocarbon storage. Emergency shutdown valves shall meet the following requirements.

(i) Each emergency shutdown valve shall be capable of activation at each storage well, at the on-site control center if one exists, at the remote control center if one exists, and at a location that is reasonably anticipated to be accessible to emergency response personnel at any facility that does not have an on-site control center that is attended 24 hours per day.

(ii) Each emergency shutdown valve shall be an automatic fail-closed valve that automatically closes when there is a loss of pneumatic pressure, hydraulic pressure, or power to the valve.

(iii) Each emergency shutdown valve shall be closed and opened at least monthly.

(iv) Each emergency shutdown valve system shall be tested at least twice each calendar year at intervals not to exceed

7 1/2 months. The test shall consist of activating the actuation devices, checking the warning system, and observing the valve closure.

(C) If an emergency shutdown valve system fails to operate as required, the storage well shall be immediately shut in until repairs are completed, unless:

(i) a backup emergency shutdown valve is in operation on the same piping; or

(ii) an attendant is posted at the well site to provide immediate manual shut-in.

(D) The requirements of this paragraph do not apply to underground hydrocarbon storage facilities storing only crude oil.

(3) Product, brine, and fresh water surface piping.

(A) Product surface piping shall be designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. For facilities with hazardous materials surface piping under the administrative authority of the Safety Division of the Railroad Commission of Texas, for the purposes of this section, product surface piping extends from the wellhead emergency shutdown valve to the first pressure regulation device, including a manual, motor-operated, or emergency shutdown valve

(B) Brine surface piping shall be designed for the maximum brine wellhead pressure and to transport, under emergency conditions, product to the brine system gas vapor control system described in paragraph (6) of this subsection unless:

(i) a secondary emergency shutdown valve is in operation on the brine surface piping; and

(ii) the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well.

(C) Fresh water surface piping, if any, must be equipped with a wellhead emergency shutdown valve unless it is:

(i) disconnected from the wellhead; or

(ii) connected to brine surface piping outboard of the wellhead emergency shutdown valve; or

(iii) designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well; and has an internal diameter of less than or equal to two inches; and an attendant is posted at the well site to provide immediate manual shut-in when in use.

(D) Fresh water piping designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well and with an internal diameter of less than or equal to two inches is exempt from the requirement that an emergency shutdown valve be located on the wellhead or separated from the wellhead by a spool no longer than six feet.

(4) Overfill detection and automatic shut-in methods.

(A) The requirements of this paragraph shall not apply to an underground hydrocarbon storage facility storing only crude oil.

(B) The requirements of this paragraph shall not apply to a storage well that is out of service and disconnected from surface piping until the well is reconnected for hydrocarbon storage.

(C) Within one year of the effective date of this section, each storage cavern shall have at least two of the following redundant devices or methods in operation:

(i) a safety casing or annular tubing string filled with a non-volatile fluid and equipped with a pressure sensor switch set to automatically close all emergency shutdown valves in response to a preset pressure;

(ii) a preset pressure sensor switch or transducer on the brine piping that is set to automatically close all emergency shutdown valves in response to a preset pressure. This pressure sensor or transducer may be used in conjunction with weep hole(s) on a safety string that is concentric with the brine string, or in conjunction with weep hole(s) on the brine string;

(iii) a device on the brine string or brine piping that detects hydrocarbon in the brine by physical or chemical characteristics and that is set to automatically close all emergency shutdown valves in response to hydrocarbon detection;

(iv) an instrument that detects a rapid increase in the brine flow rate indicative of hydrocarbon in the brine and that is set to automatically close all emergency shutdown valves in response to a preset flow rate or differential flow rate; or

(v) an alternate device or method approved by the Commission or its designee.

(5) Leak detectors.

(A) The provisions of subparagraphs (B) - (D) of this paragraph shall not apply to underground hydrocarbon storage facilities storing only crude oil.

(B) A leak detector shall be installed and in operation at the wellhead of each hydrocarbon storage well and at each process and transfer area and each surface vessel area that contains liquid or liquefied hydrocarbons. These leak detectors shall be integrated with the warning system required in paragraph (13)(A) of this subsection.

(C) Leak detectors shall be installed and in operation at four locations that are evenly spaced around the perimeter of the brine pit(s).

(D) Leak detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months and, when defective, repaired or replaced within 10 days.

(6) Brine system gas vapor control.

(A) The provisions of this paragraph shall not apply to underground hydrocarbon storage facilities storing only crude oil.

(B) Gas vapor control devices shall be installed and in operation at each brine pit system to ignite or capture hydrocarbon vapors that are heavier than air. Control devices shall consist of at least one of the following:

(i) a flare on the brine system upstream from the brine discharge point;

(ii) a hydrocarbon liquid knockout vessel and degasifier;

(iii) pilot lights on the berm of each brine pit; or

(iv) an alternative method designed to provide a reliable, localized point of ignition to prevent the formation of a vapor cloud.

(C) Brine system gas vapor control systems shall be inspected twice each calendar year at intervals not to exceed 7 1/2 months.

(7) Fire detection devices or methods and fire control systems.

(A) Fire detection devices or methods shall be installed and in operation at all process and transfer areas. Fire detection devices or methods specified in this paragraph shall be integrated with the warning system required in paragraph (13)(A) of this subsection. Fire detection shall consist of at least one of the following:

(i) fire detectors;

(ii) heat sensors, including meltdown and fused devices; or

(iii) camera surveillance at facilities that are attended at an on-site control room 24 hours per day.

(B) Fire detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months and, when defective, repaired or replaced within 10 days.

(C) Within three years of the effective date of this section, each storage wellhead in active storage service shall have fire suppression capability designed to aid in personnel rescue and for equipment protection and cooling. Within one year of the effective date of this section, the operator may request an exception to the schedule or fire suppression requirement of this subparagraph and propose an alternative schedule or means of protection from wellhead fire for approval of the Commission or its designee.

(8) Emergency response plan. Each storage facility shall submit to the Commission a written emergency response plan. The plan shall address spills and releases, fires, fire suppression capability, explosions, loss of electricity, and loss of telecommunication services. The plan shall describe the storage facility's emergency response communication system, procedures for coordination of emergency communication and response activities with local emergency planning committees and other local authorities, use of warning systems, procedures for citizen and employee emergency notification and evacuation, and employee training. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the Commission or its designee requires. The plan shall include a plat of the facility that shows the location of wells, processing areas, loading racks, brine pits, and other significant features at the site. A copy of the plan shall be provided to the local emergency response planning committee and to any other local governmental entity that submits a written request for a copy of the plan to the operator. Copies of the plan shall also be available at the storage facility and at the company headquarters.

(9) Notification of emergency or uncontrolled release.

(A) Emergency response personnel. Each operator shall notify the county sheriff's office, the county emergency management coordinator, and any other appropriate public officials, which are identified in the emergency response plan, of any emergency that could endanger nearby residents or property. Such emergencies include, but are not limited to, an uncontrolled release of hydrocarbons from a storage well, or a leak or fire at any area of the storage facility. The operator shall give notice as soon as practicable following the discovery of the emergency. At the time of the notice, the operator shall report an assessment of the potential threat to the public.

(B) Commission. The operator shall report to the appropriate Commission district office as soon as practicable any emergency, significant loss of fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release. The operator shall file with the Commission within 30 days of the incident a written report on the root cause of the incident. The operator shall file with the Commission within 90 days of the incident a written report that describes the operational changes, if any, that have been or will be implemented to reduce the likelihood of a recurrence of a similar incident. An operator may request that the Commission grant, for good cause, a reasonable amount of additional time to file a written report on the root cause of the incident.

(10) Public education. Each facility operator shall establish a continuing educational program to inform residents within a one-mile radius of a hydrocarbon storage facility of emergency notification and evacuation procedures.

(11) Annual emergency drill. Annually, each operator shall conduct a drill that tests response to a simulated emergency. Written notice of the drill shall be provided to the appropriate Commission district office, the county emergency management coordinator, and the county sheriff's office at least seven days prior to the drill. Local emergency response authorities shall be invited to participate in all such drills. The operator shall file a written evaluation of the drill and plans for improvements with the appropriate district office and the county emergency management coordinator within 30 days after the date of the drill.

(12) Employee safety training.

(A) Each operator shall prepare and implement a plan to train and test each employee at each underground hydrocarbon storage facility on operational safety to the extent applicable to the employee's duties and responsibilities. The facility's emergency response plan shall be included in the training program.

(B) Each operator shall hold a safety meeting with each contractor prior to the commencement of any new contract work at an underground hydrocarbon storage facility. Emergency measures, including safety and evacuation measures specific to the contractor's work, shall be explained in the contractor safety meeting.

(13) Warning systems and alarms.

(A) All leak detectors, fire detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation shall be integrated with warning systems that are audible and visible in the local control room and at any remote control center. The circuitry shall be designed so that failure of a detector or heat sensor, excluding meltdown and fused devices, to function will activate the warning.

(B) A manually operated alarm shall be installed at each attended storage facility. The alarm shall be audible in areas of the facility where personnel are normally located.

(14) Wind socks. At least one wind sock that is visible at any time from any normal work location within the storage facility shall be installed at the facility.

(15) Barriers. Barriers designed to prevent unintended impact by vehicles and equipment shall be placed around above-grade hydrocarbon piping, hydrocarbon process equipment, and surface hydrocarbon storage vessels in areas where vehicles may normally be expected to travel or within 100 feet of a public road.

(16) Wellhead, surface piping, and associated valves. All wellhead equipment, product, fresh water, and brine surface piping, and associated valves shall be designed, installed, and operated in accordance with engineering standards to the expected service conditions to which the piping and equipment will be subjected.

(i) Cavern capacity and configuration.

(1) Crude oil storage. The provisions of this subsection shall not apply to underground hydrocarbon storage facilities where only crude oil is stored.

(2) Before storage operations begin. The capacity and configuration of each hydrocarbon storage cavern (both salt domes and

bedded salt) shall be determined by sonar survey before storage operations begin in a newly completed cavern.

(3) Salt domes. The capacity and configuration of each salt dome hydrocarbon storage cavern shall be determined by sonar survey at least once every 10 years.

(4) Bedded salt. The configuration of the roof of each hydrocarbon storage cavern in bedded salt shall be determined by downhole log or an alternate method approved by the Commission or its designee at least once every five years.

(5) Filing results. Sonar and roof monitoring survey results shall be filed with the Commission within 30 days after the survey.

(6) Out-of-service caverns. A sonar or roof monitoring survey is not required for a cavern that is out of service. A sonar or roof monitoring survey shall be performed before any cavern that has been out of service is returned to service, unless the provisions of paragraph (2) of this subsection apply.

(j) Well completion, casing, and cementing. Hydrocarbon storage wells shall be cased and the casing strings cemented to prevent fluids from escaping to the surface or into fresh water strata, or otherwise escaping and causing waste or endangering public safety or the environment.

(1) New wells.

(A) All hydrocarbon storage wells drilled in salt domes after the effective date of this section shall have at least two casing strings cemented into the salt formation. Sufficient cement shall be used to fill the annular space outside the casing from the casing shoe to the ground surface, or from the casing shoe to a point at least 200 feet above the shoe of the previous casing string.

(B) All hydrocarbon storage wells in bedded salt drilled after the effective date of this section shall have all casing strings cemented with sufficient cement to fill the annular space outside each casing string from the casing shoe to the ground surface.

(2) Well completion report. A well completion report shall be filed in accordance with the instructions on the form prescribed by the Commission within 30 days after a storage well is completed and before solution mining to create the cavern begins.

(k) Operating requirements.

(1) Operating pressure. The operating pressure of each hydrocarbon storage well shall not exceed the permitted maximum allowable operating pressure for that well. The permitted maximum allowable operating pressure is that pressure specified in the Commission permit or order, or, if not specified in the permit or order, that pressure stated in the application or the application for amendment to a permit or order. The maximum operating pressure at the shoe of the lowermost cemented casing shall not exceed 0.8 pounds per square inch per foot of depth.

(2) Volume of hydrocarbons stored. The quantity of hydrocarbons stored in a cavern shall not exceed the permitted maximum storage volume for that cavern. The permitted maximum hydrocarbon storage volume is that volume specified in the Commission permit or order, or, if not specified in the permit or order, that volume stated in the application or the application for amendment to a permit or order.

(l) Monitoring requirements.

(1) Pressures. Each hydrocarbon storage well shall be equipped with pressure sensors that continuously monitor and display wellhead pressures on both the product and brine sides of the wellhead at the control room. Each hydrocarbon storage well with a safety string shall be equipped with a pressure sensor and the sensor shall continuously monitor the pressure on the safety string at the wellhead.

(2) Pressure gauges. Each hydrocarbon storage well shall be equipped with gauges on both the brine and hydrocarbon sides of the wellhead.

(3) Volumes injected and withdrawn. The volume of hydrocarbons injected into and withdrawn from each hydrocarbon storage well shall be measured by:

(A) flow meter for each well; or

(B) an alternate method approved by the Commission or its designee.

(4) Measurement performance. The accuracy of hydrocarbon volume measurement devices or methods required under paragraph (3) of this subsection shall be verified at least once each year by a person who is not an officer or employee of the owner or operator, or any affiliate of the owner or operator. For purposes of this section, an affiliate is any person or entity that owns, is owned by, or is under common ownership with the owner or the operator. In the case of meters, verification includes witnessing meter calibration or proving conducted by the owner or operator or an affiliate of the owner or operator.

(5) Data recording. Within three years of the effective date of this section, operators shall have installed and have functioning equipment to electronically record all liquid and gas pressures, volumes, and flow rates at a frequency of at least once per minute, and all actuations of the emergency shutdown valve.

(m) Reporting. The operator shall report maximum wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well in accordance with the instructions on the annual report form prescribed by the Commission.

(n) Operations, construction, and maintenance records retention.

(1) Hydrocarbon injection and withdrawal data.

(A) The operator shall retain for at least three months all electronic records of hydrocarbon storage well pressures, flow rates, and hydrocarbon volumes injected into and withdrawn from each well, and the hydrocarbon inventory of each cavern. These electronic data shall be recorded at a frequency of at least once per minute.

(B) The operator shall retain for at least five years the records, reported to the Commission under subsection (m) of this section, of maximum monthly wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the monthly net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well. These electronic data shall be recorded at a frequency of at least once per day.

(2) Records retention. The operator shall retain for at least five years the records of measurement performance under subsection (l)(4) of this section; and testing of safety devices under subsection (h) of this section. Records of any test of a safety device required under subsection (h) of this section shall be available for on-site inspection within 10 days of the date of the test.

(3) Construction and maintenance data. The operator shall retain for the life of the facility documents and records pertaining to the drilling, mining, completion, major repairs, and workovers of storage wells and testing of storage well integrity, and shall transfer all such documents and records to any new owner and/or new operator of the facility.

(4) Extension during investigation. Any documents or records that contain information pertinent to the resolution of any pending regulatory enforcement proceeding shall be retained beyond the prescribed retention until the resolution of such proceeding.

(o) Testing and maintenance.

(1) Integrity tests for wells in salt domes with a single casing string. Each hydrocarbon storage well drilled into a salt dome and having a single casing string cemented to the surface shall have the casing inspected by mechanical, ultrasonic, or magnetic methods at least once every five years and after each workover that involves physical changes to the cemented casing string.

(2) Integrity tests for wells other than those in salt domes with a single casing string. Each hydrocarbon storage well shall be tested for integrity prior to being placed into service, at least once every five years, and after each workover that involves physical changes to any cemented casing string. The following requirements apply to all such integrity tests.

(A) A hydrocarbon storage well shall be tested for integrity by the nitrogen-brine interface method or an alternative approved by the Commission, or its designee.

(B) A test procedure shall be filed with the Commission for approval at least 10 days before the test date.

(C) The operator shall notify the district office at least five days prior to conducting any integrity test.

(D) A complete record of each integrity test shall be filed in duplicate with the district office within 30 days after testing is completed. The record shall include a chronology of the test, copies of all downhole logs, storage well completion information, pressure readings, volume measurements, temperature logs and readings, and an explanation of the test results that addresses the precision of the test in terms of a calculated leak rate.

(E) Storage well pressures shall be allowed to stabilize to a rate of change of less than 10 psi in 24 hours before the testing period begins.

(3) Storage wellhead and casing. Storage wellhead components and casing shall be inspected at least once every 10 years for corrosion, cracks, deformations or other conditions that may compromise integrity and that may not be detected by the five-year test. The operator may request an extension of up to five years from the Commission for good cause. Factors the Commission may consider in determining good cause pursuant to this paragraph include by are not limited to the age, location, and configuration of the well; well and facility history; operator compliance record; operator efforts to comply with this subsection; and accuracy of inventory control.

(4) Product, fresh water, and brine surface piping. Within one year of the effective date of this section, the operator shall submit a piping integrity management plan for approval by the Commission or its designee. Within three years of the effective date of this section, or in conjunction with the storage well integrity testing, all product, freshwater, and brine surface piping shall be maintained according to the facility's piping integrity management plan.

(5) Alternative monitoring. An operator may request the Commission or its designee to approve storage well pressure monitoring as an alternative to integrity testing for hydrocarbon storage wells that are out of storage service. An out-of-service storage well must be tested for integrity according to the procedures specified in paragraph (2) of this subsection before it may be returned to storage service.

(p) Plugging.

(1) Plug on abandonment. A hydrocarbon storage well shall be plugged upon permanent abandonment in a manner approved by the Commission or its designee. A proposal for plugging shall be submitted to the Commission in Austin for approval or modification prior to plugging. Following approval of a plugging plan, the operator shall file a notification of intent to plug at least five days prior to commencement of plugging operations. A plugging report shall be filed with the Commission in Austin within 30 days after plugging.

(2) Alternative monitoring. As an alternative to plugging a hydrocarbon storage well that has been permanently deactivated, an operator may request approval by the Commission or its designee of a plan to convert the storage well to a monitor well. A pressure monitoring plan must be submitted to the Commission along with the request to convert the storage well to a monitoring well.

(q) Penalties.

(1) Penalties. Violations of this section may subject the operator to penalties and remedies specified in the Texas Natural Resources Code, Titles 3 and 11, and other statutes administered by the Commission.

(2) Certificate of compliance. The certificate of compliance for any underground hydrocarbon storage facility may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance).

(r) Applicability of other Commission rules and orders. The owner or operator of an underground hydrocarbon storage facility is not relieved by this section of compliance with any other requirement of Chapters 3, 4, 7, or 8 of this title (relating to Oil and Gas Division; Environmental Protection; Gas Services Division; or Pipeline Safety Regulations).

§3.97. Underground Storage of Gas in Salt Formations.

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

(1) Affected person--A person who, as a result of actions proposed in an application for a storage facility permit or amendment or modification of an existing storage facility permit, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Cavern--The storage space created in a salt formation by solution mining.

(3) Commission--The Railroad Commission of Texas.

(4) Emergency shutdown valve--A valve that automatically closes to isolate a gas storage wellhead from surface piping in the event of specified conditions that, if uncontrolled, may cause an emergency.

(5) Fresh water--Water having bacteriological, physical, and chemical properties that make it suitable and feasible for beneficial use for any lawful purpose. For purposes of this section, brine associated with the creation, operation, and maintenance of an underground gas storage facility is not considered fresh water.

(6) Gas storage well or storage well--A well, including the storage wellhead, casing, tubing, borehole, and cavern used for the injection or withdrawal of natural gas or any other gaseous substance into or out of an underground gas storage facility.

(7) Leak or fire detector--A device capable of detecting by chemical or physical means the presence of stored product gas or the escape of stored product gas or the presence of flame or heat of a fire.

(8) Operator--The person recognized by the Commission as being responsible for the physical operation of an underground gas storage facility, or such person's authorized representative.

(9) Owner--The person recognized by the Commission as owning all or part of an underground gas storage facility, or such person's authorized representative.

(10) Person--A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(11) Pollution--Alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(12) Storage wellhead--Equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges. Spool pieces must have a length less than six feet to be considered a part of the storage wellhead.

(13) Surface piping--Any pipe within a storage facility that is directly connected to a storage well, outboard of the wellhead emergency shutdown valve and used to transport gas, brine, or fresh water to or from a storage well whether such pipe is above or below ground level.

(14) Underground gas storage facility or storage facility--A facility used for the storage of natural gas or any other gaseous substance in an underground salt formation, including surface and subsurface rights, appurtenances, and improvements necessary for the operation of the facility.

(b) Permit required.

(1) General. No person may create, operate, or maintain an underground gas storage facility without obtaining a permit from the Commission. A permit issued by the Commission for such activities before the effective date of this section shall continue in effect until revoked, modified, or suspended by the Commission, or until it expires according to its terms. The provisions of this section apply to permits to conduct gas storage operations issued prior to the effective date of this section, except as otherwise specifically provided.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a Commission order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application.

(1) Information required. An application for a permit to create, operate, or maintain an underground gas storage facility shall be filed with the Commission by the owner or operator, or the proposed owner or operator, on the prescribed form. The application shall contain the information necessary to demonstrate compliance with applicable state laws and Commission regulations.

(2) Permit amendment. An application for amendment of an existing underground gas storage facility permit shall be filed with the Commission:

(A) prior to any planned enlargement of a cavern in excess of the permitted cavern capacity by solution mining;

(B) when required in accordance with paragraph (3) of this subsection;

(C) prior to the drilling of any additional storage wells;

(D) prior to an increase in the maximum operating pressure above the permitted pressure; or

(E) any time that conditions at the storage facility deviate materially from the conditions specified in the permit or permit application.

(3) Increase in capacity. The owner or operator of a storage facility shall notify the Commission if information indicates that the capacity of a cavern exceeds the permitted cavern capacity by 20% or more. Such notification shall be made in writing to the Commission within 10 days of the date that the owner or operator of the storage facility knows or has reason to know that the cavern capacity exceeds the permitted capacity by 20% or more. The notification shall include a description of the information that indicates that the permitted cavern capacity has been exceeded, and an estimate of the current cavern capacity. Upon receipt of such information, the Commission or its designee may take any one or more of the following actions:

(A) require the permittee to comply with a compliance schedule that lists measures to be taken to ensure that conditions at the storage facility do not pose a danger to life or property, and that no waste of gas, uncontrolled escape of gas, or pollution of fresh water occurs;

(B) require the permittee to file an application to amend the underground gas storage facility permit;

(C) modify, cancel, or suspend the permit as provided in subsection (f) of this section; or

(D) take enforcement action.

(d) Standards for underground storage zone.

(1) Geologic, construction, and operating performance. An underground gas storage facility may be created, operated, or maintained only in an impermeable salt formation in a manner that will prevent waste of the stored gases, uncontrolled escape of gases, pollution of fresh water, and danger to life or property. This section does not authorize storage of liquid or liquefied hydrocarbons in an underground salt formation. A permit under §3.95 of this title (relating to Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations) is required to convert from storage of natural gas to storage of liquid or liquefied hydrocarbons in an underground salt formation.

(2) Fresh water strata. The applicant must submit with the application a letter from the Texas Commission on Environmental Quality or its successor agencies stating the depth to which fresh water strata occur at each storage facility.

(e) Notice and hearing.

(1) Notice requirements. The applicant shall, no later than the date the application is mailed to or filed with the Commission, give notice of an application for a permit to create, operate, or maintain an underground hydrocarbon storage facility, or to amend an existing storage facility permit, by mailing or delivering a copy of the application form to:

(A) the surface owner of the tract where the storage facility is located or is proposed to be located;

(B) the surface owner of each tract adjoining the tract where the storage facility is located or is proposed to be located;

(C) each oil, gas, or salt leaseholder, other than the applicant, of the tract on which the storage facility is located or is proposed to be located;

(D) each oil, gas, or salt leaseholder of any tract adjoining the tract on which the storage facility is located or is proposed to be located;

(E) the county clerk of the county or counties where the storage facility is located or is proposed to be located; and

(F) if the storage facility is located or is proposed to be located within city limits, the city clerk or other appropriate city official.

(2) Publication of notice. Notice of the application, in a form approved by the Commission or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county where the storage facility is or is proposed to be located. The applicant shall file proof of publication prior to any hearing on the application or administrative approval of the application.

(3) Notice by publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A) - (D) of this subsection. The exercise of diligent efforts to ascertain names and addresses of such persons shall require an examination of the county records where the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A) - (D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the Commission specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing required for new permits. A permit application for a new underground gas storage facility will be considered for approval only after notice and hearing. The Commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission.

(5) Hearing on permit amendments.

(A) An application for an amendment to an existing storage facility permit may be approved administratively if the Commission receives no protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person.

(B) If the Commission receives a protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the Commission, or of the date of the third publication, whichever is later, or if the Commission determines that a hearing is in the public interest, then the applicant will be notified that the application cannot be approved administratively. The Commission will schedule a hearing on the application upon written request of the applicant. The Commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission.

(C) If the application is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the Commission.

(f) Modification, cancellation, or suspension of a permit.

(1) General. Any permit may be modified, suspended, or canceled after notice and opportunity for hearing if:

(A) a material change in conditions has occurred in the operation, maintenance, or construction of the storage facility, or there are material deviations from the information originally furnished to the Commission. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) pollution of fresh water is likely as a result of continued operation of the storage facility;

(C) there are material violations of the terms and provisions of the permit or Commission regulations;

(D) the applicant has misrepresented any material facts during the permit issuance process; or

(E) injected fluids are escaping or are likely to escape from the storage facility.

(2) Imminent danger. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the Commission or its designee may immediately suspend a storage facility permit until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All operations at the facility shall cease upon suspension of a permit under this paragraph.

(g) Transfer of permit. A storage facility permit may not be transferred without the prior approval of the Commission, or its designee. Until such transfer is approved by the Commission or its designee, the proposed transferee may not conduct any activities authorized by the permit. The following procedure shall be followed when requesting approval for transfer of a permit.

(1) Request. Prior to transferring either ownership or operation of a storage facility, the permittee shall file with the Commission a request for transfer of the permit. Such a request may not be filed unless a completed Form P-4, signed by both the permittee and the proposed transferee, has been filed with the Commission.

(2) Approval. The Commission, or its designee, shall approve the transfer of a storage facility permit, provided:

(A) the proposed transferee is not the subject of any unsatisfied Commission enforcement order at the time of the request for permit transfer; and

(B) there are no existing violations of any Commission regulation, order, or permit at the storage facility at the time of the request for permit transfer that have been documented by the Commission, or its employees, unless the proposed transferee agrees to correct the violations according to a compliance schedule approved by the Commission, or its designee.

(3) Good cause. Notwithstanding paragraph (2) of this subsection, for good cause shown the Commission, or its designee, may require public notice and opportunity for hearing prior to taking action on a request for transfer of a permit. Such request may be denied after notice and opportunity for hearing if the Commission or its designee finds that transfer of the permit would not be in the public interest.

(h) Safety. The following safety requirements shall apply to all underground gas storage facilities, provided, however, that the provisions of this subsection shall not apply to any natural gas storage well that is out of service and disconnected from surface piping. Notwithstanding the compliance time periods specified in this subsection, a new underground gas storage facility permitted under this section must

have all required safety measures and equipment in place before commencement of storage operations at the facility. All existing storage facilities must have such safety measures and equipment in place within the period of time specified. Notwithstanding the compliance time periods specified in paragraph (2)(B) of this subsection, no storage well in active service may be operated without a fully functional emergency shutdown valve unless in compliance with specified conditions of paragraph (2)(C) of this subsection.

(1) Monitoring of injection and withdrawal operations. All gas injection and withdrawal activities shall be continuously monitored by an individual who is experienced and trained in such activities. Any facility that is unattended during injection and withdrawal activities shall have company personnel on call at all times. On-call personnel must be able to reach the facility within 30 minutes from the time a potential problem is noted by the individual monitoring the injection or withdrawal activities.

(2) Storage wellhead.

(A) The storage wellhead must be designed, operated, and maintained to contain the contents of the storage well and protect against loss of stored product.

(B) Within five years of the effective date of this section, the operator shall have installed emergency shutdown valves between the wellhead and the gas injection/withdrawal surface piping of each storage well and between the wellhead and any brine or fresh water surface piping. Within one year of the effective date of this section, the operator may request an exception to the storage wellhead configuration or compliance date of this subparagraph and propose an alternative configuration or workover schedule for approval by the Commission or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for active gas storage. Emergency shutdown valves shall meet the following requirements:

(i) Each emergency shutdown valve shall be capable of activation at each storage well, at the on-site control center if one exists, at the remote control center if one exists, and at a location that is reasonably anticipated to be accessible to emergency response personnel at any facility that does not have an on-site control center that is attended 24 hours per day.

(ii) Each emergency shutdown valve shall be an automatic fail-closed valve that automatically closes when there is a loss of pneumatic or hydraulic pressure on, or power to, the valve or when the maximum operating pressure under subsection (k) of this section is exceeded.

(iii) Each emergency shutdown valve shall be closed and opened at least monthly.

(iv) Each emergency shutdown valve system shall be tested at least twice each calendar year at intervals not to exceed 7 1/2 months. The test shall consist of activating the actuation devices, checking the warning system, and observing the valve closure.

(C) If an emergency shutdown valve system fails to operate as required, the well shall be immediately shut in until repairs are completed, unless:

(i) a backup emergency shutdown valve is in operation on the same piping; or

(ii) an attendant is posted at the well site to provide immediate manual shut-in.

(3) Gas, brine, and fresh water surface piping.

(A) Gas surface piping shall be designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. For facilities with hazardous materials surface piping under the administrative authority of the Safety Division of the Railroad Commission of Texas, for the purposes of this section, gas surface piping extends from the wellhead emergency shutdown valve to the first pressure regulation device, including a manual, motor-operated, or emergency shutdown valve.

(B) Brine piping, if any, shall be designed for the maximum brine wellhead pressure and to transport, under emergency conditions, gas to a gas control system if the operator is solution mining while the gas storage well is in active storage service, unless:

(i) a secondary emergency shutdown valve is in operation on the brine surface piping; and

(ii) the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well.

(C) Fresh water surface piping, if any, must be equipped with an emergency shutdown valve unless it is:

(i) disconnected from the wellhead; or

(ii) connected to the brine surface piping outboard of the wellhead emergency shutdown valve; or

(iii) designed for the maximum allowable operating pressure on the hydrocarbon side of the well; and has an internal diameter of less than or equal to two inches; and an attendant is posted at the well site to provide immediate manual shut-in when in use.

(D) Fresh water piping designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well and with an internal diameter of less than or equal to two inches, is exempt from the requirement that an emergency shutdown valve be separated from the wellhead by a spool no longer than six feet.

(4) Cavern debrining and solution mining operations.

(A) Within one year of the effective date of this section, each storage well shall have two or more of the following redundant devices or methods in operation during cavern debrining operations or during solution mining operations that are conducted with gas in storage in the same cavern. These devices are designed to prevent the release of gas into the brine and fresh water systems connected to the well during cavern debrining operations or during solution mining operations that are conducted with gas in storage in the same cavern. Gas release prevention shall consist of at least two of the following redundant devices or methods:

(i) emergency shutdown valves equipped with pressure sensor switches or transducers set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to preset pressures on the brine and fresh water piping of the well;

(ii) weep hole(s) on the brine return string in conjunction with a preset pressure sensor switch or transducer on the brine piping that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to a preset pressure;

(iii) a device on the brine return string or brine piping that detects hydrocarbon in the brine by physical or chemical characteristics and that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to hydrocarbon detection;

(iv) an instrument that detects a rapid increase in the brine flow rate indicative of hydrocarbon in the brine and that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to a preset flow rate or differential flow rate; or

(v) an alternative device or method approved by the Commission.

(B) Solution mining of a cavern may occur while gas is in storage, provided that the injection of fresh water and the injection of gas do not occur simultaneously within the same cavern.

(5) Leak or fire detectors.

(A) Within two years of the effective date of this section, a leak or fire detector shall be installed and in operation at each gas storage well and each structurally enclosed compressor site.

(B) Leak or fire detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months, and, when defective, repaired or replaced within 10 days. Leak or fire detectors shall be integrated with warning systems required in paragraph (6)(A) of this subsection.

(6) Warning systems and alarms.

(A) Within two years of the effective date of this section, all leak or fire detectors and sensors or methods that actuate the emergency shutdown valve shall be integrated with warning systems that are audible and visible in the control room and at any remote control center. The circuitry shall be designed so that failure of a leak or fire detector to function will activate the warning.

(B) A manually operated audible alarm shall be installed at each attended storage facility. The alarm shall be audible in areas of the facility where personnel are normally located.

(7) Emergency response plan. Each storage facility shall submit to the Commission a written emergency response plan. The plan shall address gas releases, fires, fire suppression capability, explosions, loss of electricity, and loss of telecommunication services. The plan shall describe the facility's emergency response communication system, procedures for coordination of emergency communication and response activities with local authorities, use of warning systems, procedures for citizen and employee emergency notification and evacuation, and employee training. The plan shall also include a plat of the facility showing the locations of wells, processing areas, and other significant features at the facility. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the Commission or its designee requires. A copy of the plan shall be provided to the local emergency response committee and to any other local governmental entity that submits a written request for a copy of the plan to the operator. Copies of the plan shall also be available at the storage facility and at the company headquarters.

(8) Notification of emergency or uncontrolled release.

(A) Emergency response personnel. Each operator shall notify the county sheriff's office, the county emergency management coordinator, and any other appropriate public officials which are identified in the emergency response plan of any emergency that could endanger nearby residents or property. Such emergencies include, but are not limited to, an uncontrolled release of hydrocarbons from a storage well or a leak or fire at any area of the storage facility. The operator shall give notice as soon as practicable following the discovery of the emergency. At the time of the notice, the operator shall also report an assessment of the potential threat to the public.

(B) Commission. The operator shall report to the appropriate Commission district office as soon as practicable any emergency, significant loss of gas or fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release. The operator shall file with the Commission within 30 days of the incident a written report on the root cause of the incident. Within 90 days of the incident, the operator shall file with the Commission a written report that describes the operational changes, if any, that have been or will be implemented to reduce the likelihood of a recurrence of a similar incident. An operator may request that the Commission grant, for good cause, a reasonable amount of additional time to file a written report on the root cause of the incident.

(9) Annual emergency drill. Annually, each operator shall conduct a drill that tests response to a simulated emergency. Written notice of the drill shall be provided to the appropriate Commission district office, the county emergency management coordinator, and the county sheriff's office at least seven days prior to the drill. Local emergency response authorities shall be invited to participate in all such drills. The operator shall file a written evaluation of the drill and plans for improvements with the appropriate district office and the county emergency management coordinator within 30 days after the date of the drill.

(10) Employee safety training.

(A) Each operator shall prepare and implement a plan to train and test each employee at each underground gas storage facility on operational safety to the extent applicable to the employee's duties and responsibilities. The facility's emergency response plan shall be included in the training program.

(B) Each operator shall hold a safety meeting with each contractor prior to the commencement of any new contract work at an underground gas storage facility. Emergency measures, including safety and evacuation measures specific to the contractor's work, shall be explained in the contractor safety meeting.

(11) Fire suppression capability.

(A) Within three years of the effective date of this section, each operator shall have fire suppression capability designed to aid in personnel rescue and equipment protection and cooling.

(B) Within one year of the effective date of this section, the operator may request an exception to the schedule or fire suppression requirement of this paragraph and propose an alternative schedule or means of protection from wellhead fire for approval of the Commission or its designee.

(12) Wellhead, piping, and associated valves. All wellhead surface piping and associated valves shall be designed, installed, and operated in accordance with engineering standards to the expected service conditions to which the piping and equipment will be subjected.

(13) Barriers. Within one year of the effective date of this section, barriers designed to prevent unintended impact by vehicles and equipment shall be placed around above grade hydrocarbon piping, hydrocarbon process equipment where vehicles may normally be expected to travel, or within 100 feet of a public road.

(i) Cavern capacity and configuration.

(1) Before storage operations begin. The capacity and configuration of each gas storage cavern (both salt domes and bedded salt) shall be determined by sonar survey before storage operations begin in a newly completed cavern.

(2) Salt domes. The capacity and configuration of each salt dome gas storage cavern shall be determined by sonar survey before a

cavern that has been out of service is returned to service, provided, however, that a sonar survey shall not be required on a cavern that is being returned to service if a sonar survey of that cavern has been run at any time during the previous 10 years.

(3) Bedded salt. The configuration of the roof of each gas storage cavern in bedded salt shall be determined by downhole log or an alternate method approved by the Commission, or its designee, at least once every five years.

(4) Filing of results. Sonar and roof monitoring survey results shall be filed with the Commission within 30 days after the survey.

(5) Out-of-service caverns. A sonar or roof monitoring survey is not required for a cavern that is out of service. A sonar or roof monitoring survey shall be performed before any such cavern that has been out of service is returned to service, unless the provisions of paragraph (2) of this subsection apply.

(6) Verification. Sonar surveys performed before debrining shall be verified by metering the volume of the displaced brine.

(j) Well completion, casing, and cementing. Gas storage wells shall be cased and the casing strings cemented to prevent gases from escaping to the surface or into fresh water strata, or otherwise escaping and causing waste or endangering public safety or the environment.

(1) New wells.

(A) All gas storage wells drilled in salt domes after the effective date of this section shall have at least two casing strings cemented into the salt formation. Sufficient cement shall be used to fill the annular space outside the casing from the casing shoe to the ground surface, or from the casing shoe to a point at least 200 feet above the shoe of the previous casing string.

(B) All gas storage wells drilled in bedded salt after the effective date of this section shall have all casing strings cemented with sufficient cement to fill the annular space outside each casing string from the casing shoe to the ground surface.

(2) Well completion report. A well completion report shall be filed in accordance with the instructions on the form prescribed by the Commission within 30 days after a storage well is completed and before solution mining to create the cavern begins.

(k) Operating pressure.

(1) Not to exceed maximum. The operating pressure of each gas storage well shall not exceed the permitted maximum allowable operating pressure for that well. The permitted maximum allowable operating pressure is that pressure specified in the Commission permit or order, or, if not specified in the permit or order, that pressure stated in the application or the application for amendment to a permit or order.

(2) At casing seat. The maximum operating pressure at the casing seat shall not exceed 0.85 pounds per square inch per foot of depth.

(l) Monitoring requirements.

(1) Gas pressure. Gas pressure on the injection/withdrawal casing or tubing or piping connected thereto shall be equipped with a pressure sensor to continuously monitor the wellhead pressure. Pressure sensors shall be integrated electronically with the warning systems, alarms, and emergency shutdown valve actuation system as required in subsection (h)(2)(B) and (h)(6)(A) of this section.

(2) Pressure observation valves. The injection/withdrawal casing or tubing shall be equipped with a pressure observation valve and gauge. The wellhead shall be equipped with a pressure observation valve on each casing annulus so that a gauge may be installed for pressure monitoring.

(3) Volumes injected and withdrawn. The volume of gas injected into and withdrawn from each storage well shall be measured by:

(A) flow meter for each well; or

(B) an alternate method approved by the Commission.

(4) Meter calibration. Meters that measure the volume of gas into storage and out of storage shall be recalibrated at least once each year.

(5) Data recording. Within three years of the effective date of this section, operators shall have installed and have functioning equipment to electronically record all liquid and gas pressures and injection volumes and rates at a frequency of at least once per minute, and all actuations of the emergency shutdown valve.

(m) Reporting.

(1) Monthly reports. On or before the last day of each month, the operator of each facility that stores gas to supply a public utility shall file with the Commission a report showing the volume of gas placed into storage and the volume of gas removed from storage at the storage facility, during the preceding month. The report shall also state the total volume of gas in storage on the first and last days of the preceding month. This report shall be filed in a format acceptable to the Commission or its designee.

(2) Annual reports. The operator shall file annually a status report for each storage well in accordance with the instructions on the form prescribed by the Commission.

(n) Operations, construction, and maintenance records retention.

(1) Operations data.

(A) The operator shall retain for at least three months all electronic records of storage well pressures, volumes of gases injected and withdrawn, and the inventory of gas in storage. These electronic data shall be recorded at a frequency of at least once per minute.

(B) The operator shall retain for at least five years the records reported to the Commission under subsection (m). These electronic data shall be recorded at a frequency of at least once per day.

(2) Records retention. The operator shall retain for at least five years the records of measurement performance under subsection (l)(4) of this section; and testing of safety devices under subsection (h) of this section. Records of any test of a safety device required under subsection (h) of this section shall be available for on-site inspection within 10 days of the date of the test.

(3) Construction and maintenance data. The operator shall retain for the life of the facility documents and records pertaining to the drilling, mining, completion, repair and workover of storage wells and the testing of storage well integrity, and shall transfer all such documents and records to any new owner and/or new operator of the facility.

(4) Extension during investigation. The operator shall retain beyond the prescribed retention period any documents or records that contain operational data pertaining to the resolution of any pending regulatory enforcement proceedings until the resolution of such proceedings.

(o) Testing and maintenance.

(1) Integrity tests. Each gas storage well shall be tested for integrity prior to being placed into service, at least once every five

years, and after each workover that involves physical changes to any cemented casing string. The following requirements apply to such integrity tests.

(A) A test procedure shall be filed with the Commission for approval at least 10 days before the test date.

(B) The initial test conducted on a well prior to placing it into service shall be performed using the nitrogen-interface test method or an alternative method approved by the Commission or its designee.

(C) The integrity test required to be conducted at least once every five years on a well that has gas in storage may be performed using pressure monitoring, provided:

(i) the wellhead pressure is stabilized such that the effects of ambient temperature on pressure have overtaken the effects of the last injection or withdrawal on pressure;

(ii) a downhole temperature log is run at the beginning and at the end of the test period;

(iii) the test period is a minimum of 72 hours; and

(iv) the net gas volume change for the test period is calculated.

(D) The operator shall notify the district office at least five days prior to conducting any integrity test.

(E) A complete record of each integrity test shall be filed in duplicate with the district office within 30 days after testing is completed. The record shall include a chronology of the test, copies of all downhole logs, storage well completion information, pressure readings, volume measurements, temperature logs and readings, and an explanation of the test results that addresses the precision of the test in terms of a calculated leak rate.

(2) Alternative monitoring. An operator may request the Commission or its designee to approve well pressure monitoring as an alternative to integrity testing for storage wells that are out of gas storage service. An out-of-service well shall be tested for integrity by the nitrogen-interface method before it may be returned to storage service.

(3) Storage wellhead and casing. Storage wellhead components and casing shall be inspected at least once every 15 years for corrosion, cracks, deformations, or other conditions that may compromise integrity and that may not be detected by the five-year test. The operator may request an extension of up to five years from the Commission for good cause. Factors the Commission may consider in determining good cause pursuant to this paragraph include by are not limited to the age, location, and configuration of the well; well and facility history; operator compliance record; operator efforts to comply with this subsection; and accuracy of inventory control.

(4) Fresh water, brine, and gas surface piping. Within one year of the effective date of this section, the operator shall submit a piping integrity management plan for approval by the Commission or its designee. Within three years of the effective date of this section, or in conjunction with the storage well integrity testing, all gas, freshwater, and brine surface piping shall be maintained according to the facility's piping integrity management plan.

(p) Plugging.

(1) Plug on abandonment. A gas storage well shall be plugged upon permanent abandonment in a manner approved by the Commission or its designee. A proposal for plugging shall be submitted to the Commission in Austin for approval or modification prior to plugging. Following approval of a plugging plan, the operator shall file notification of intent to plug at least five days prior to commencement of plugging operations. A plugging report shall be filed with the Commission within 30 days after plugging.

(2) Alternative monitoring. As an alternative to plugging a gas storage well that has been permanently deactivated, an operator may request approval by the Commission or its designee of a plan to convert the well to a monitor well. A pressure monitoring plan must be submitted to the Commission along with the request to convert the well to a monitoring well.

(q) Penalties.

(1) Penalties. Violations of this section may subject the operator to penalties and remedies specified in Texas Natural Resources Code, Title 3; Texas Utilities Code, Chapter 121; and other statutes administered by the Commission.

(2) Certificate of compliance. The certificate of compliance for any underground gas storage facility may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) for violation of this section.

(r) Applicability of other Commission rules and orders. The owner or operator of an underground gas storage facility is not relieved by this section of compliance with any other requirement of Chapters 3, 4, 7, or 8 of this title (relating to Oil and Gas Division; Environmental Protection; Gas Services Division; or Pipeline Safety Regulations).

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 January 10, 2007.

TRD-200700086
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER B. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDERS

25 TAC §§140.30 - 140.47

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts new §§140.30 - 140.47, concerning the regulation and licensing of personal emergency response system (PERS) providers without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register*

(31 TexReg 5753) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The passage of Senate Bill 568 in the 79th Regular Session of the Texas Legislature, 2005, created new Health and Safety Code, Chapter 781, exclusively focusing on the licensing and regulation of personal emergency response system (PERS) providers. It is the purpose of these rules to implement and administer Health and Safety Code, Chapter 781.

A "personal emergency response system" is one that is "installed in the residence of a person; monitored by an alarm company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the provider may dispatch the appropriate aid; and is not part of a combination of alarm systems that includes a burglar alarm or fire alarm."

SECTION BY SECTION SUMMARY

Section 140.30 introduces the content and purpose of the chapter. Section 140.31 provides definitions of terms used throughout the chapter. Section 140.32 provides a schedule of fees for program. Section 140.33 provides a method for the public to request that rules be adopted or amended. Section 140.34 sets out standard department requirements for the initial license and registration application process. Section 140.35 establishes general liability insurance requirements for licensees. Section 140.36 references the across-the-board application processing timeframes and procedures established for professional licensing staff. Section 140.37 defines who is required to hold a license and a registration. Section 140.38 sets out specific procedures for renewing licenses and registrations; and addresses across-the-board legislative requirements concerning active military duty, student loan default, and child support/custody. Section 140.39 clearly assigns responsibility for address change notifications to the licensee/registrant.

Section 140.40 establishes standards of ethical conduct for PERS licensees and registrants, and addresses the relationship between the department and PERS providers. Section 140.41 addresses department policy to provide information regarding regulatory functions and complaint procedures to the public and other agencies. Section 140.42 details the complaint process and complaint investigation. Section 140.43 defines grounds for disciplinary action to be taken against licensees and registrants. Section 140.44 addresses informal conferences. Section 140.45 addresses formal hearings. Section 140.46 sets out guidelines for the licensing and registration of persons with criminal convictions. Section 140.47 addresses license suspension for failure to maintain insurance coverage.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of rules.

Comment: Concerning §140.32, three commenters stated opposition to the amount of the licensing and registration fees. Two of the commenters indicated that the licensing fee amounts will have to be passed on to consumers, and one of the commenters recommended specific fee reductions.

Response: The commission understands concerns relating to the amount of licensing fees, but disagrees with the commenters. Health and Safety Code, §12.0111, requires the Department of State Health Services to "charge a fee for issuing or renewing a license that is in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program." Because of this mandate, the fee amounts are based on the projected direct and indirect costs of administering and enforcing the PERS licensing program, as well as the number of license holders and registrants who will pay the fee. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted new sections are authorized by Health and Safety Code, §781.051(b), which requires the Executive Commissioner to adopt rules necessary to administer the chapter and by Health and Safety Code, §781.051(c), which requires the Executive Commissioner to establish fees necessary to administer the chapter, including fees for processing and issuing or renewing a license or registration under the chapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 January 12, 2007.

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Cathy Campbell
General Counsel
Department of State Health Services
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CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§229.40, 229.41, 229.241 - 229.252, 229.419 - 229.430, and the repeal of §§229.251 - 229.254, concerning the regulation of cosmetics, the licensing of wholesale distributors of nonprescription drugs--including good manufacturing practices, and the licensing of wholesale distributors of prescription drugs--including good manufacturing practices. New §229.430 is adopted with changes to the proposed text as published in the July 14, 2006,

issue of the *Texas Register* (31 TexReg 5540). The repeal of §§229.251 - 229.254 and new §§229.40, 229.41, 229.241 - 229.252, and 229.419 - 229.429 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new sections are necessary to comply with amendments to Health and Safety Code, Chapter 431, Subchapters I and N, relating to the licensing and regulation of nonprescription and prescription drugs. Subchapter I of the statute sets forth the standards for the licensing and regulation of nonprescription drugs and requires the department to adopt rules to implement and enforce the subchapter. Existing §§229.251 - 229.254 in Subchapter O of Chapter 229 of this title originally set forth the requirements for all drug and cosmetic manufacturers and distributors, but is being repealed in order to separate the licensing and regulation of the various commodities.

SECTION-BY-SECTION SUMMARY

New §229.40 and §229.41 reflect the regulations for cosmetic manufacturing and labeling, setting out the scope and purpose and adopting by reference the federal requirements for cosmetics.

New §§229.241 - 229.252 set forth the licensing and regulation of manufacturers and distributors of nonprescription drugs. Section 229.241 sets forth the purpose of the rules. Section 229.242 adopts by reference the federal requirement for nonprescription drugs. Section 229.243 sets forth the definitions used in the rules. Section 229.244 defines the word "sale" to include entire stream of possession of nonprescription drugs until possession by a consumer. Sections 229.245 - 229.248 set out the exemptions from licensing; licensing requirements; licensing procedures; and the requirements for reporting licensure changes. Section 229.249 sets out the licensing fees for each category of license. Section 229.250 sets forth the reasons for refusing to issue a license and for canceling, suspending, or revoking a license. Section 229.251 sets out the minimum standards for licensure, including good manufacturing practices. Section 229.252 sets out the enforcement and penalties provisions.

New §§229.419 - 229.430 set forth the licensing and regulation of manufacturers and distributors of prescription drugs. Section 229.419 sets forth the purpose of the rules. Section 229.420 adopts by reference the federal requirement for prescription drugs. Section 229.421 sets forth the definitions used in the rules. Section 229.422 defines the word "sale" to include entire stream of possession of prescription drugs until possession by a consumer. Section 229.423 sets out the exemptions from licensing. Section 229.424 outlines licensing requirements. Section 229.425 sets forth the licensing procedures, and §229.426 sets forth the requirements for reporting licensure changes. Section 229.427 sets out the licensing fees for each category of license. Section 229.428 sets forth the reasons for refusing to issue a license and for canceling, suspending, or revoking a license. Section 229.429 sets out the minimum standards for licensure, including good manufacturing practices. Section 229.430 outlines enforcement and penalties provisions.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was the Healthcare Distribution Management Association. The commenter was not against the rules in their entirety; however, the commenter suggested a recommendation for change as discussed in the summary of comments. The commenter was generally in favor of the rules.

Comment: Concerning the criteria for issuing a cease distribution order in §229.430(f)(1)(A)(ii), the commenter suggested that the reference to the term "falsified pedigree" be removed since the rules do not currently address pedigree requirements.

Response: The commission agrees and has deleted the words "falsified pedigree" so that the rule text in §229.430(f)(1)(A) no longer references the term.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER D. REGULATION OF COSMETICS

25 TAC §229.40, §229.41

STATUTORY AUTHORITY

The new sections are adopted under the Health and Safety Code, §431.241, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary for the implementation and enforcement of Chapter 431 by the department; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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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Cathy Campbell
General Counsel
Department of State Health Services
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SUBCHAPTER O. LICENSING OF WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.241 - 229.252

STATUTORY AUTHORITY

The new sections are adopted under the Health and Safety Code, §431.241, which authorizes the Executive Commissioner

of the Health and Human Services Commission to adopt rules necessary for the implementation and enforcement of Chapter 431 by the department; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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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Cathy Campbell
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SUBCHAPTER O. LICENSING OF WHOLESALE DISTRIBUTORS OF DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.251 - 229.254

STATUTORY AUTHORITY

The repeals are adopted under the Health and Safety Code, §431.241, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary for the implementation and enforcement of Chapter 431 by the department; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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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Cathy Campbell
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Department of State Health Services
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SUBCHAPTER W. LICENSING OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.419 - 229.430

STATUTORY AUTHORITY

The new sections are adopted under the Health and Safety Code, §431.241, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary for the implementation and enforcement of Chapter 431 by the department; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§229.430. Enforcement and Penalties.

(a) Inspection.

(1) To enforce these sections or the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act), the commissioner, an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge of a place of business:

(A) enter at reasonable times a place of business, including a factory or warehouse, in which a prescription drug is manufactured, packed, or held for introduction into commerce or held after the introduction;

(B) enter a vehicle being used to transport or hold a prescription drug in commerce; or

(C) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the place of business or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of these sections or the Act.

(2) The inspection of a place of business, including a factory, warehouse, or consulting laboratory, in which a prescription drug is manufactured, processed, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the drug:

(A) is adulterated or misbranded;

(B) may not be manufactured, introduced into commerce, sold, or offered for sale under the Act; or

(C) is otherwise in violation of these sections or the Act.

(3) An inspection under paragraph (2) of this subsection may not extend to:

(A) financial data;

(B) sales data other than shipment data;

(C) pricing data;

(D) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under the Act;

(E) research data other than data:

(i) relating to new drugs and antibiotic drugs; and

(ii) subject to reporting and inspection under regulations issued under §505(i) or (j) of the Federal Act; or

(F) data relating to other drugs that, in the case of a new drug, would be subject to reporting or inspection under regulations issued under §505(j) of the Federal Act.

(4) An inspection under paragraph (2) of this subsection shall be started and completed with reasonable promptness.

(b) Receipt for samples. An authorized agent or health authority who makes an inspection of a place of business, including a factory or warehouse, and obtains a sample during or on completion of the inspection and before leaving the place of business, shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample.

(c) Access to records.

(1) A person who is required to maintain records referenced in these sections or under the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or Chapter V of the Federal Food, Drug, and Cosmetic Act (Federal Act) or a person who is in charge or custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times access to and to copy and verify the records.

(2) A person, including a carrier engaged in commerce, or other person receiving a prescription drug in commerce or holding a prescription drug received in commerce shall, at the request of an authorized agent, permit the authorized agent at all reasonable times to have access to and to copy and verify all records showing:

(A) the movement in commerce of any prescription drug;

(B) the holding of any prescription drug after movement in commerce; and

(C) the quantity, shipper, and consignee of any prescription drug.

(d) Retention of records. Records required by these sections shall be maintained at the place of business or other location that is reasonably accessible for a period of at least three years following disposition of the prescription drug unless a greater period of time is required by laws and regulations adopted in §229.420 of this title (relating to Applicable Laws and Regulations).

(e) Adulterated or misbranded prescription drug. If the department identifies an adulterated or misbranded prescription drug, the department may impose the applicable enforcement provisions of Subchapter C of the Act including, but not limited to: detention, emergency order, recall, condemnation, destruction, injunction, civil penalties, criminal penalties, and/or administrative penalties. Administrative and civil penalties will be assessed using the Severity Levels contained in §229.251 of this title (relating to Minimum Standards for Licensure).

(f) Order to cease distribution.

(1) The commissioner shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the commissioner determines there is a reasonable probability that:

(A) a wholesale distributor has:

(i) violated these sections or the Act; or

(ii) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(B) other procedures would result in unreasonable delay.

(2) An order under this subsection must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(3) If, after providing an opportunity for a hearing, the commissioner determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

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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Cathy Campbell
General Counsel
Department of State Health Services
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER M. BEST AVAILABLE RETROFIT TECHNOLOGY (BART)

30 TAC §§116.1500, 116.1510, 116.1520, 116.1530, 116.1540

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§116.1500, 116.1510, 116.1520, 116.1530, and 116.1540. Sections 116.1500, 116.1510, and 116.1530 are adopted *with changes* to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6616). Sections 116.1520 and 116.1540 are adopted *without changes* and will not be republished.

The adopted new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA), §169A, Visibility Protection for Federal Class I Areas, and §169B, Visibility (42 United States Code (USC), §7491 and §7492), require the EPA to adopt regulations to address visibility impairment at federal Class I areas

due to regional haze. Class I areas are federally designated parks and scenic areas of national importance. There are 156 Class I areas in the United States, including national and international parks and wilderness areas. Regional haze is caused by the emission of air pollutants from numerous sources located over a wide geographic area. The EPA promulgated regulations to address these statutory requirements in 40 Code of Federal Regulations (CFR) Part 51, Subpart P, Protection of Visibility, on July 1, 1999 (64 FR 35763), and promulgated amendments to Subpart P and a new Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, to Part 51 on July 6, 2005 (70 FR 39156). The FCAA and implementing regulations require states to submit SIPs to address visibility impairment caused by regional haze and include guidelines for determining best available retrofit technology (BART). As part of the SIP, states must identify BART-eligible sources. BART-eligible sources belong to one of 26 named source categories, have the potential to emit 250 tons per year (tpy) or more of a visibility-impairing pollutant (nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter (PM)), and were built or reconstructed between August 7, 1962, and August 7, 1977. These sources must be evaluated to determine whether they contribute to visibility impairment at any Class I area. BART-eligible sources that contribute to visibility impairment at any Class I area are subject to BART and owners or operators must conduct a technology evaluation to determine the appropriate level of BART controls. BART is to be determined on a case-by-case basis for each source based on the technology available, the costs of compliance, the energy and non-air quality environmental impacts of controls, any existing pollution control technology used by the source, the remaining useful life of the source, and the degree of visibility improvement that would result from the use of the technology.

The adopted rules revise Chapter 116 to ensure that owners or operators of sources that are subject to BART requirements perform a BART engineering evaluation to determine the appropriate level of BART and subsequently implement any required BART controls. The adopted rules also provide mechanisms for BART-eligible sources to demonstrate that they do not significantly impact visibility in Class I areas and are therefore not subject to BART control requirements.

The TCEQ is required to submit a Regional Haze SIP to the EPA no later than December 17, 2007. In order to develop this SIP in a timely manner, the TCEQ must receive the BART engineering analyses (or BART exemption modeling) from each BART-eligible source no later than April 30, 2007. A corresponding deadline is adopted in the rules.

SECTION BY SECTION DISCUSSION

§116.1500. Definitions.

The commission adopts new §116.1500, which contains definitions relevant to the rules. The terms defined include BART-eligible source and visibility-impairing air pollutant. The definition of BART-eligible source is similar to the functional definition of this term under 40 CFR §51.301, Definitions, except that the definition refers only to visibility-impairing pollutants, instead of all pollutants. The definition of BART-eligible source has been revised in response to comments, to more clearly indicate that the BART-eligible source is based on an aggregation of emission units, and does not necessarily include all equipment at the plant site. The term "visibility-impairing air pollutant" is also defined and includes NO_x, SO_2, and PM, which are the principal species emitted from Texas sources that influence visibility. Note that particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) may be used as the indicator for PM when assessing BART eligibility. The commission has not included volatile organic compounds (VOCs) or ammonia as visibility-impairing air pollutants. The commission's research has determined that VOCs are not a significant contributor to visibility impairment at Class I areas that are impacted by Texas facilities. In addition, the commission has not included ammonia because existing background levels in Texas would make visibility improvements from ammonia source reductions only marginally effective. For terms not defined in this section, the definitions contained in 40 CFR §51.301 apply. The effective date of the 40 CFR §51.301 incorporation has been revised to August 30, 1999, in response to a comment.

§116.1510. Applicability and Exemption Requirements.

The commission adopts new §116.1510 to specify which facilities will be subject to the adopted rules and identify certain exemptions which may apply. The rules only apply to BART-eligible sources as defined in §116.1500.

Under adopted §116.1510(b), the owner or operator of a BART-eligible source may elect to use modeling to demonstrate that the source does not contribute to visibility impairment at any Class I areas. If the owner or operator successfully demonstrates that the source does not contribute to visibility impairment, the source would not be subject to the requirements of §116.1520, Best Available Retrofit Technology (BART) Analysis, and §116.1530, Best Available Retrofit Technology (BART) Control Implementation. Owners or operators who seek to claim this exemption must submit the exemption modeling to the commission's Air Permits Division no later than April 30, 2007, under seal of a professional engineer licensed in the State of Texas.

BART exemption modeling and modeling conducted as part of the BART analysis must conform to an executive director-approved model and associated guidelines. The executive director has approved the use of the California Puff Model (CALPUFF) and the Central Regional Air Planning Association's (CENRAP) BART Modeling Guidelines, as well as the use of the Comprehensive Air Quality Model with extensions (CAMx) model. Modeling protocols for both CALPUFF and CAMx are available on the TCEQ Web site at: *www.tceq.state.tx.us/implementation/air/sip/bart/haze.html*.

Persons seeking guidance about the modeling guidelines and other aspects of the BART modeling process should contact the commission's Air Permits Division.

The commission is adopting a 0.5 deciview threshold for determining whether a source contributes to visibility impairment. EPA guidance indicates that 0.5 deciview is the upper limit that states should use for determining whether a source contributes to visibility impairment. Factors that may influence the selection of this threshold are the number of emission sources affecting Class I areas and the magnitude of emissions from the individual sources. In response to comments, the commission has modified the proposed language of §116.1510(b) to refer only to sources that do not contribute to visibility impairment, because this correlates to the selected 0.5 deciview threshold. The commission expects Class I areas to have more than one source affecting visibility, so the *contributing to* threshold, not the *cause* threshold, will be the controlling factor for BART determinations. As a result of comments, the commission has also modified the rule to clarify that the threshold for contributing to visibility impairment is a change in visibility that is greater than or equal to 0.5 deciview, instead of simply greater than 0.5 deciview.

The commission is adopting several exemptions under §116.1510(c). These exemptions are based on examples that the EPA developed for 40 CFR Part 51, Appendix Y. There are two "model plant" exemptions adopted as §116.1510(c)(1) and (2), respectively. The EPA concluded that sources meeting the stated criteria for emissions and distance from Class I areas are unlikely to have a significant effect on visibility. The exemptions in §116.1510(c)(1) and (2) are pollutant specific for NO_x and SO_2, such that the owner or operator of the source would still be required to perform the BART engineering analysis and implement any applicable BART controls for other visibility-impairing pollutants (such as PM).

The exemption adopted under §116.1510(c)(3) is based on *de minimis* emission totals that EPA determined would be unlikely to contribute to regional haze. As is the case with the exemptions in §116.1510(c)(1) and (2), the exemption in §116.1510(c)(3) is pollutant specific. For example, a source may be exempted for purposes of NO_x or SO_2 while remaining subject to BART requirements for PM. A source claiming this exemption could also be exempted from BART requirements for PM while remaining subject to BART for other visibility-impairing air pollutants. The *de minimis* exemption level in §116.1510(c)(3) is determined by the emissions of PM_{10}.

Owners or operators claiming exemption under §116.1510(c) are required to maintain records to demonstrate compliance with the exemption criteria, and shall make such records available to the commission or any local air pollution control agency with jurisdiction upon request.

The commission is adopting §116.1510(d) to provide that electric generating units (EGUs) that are participating in the Clean Air Interstate Rule (CAIR) cap and trade program may avoid a BART analysis and implementation of controls for NO_x and SO_2. The EPA has determined that CAIR provides greater reasonable progress than BART and has correspondingly allowed the use of CAIR as an acceptable substitute for the application of BART controls. This subsection only addresses NO_x and SO_2, so BART-eligible EGUs would remain subject to BART requirements for PM.

In response to public comment, the commission has added §116.1510(e), to clarify that owners or operators of BART-eligible sources that were screened out by the TCEQ's contractor-performed screening modeling are not required to comply with the requirements for the BART analysis or BART controls for the screened pollutant(s). However, an owner or operator seeking to use this exemption must submit a certification to the TCEQ no later than February 28, 2007, that the modeling inputs used in the screening modeling were valid. Entities that were screened out by the TCEQ's modeling will be notified by mail.

§116.1520. Best Available Retrofit Technology (BART) Analysis.

The commission adopts new §116.1520, which contains requirements for the BART engineering analysis. BART-eligible sources that are not exempted under §116.1510 are required to develop a BART engineering analysis to determine BART for that source. The analysis shall be conducted according to the procedures established in 40 CFR Part 51, Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, Section IV, The Bart Determination: Analysis of BART Options. The BART analysis must include an evaluation of all technically feasible retrofit technologies in accordance with the five factors stated in FCAA, §169A(g)(2) (42 USC, §7491). The factors to be considered in the BART analysis are: an analysis of the cost of compliance, the energy and non-air quality environmental impacts, the degree of visibility improvement in affected Class I areas resulting from the use of the control technology, the remaining useful life of the source, and any existing control technology present at the source. Based on these statutory factors, the owner or operator must select and identify one of the emission control alternatives as the prospective BART control strategy for the source.

Adopted §116.1520(b) will require the owner or operator to specify short-term (hourly) and long-term (annual) emission limits associated with the selected BART control strategy. This information is necessary for the commission to develop the required Regional Haze SIP.

Adopted §116.1520(c) establishes a deadline of April 30, 2007, for submission of the BART analysis. This deadline is necessary to provide the commission with sufficient time to review the BART analyses and compile BART emission reductions to develop the required Regional Haze SIP by the December 17, 2007, deadline.

§116.1530. Best Available Retrofit Technology (BART) Control Implementation.

The commission adopts new §116.1530, which contains requirements and deadlines associated with the implementation of any required BART controls. Adopted §116.1530(a) establishes the deadline for any required BART controls to be implemented. Federal regulations specify that BART controls must be in place no later than five years after the EPA approves a state's Regional Haze SIP. Given that the commission is required to submit the Regional Haze SIP to EPA by December 17, 2007, and the EPA will require some time to review the SIP, it is likely that the BART control deadline will occur during or after the year 2013. Many factors influence the schedule of the development and approval of the Regional Haze SIP and it would be difficult to estimate a more precise deadline. Adopted §116.1530(a) also contains a requirement for owners or operators to establish procedures to ensure that BART-required control equipment is properly and continuously operated and maintained.

Adopted §116.1530(b) is intended to ensure that owners or operators subject to BART obtain any necessary authorization for new control equipment and establish enforceable mechanisms to ensure ongoing compliance with BART. The adopted rule requires that each owner or operator of a BART-eligible source comply with applicable portions of Subchapters B, F, and H of Chapter 116. The rule has been revised in response to comments from the U.S. EPA, to more clearly identify applicable permitting requirements.

§116.1540. Exemption from Best Available Retrofit Technology (BART) Control Implementation.

Adopted new §116.1540 provides a case-specific mechanism for BART-eligible sources to request an exemption from BART control requirements. In order to obtain exemption under this section, the owner or operator seeking exemption must first obtain initial approval from the commission, then obtain final approval from the EPA. Although this exemption may be used to avoid the otherwise-required installation of BART controls, this exemption does not negate the requirement to perform the BART analysis required under adopted §116.1520, or the requirement to submit the analysis no later than April 30, 2007.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking meets 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. The adopted rulemaking does not, however, 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.

This rulemaking will require BART on certain sources of NO_x, SO_2, and PM that contribute to visibility impairment in any Class I area. The adopted new §§116.1500, 116.1510, 116.1520, 116.1530, and 116.1540 will ensure that owners or operators of sources that are subject to BART requirements perform a BART engineering evaluation to determine the appropriate level of BART and subsequently implement any required BART controls. The rules incorporate by reference the EPA's Guidelines for BART Determinations Under the Regional Haze Rule (40 CFR Part 51, Appendix Y). The rules also provide mechanisms for BART-eligible sources to demonstrate that they do not significantly impact visibility in Class I areas and are therefore not subject to BART control requirements. This strategy is intended to address visibility impairment at federally designated parks and scenic areas of national importance (Class I areas) and thus the intent of the adopted rules is protection and improvement of the aesthetic environment in these areas. Furthermore, the commission finds that the revisions to Chapter 116 in this rulemaking could adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Under the adopted new sections, BART-eligible sources are those sources that belong to one of 26 named source categories, have the potential to emit 250 tpy or more of a visibility-impairing air pollutant (NO_x, SO_2, and PM), and were built or reconstructed between August 7, 1962, and August 7, 1977. The commission has determined that approximately 127 sources may be BART eligible. Sources determined to be subject to BART through the engineering analysis of Appendix Y must install and operate BART controls for the source five years after the EPA approves the state's Regional Haze SIP. The commission anticipates that a fraction of these BART-eligible sources will actually be required to install BART controls, and it is not yet known what BART will be for each source. Some sources will model out of the requirement to determine and ultimately install BART; and EGUs may use CAIR as a substitute for BART for NO_x and SO_2. The exact cost of the BART controls for each unit cannot be predicted, but significant costs to comply with the control requirements may be expected from at least some units, which could in turn adversely affect a sector of the economy. The EPA has estimated costs ranging from $1,000 to $10,000 per ton of NO_x, SO_2, or PM. Given the potential for significant costs, the commission has made the determination that this rulemaking meets the definition of a major environmental rule.

Nevertheless, the adopted new sections to Chapter 116 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements in subsection (a) of that section. Specifically, the BART requirements in Chapter 116 were developed to be included in the Regional Haze SIP that will be submitted to the EPA as required under FCAA, 42 USC, §7491 and §7492, and therefore meet a federal requirement. The Federal Clean Air Act (FCAA, 42 USC, §7491) requires each SIP to include a requirement that each BART-eligible source that is reasonably anticipated to contribute to visibility impairment in any Class I area to procure, install, and operate BART controls. BART is to be determined according to the five factors listed in §7491(g)(2). Section 7492 of the FCAA requires that any regulations promulgated by the EPA pursuant to §7491 require states to revise their SIPs under FCAA, 42 USC, §7410 to include a regional haze plan that includes BART for certain sources.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the 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 proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet emission standards or visibility goals and reasonable progress of those goals; thus, states must develop programs and strategies to help ensure that those standards and goals for new and existing sources are met. The same is true for visibility protection. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. As discussed earlier in this preamble, states must also revise their SIPs under §7410 to incorporate a plan for visibility protection, including requirements for BART. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP

rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that *when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation*. *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of *substantial compliance*. The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the rulemaking is to adopt BART rules and incorporate by reference the federal BART determination guidelines, with the objective to reduce visibility impairment in federal Class I areas. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.012, 382.017, and 382.051. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the rulemaking meets the definition of a major environmental rule, it does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Specifically, the new sections of Chapter 116 require that BART-eligible sources determine whether they are subject to BART controls. Those sources that are subject to BART must perform a BART engineering evaluation to determine the appropriate level of BART, and subsequently implement any required BART controls. The Federal Clean Air Act (FCAA, 42 USC, §7491) requires each state to submit a Regional Haze SIP to address visibility in federal Class 1 areas. The FCAA further mandates that the SIP require each BART-eligible source that is reasonably anticipated to cause or contribute to visibility impairment in any Class 1 area to procure, install, and operate BART. BART is to be determined according to the five federally established factors, listed in 42 USC, §7491(g)(2).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rules are intended to implement a federally required program to apply BART emission controls to certain sources of visibility-impairing air pollutants. The adopted changes would tend to reduce undesirable haze at federal Class I areas. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. The CMP policy applicable to this rulemaking action 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 §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Owners and operators subject to the Federal Operating Permit Program must, consistent with the revision process in 30 TAC Chapter 122, Federal Operating Permits Program, revise their operating permits to include the applicable BART control requirements or emission limits for each source.

PUBLIC COMMENT

A public hearing was held on the proposed rules on September 18, 2006, in Austin, Texas. The comment period was originally scheduled to end on September 25, 2006, but was extended at the request of commenters, and closed on October 9, 2006. The commission received comments from American Electric Power (AEP), Alcoa Inc. (Alcoa), Arkema Inc. (Arkema), Ash Grove Texas, L.P. (Ash Grove), Association of Electric Companies of Texas (AECT), BP Products North America Inc. (BP), Dow Chemical Company (Dow), El Paso Electric Company (EPE), Sierra Club-Houston Regional Group (Houston Sierra Club),

Source Environmental Sciences, Inc., Texas Chemical Council (TCC), Texas Lehigh Cement Company, Texas Oil and Gas Association (TXOGA), TXU Power (TXU), National Park Service (NPS) a division of the United States Department of Interior, and the United States Environmental Protection Agency, Region 6 (EPA). No individuals provided comments.

BP supported comments submitted by TXOGA. TXU supported comments submitted by AECT.

RESPONSE TO COMMENTS

FEDERAL APPROVABILITY

EPA commented that the *de minimis* exemptions in proposed §116.1510(c)(3) should be modified to clarify that these exemptions apply on a plant-wide basis, as described in 70 FR 39117 and 39161.

The *de minimis* exemptions are evaluated based on the total potential emissions from the BART-eligible source as a whole, which includes the total emissions from all the emission units that meet the BART-eligibility criteria. Therefore, these exemptions already incorporate a plant-wide approach. Therefore, the commission did not change the rule in response to this comment.

EPA suggested that in §116.1500(d), Texas should modify the language to make it clear that participation in the CAIR does not absolve a BART-eligible source from possibly being found subject to the BART provisions of the regional haze rule for PM.

The rule has not been revised in response to this comment. The commission is aware that CAIR controls only NO_x and SO_2, and not direct PM. Therefore, CAIR will not cover PM for BART.

EPA commented that in §116.1520(b), the proposed rule requires the owner or operator to provide detailed information documenting the projected hourly and annual emission limits for the selected BART control strategy. EPA stated that this requirement, although important, could benefit from additional specificity, similar to that required under existing §116.12(1) - (3).

The proposed requirement to document the projected hourly and annual emission limits is sufficiently straightforward, and it is not clear which aspects of §116.12(1) - (3) would be applicable. No changes were made in response to this comment.

EPA commented that the commission may wish to define BART-required control equipment as used in §116.1530(a) and (b).

The term BART-required control equipment simply means the control equipment installed to satisfy the BART rules. Because the meaning is sufficiently straightforward, an explicit definition is not necessary.

EPA stated that in §116.1530(b), the TCEQ rule discusses how BART-required control equipment must be housed within a permit or other enforcement mechanism. As written, the provision is vague and would not be approvable as a SIP revision. EPA recommended TCEQ provide further clarification and reference any specific permitting rules and procedures that apply. In addition, EPA sought clarification, with respect to modifying emission limits, how §116.1530(b) provides for grandfathered facilities currently operating under Title V permits. Because the BART requirements are *applicable* requirements of the FCAA, EPA states that they must be included as Title V permit conditions according to the procedures established in 40 CFR Part 70 or 40 CFR Part 71. Under §70.7(f)(1)(i), Title V permits must be reopened and revised to include new applicable requirements if the permit has three or more years of life. The reopening must be completed within 18 months after promulgation of the new applicable requirement and the reopening must follow the same procedures (public comment, etc.) as apply to initial permit issuance.

The commission has revised the language in §116.1530(b) in response to this comment. The language clarifies that every BART source must comply with the requirements of Subchapter B (for New Source Review Permits) or Subchapter F (for Standard Permits). These subchapters address requirements for permitted facilities to apply for permit amendment, permit alteration, or standard permit, as applicable. The new language will also cover modifications to grandfathered facilities permitted under Chapter 116. Because Texas' Title V program rules (30 TAC Chapter 122), do not reference preconstruction permits issued under Title I of the FCAA, but instead reference preconstruction permits under Chapter 116, Title V sources will be required to revise their operating permits after issuance of the modified permit required under §116.1530(b). Title V sources with BART-subject sources authorized under a grandfathered permit (existing facility or Voluntary Emission Reduction Permit (VERP)) must also revise their Title V permit to reflect the BART limits added to their Chapter 116 authorization.

EPA questioned the exclusion of VOCs and ammonia in the definition of visibility-impairing pollutant.

The commission understands the commenter's concerns that VOCs and ammonia are not included on the list of BART pollutants. The TCEQ has modeled the visibility impairment impact of VOC emissions from all potentially BART-eligible sources in Texas for Class I areas in Texas and surrounding states. The collective impact of all these sources was below the *de minimis* impact threshold of 0.5 deciview. Therefore, the collective impact of all individual sources and all groupings of sources from among the potentially BART-eligible sources in Texas is below the *de minimis* threshold. For this reason, the commission concludes that it is appropriate not to list VOCs as a visibility-impairing pollutant for potentially BART-eligible sources in Texas. The rules have not been revised in response to these comments.

The commission has considered ammonia emissions and has concluded that it would be inappropriate to add ammonia to the list of visibility-impairing pollutants in the BART rule. Industrial ammonia emissions are less than 1% of the total ammonia emissions in Texas, and BART source emissions are only a part of industrial ammonia emissions. Therefore, it is inappropriate to list ammonia from BART sources in Texas as a visibility-impairing pollutant. The Regional Haze SIP will look at visibility-impairing pollutants again and determine if more pollutants should be considered. In the SIP, the uniform rate of progress may require further controls. The rule has not been revised in response to these comments.

EPA suggested various revisions to the definition of a BART-eligible source to clarify that BART applies on an emission unit basis and not a source-wide or site-wide basis.

The commission concurs that the definition of BART-eligible source should be rephrased to clarify that BART applicability is determined on an emission unit basis, consistent with EPA guidance, and not on a source-wide or site-wide basis. The commission has modified the definition accordingly.

EPA strongly urged TCEQ to work with EPA if using alternative approaches to ensure consistency and approvability throughout the process. EPA recommended that any alternative modeling approach used by owner/operator be approved by EPA, in addi-

tion to the commission, to ensure that the alternative modeling is equally stringent.

The commission concurs and will be submitting all BART modeling protocols and analyses to EPA for its review.

EPA commented that in §116.1530(a), the proposed rule requires that each owner or operator maintain the BART-required control equipment and establish procedures to ensure such equipment is properly and continuously operated and maintained. As written, the requirement to establish procedures appears vague. EPA commented that TCEQ may wish to specify accepted procedures required to continue implementing their controls.

Specific procedures to ensure that BART-required control equipment is properly and continuously operated and maintained will be addressed in the facility's permit. It would be difficult to specify those procedures in the BART rule given the broad range of unit types and control equipment that are potentially subject to BART. No change to the rule was made in response to this comment.

GENERAL COMMENTS

The Houston Sierra Club commented that the proposal explanation was incomplete and requested the list of 127 sources, a map of source locations, and the amounts of NO_x, SO_2, and PM that each source emits. The Houston Sierra Club was concerned that the rule is unclear as to the level of BART control from each individual source or the percentage of control from all BART sources. The Houston Sierra Club commented that it is not clear how interstate consultation will apportion visibility reduction and what constitutes BART and BART control equipment.

The commission does not agree that the proposed rule explanation is incomplete. The primary purpose of the rule is to create a process for certain sources within the state to determine whether they are subject to the requirements to determine and install BART. Subsequent to this rulemaking, the commission will propose a Regional Haze SIP that will incorporate information on BART at those sources determined to be subject to this rule. When developing a rule, the commission attempts to describe the number of entities that will be affected by the rule and characterize the overall costs and benefits of the rule. There is no requirement for the commission to provide detailed information about each individual source that may be affected by a proposed rule. However, the requested information is now available in the BART resources and guidance documents posted on the TCEQ Web site at: *www.tceq.state.tx.us/implementation/air/sip/bart/haze.html*. The CAMx Modeling Guidance contains a map showing the proximity of BART-eligible sites to Class I areas. The Texas Modeling Data file contains the NO_x, SO_2, and PM emission rates that were used in the screening modeling.

BART is determined on a case-by-case basis, taking into account a combination of factors. There is no defined percentage of control or specific control equipment type associated with BART. The commission cannot project the amount of reductions from BART at this time as no sources have submitted the BART engineering analyses yet; the engineering analyses are due April 30, 2007. The Regional Haze SIP will contain more detailed information about sources that are subject to BART including estimates of pollutant reductions associated with BART.

Houston Sierra Club commented that the installation of BART should not take 57 years to complete. Houston Sierra Club urges the TCEQ to go beyond regulatory policy that proposes the goal of natural background in 2064 and, instead, consider the goal of 2020.

The commission appreciates the concern of the Houston Sierra Club that visibility goals are set at 2064, but this 2064 goal is for regional haze not BART. BART controls are scheduled to be in place five years after the EPA approves the Regional Haze SIP or approximately 2013. In 2018, BART controls and other regional haze controls will be reassessed. Under the SIP, the state will reevaluate the rate of progress towards natural visibility every five years until 2064. If the state is not meeting the uniform rate of progress, more controls may be proposed. EPA estimated how long it would take to reach natural conditions based on the rate of visibility improvement being achieved from existing programs. Page 35731 of the 1999 Regional Haze Rule states: *EPA's analyses show that the reductions from CAA and other programs will result in a rate of improvement estimated at approximately 3 deciviews over the period from the mid 1990's to about 2005. The EPA calculated that if this rate of improvement could be sustained, these areas would reach the national goal in 60 years*. No change was made in response to this comment.

TCC commented that it reviewed federal rules regarding regional haze and found no requirement for a once-in-always-in (OIAI) provision. TCC is concerned that until the exemption levels are established by rule, member companies cannot begin to develop or implement control strategies to reduce emissions to exemption levels. TCC suggests that any OIAI provision adopted by the commission apply only after the first compliance date for actual controls, similar to the federal Maximum Achievable Control Technology (MACT) standards.

The commission has made no changes in response to this comment. The determination that a BART-eligible source is subject to BART, as well as BART engineering analysis, must be made by April 30, 2007, in order for these controls to be reflected in the state's Regional Haze SIP due in December 2007, as required under FCAA, §169A and 40 CFR §51.308. Once a determination is made that a source is subject to BART controls, but prior to installation of the controls or emission limits, §116.1540 provides that the source may apply for an exemption from the executive director and final approval from EPA. It is unnecessary for sources to wait until adoption of this rule to implement controls or other enforceable limits in order to fall below the BART-eligibility thresholds. Sources have the option to revise their Title I (preconstruction) permits to provide synthetic minor limits. However, in response to questions from states and regional planning organizations on SIP requirements (*Additional Regional Haze Questions*, August 3, 2006), EPA has stated that the modifications must be completed before the state goes to public hearing on the SIP.

DEFINITION OF BART-ELIGIBLE

Alcoa commented that the rule should provide differentiation between BART-eligible sources and sources that are subject to BART. The terms and requirements of the proposed rule are inconsistent with Appendix Y to Part 51-Guidelines for BART Determinations; Final Rule (EPA). Alcoa also commented that TCEQ treats both classes of sources as one; both are BART-eligible sources.

Although the proposed rule does not explicitly differentiate between sources that are BART-eligible and sources that are subject to BART, on a functional level the rule is consistent with Part 51 and the associated guideline. A source that is subject

to BART is simply a BART-eligible source that emits any air pollutant that may reasonably be anticipated to contribute to any impairment of visibility in any mandatory Class I federal area. The rule allows a source to demonstrate that it does not contribute to visibility impairment (and are therefore not subject to BART), and those sources are not required to implement BART. No changes to the rule were made in response to this comment.

Alcoa stated that the effective date of 40 CFR §51.301 definitions cited in the rule is incorrect. In the first paragraph of §116.1500, TCEQ proposes that terms not explicitly defined in the rule are to have the meaning given them in 40 CFR §51.301 as effective September 6, 2005. The effective date of the current version is July 1, 1999. The date reference in TCEQ's BART rule is inconsistent with the effective date of current definitions in 40 CFR §51.301 and produces unnecessary confusion.

The commission agrees that the most current revision to 40 CFR §51.301 was published on July 1, 1999, and became effective on August 30, 1999. The commission has made a change to §116.1500 to reflect the August 30, 1999, effective date.

AECT, Alcoa, Ash Grove, and El Paso Electric suggested various revisions to the definition of a BART-eligible source to clarify that BART applies on an emission unit basis, and not a source-wide or site-wide basis.

The commission concurs that the definition of BART-eligible source should be rephrased to clarify that BART applicability is determined on an emission unit basis, consistent with EPA guidance, and not on a source-wide or site-wide basis. The commission has modified the definition accordingly.

DEFINITION OF VISIBILITY-IMPAIRING POLLUTANT

ACET, Ash Grove, TXU, Dow, and TCC all agreed that the §116.1500 definition of visibility-impairing pollutants should include only NO_x, SO_2, and PM.

The commission appreciates the support of the §116.1500(b) list of BART pollutants as proposed.

The Houston Sierra Club and NPS questioned the exclusion of VOCs and ammonia in the definition of visibility-impairing pollutant. AEP suggested that the TCEQ reexamine the proposed exclusion of VOCs, especially reactive VOCs, from the definition since the role of VOCs in producing secondary organic aerosols cannot be discounted in developing control strategies.

The commission disagrees with the suggestions to add VOCs to the list of BART pollutants. The TCEQ has modeled the visibility-impairment impact of VOC emissions from all potentially BART-eligible sources in Texas for Class I areas in Texas and surrounding states. The collective impact of all these sources was below the *de minimis* impact threshold of 0.5 deciview. Therefore, the collective impact of all individual sources and all groupings of sources from among the potentially BART-eligible sources in Texas is below the *de minimis* threshold. For this reason, the commission concludes that it is appropriate not to list VOCs as a visibility-impairing pollutant for potentially BART-eligible sources in Texas. The rules have not been revised in response to these comments.

The commission has considered ammonia emissions and has concluded that it would be inappropriate to add ammonia to the list of visibility-impairing pollutants in the BART rule. Industrial ammonia emissions are less than 1% of the total ammonia emissions in Texas, and BART source emissions are only a part of industrial ammonia emissions. Therefore, it is inappropriate to list ammonia from BART sources in Texas as a visibility-impairing pollutant. The Regional Haze SIP will look at visibility-impairing pollutants again and determine if more pollutants should be considered. In the SIP, the uniform rate of progress may require further controls. The rule has not been revised in response to these comments.

0.5 DECIVIEW THRESHOLD

AECT, AEP, Alcoa, and TXU all provided comments opposing a threshold lower than the 0.5 deciview proposed in the rule. AECT, TXU, and AEP expressed concern that a lower threshold could lead to inconsistencies and conflicts between states. In addition, AEP and Alcoa concurred that a lower threshold would be unwarranted on the basis that a change of 0.5 deciview is significantly below the well-established threshold of perceptibility given by a change of 1.0 deciviews or greater. Alcoa argued that using a threshold lower than the proposed 0.5 deciview would require additional modeling resources for its justification.

The commission will not lower the 0.5 deciview threshold. The TCEQ has received no evidence that a lower threshold is appropriate in Texas. By using only a single threshold, the TCEQ does not intend to imply that the threshold for *causing* visibility impairment is the same as for *contributing to*. Since TCEQ expects all Class I areas have more than one source impacting visibility, any source that *causes* visibility-impairment (such as, using for example, based on the EPA's threshold of a humanly perceptible visibility impact of 1.0 deciview or greater) also *contributes to* the same. So the *contributes to* threshold is the one relevant to this rule. To clarify the rule, the TCEQ will remove the term *causes* in this context, so that the 0.5 deciview value will be applicable only as a contribution threshold. The commission is following EPA guidance, Part 51, Appendix Y, Section III.A.1, and has made no changes in §116.1520 and §116.1530 in response to the comments.

In addition, Alcoa expressed concern that the proposed rule does not provide a clear distinction between *contributing to* and *causing* visibility impairment in Class I areas. In particular, Alcoa does not support using 0.5 deciview as an appropriate threshold for determining that emissions from a single BART source are causing visibility impairment in a Class I area.

By using only a single threshold, the commission does not intend to imply that the threshold for *causing* visibility impairment is the same as for *contributing to*. Since the commission expects all Class I areas have more than one source impacting visibility, only the threshold for *contributing to* visibility impairment will be examined for the BART determination. To clarify the rule, the commission will remove the term *causes* in this context, so that the 0.5 deciview value will be applicable only as a contribution threshold.

The Houston Sierra Club expressed the desire that TCEQ revisit the 0.5 deciview threshold after BART has been applied, citing concern that 0.5 deciview threshold may not be stringent enough.

The commission has made no changes in response to this comment. Since a determination of which BART-eligible sources will be subject to BART engineering analysis must be determined prior to submittal of the Regional Haze SIP to EPA (December 17, 2007), there is no opportunity to revisit the threshold after it has been applied. However, the state must periodically reassess the reasonable progress goals contained in the SIP for each Class I area. This analysis may indicate that additional emission reductions at BART and other non-BART sources are

necessary to make reasonable progress toward the goal of natural visibility conditions.

NPS expressed concern that proposed §116.1510(b) uses a threshold of *greater than 0.5 deciviews* while the EPA uses a threshold of at *or more*. NPS suggests that the rule should specify whether the threshold will be the same as EPA language or if Texas will apply a different threshold.

The commission agrees with this comment. For consistency with EPA guidance, the commission has changed the wording in the rule accordingly.

SCREENING TOOLS

Dow and TCC commented that CALPUFF modeling can be time consuming and resource intensive and that TCEQ's cost estimates for modeling are low.

The commission acknowledges that the range of costs for exemption modeling will vary depending on a number of factors, including the complexity of the source, the size of the facility, and the proximity of the source to Class I areas and the number of Class I areas to be modeled. No changes to the rule have been made.

Alcoa, AECT, AEP, Ash Grove, El Paso Electric, and TXU have recommended that *model plant* exemptions from the requirements of §116.1520 and §116.1530 be expanded to include distance and emissions threshold levels for PM. BP, Dow, TXOGA, and TCC suggested that the TCEQ include additional screening tools for evaluating visibility requirements.

The commission agrees that additional tools may be needed. Section 116.1510(b) allows for the use of additional modeling screening tools that have been developed or approved by the executive director. Screening tools developed based on the CAMx screening modeling have been included in the modeling guidance documents posted on the BART Web site at: *www.tceq.state.tx.us/implementation/air/sip/bart/haze.html*. The screening tools include Texas-specific model plants for PM_{10}, NO_x, and SO_2. No changes to the rule have been made.

USE OF COMMISSION VS EXECUTIVE DIRECTOR

AECT, TXU, Ash Grove, and El Paso Electric recommend that in §116.1510(b), the word *commission* be replaced with *executive director*. The revision is needed because it will be the executive director's staff, not the commissioners, who will evaluate the modeling. Such revision would be consistent with the rest of the BART rules, which use the term *executive director* to refer to the executive director and his staff, and *commission* to refer to the three commissioners.

The commission agrees with this suggestion and has changed *commission* to *executive director*. The commission notes that this is consistent with references to the *executive director* in other parts of the rule.

EXTENSION OF SUBMITTAL DATE FOR MODELING AND ENGINEERING ANALYSIS

BP, Dow, TCC, and TXOGA commented that the TCEQ should extend the April 30, 2007, deadline for submittal of exemption modeling and the engineering analysis to allow adequate time for regulated entities to conduct and submit modeling that shows that the source does not cause or contribute to visibility impairment. Dow and TCC suggested extending the deadline to July 31, 2007, to allow ample time for TCEQ to review this information and develop the required Regional Haze SIP by the December 17, 2007, deadline. Arkema suggested the deadline be effective 150 to 180 days after BART rule promulgation.

The commission understands the commenters' concerns, however, due to the short time line, the rule has not been changed in response to comments. The Regional Haze SIP is anticipated to go to the commission for proposal in the summer of 2007 to meet the adoption date of December and to meet EPA's deadline of December 17, 2007. It will take months for TCEQ to review modeling and engineering analysis submittals for general completeness and to identify the magnitude of projected BART emission reductions. Therefore, the April 30, 2007, due date cannot change because of the Regional Haze SIP time line.

MODELING

The Houston Sierra Club commented that it does not support waiting until the eighth highest 24-hour visibility reading before deciding whether regional haze is at unacceptable levels as it is stated in the Draft Final Modeling Protocol: Screening Analysis of Potentially BART-Eligible Sources in Texas on page 3-3.

The commission has made no changes in response to these comments. EPA notes in the final BART rule published in the *Federal Register* on July 6, 2005, that if the 98th percentile, or the eighth highest daily value, from the modeling is less than the contribution threshold of 0.5 deciview then it may be concluded that the source does not contribute to visibility impairment and is not subject to BART.

AECT and AEP commented that the use of CALPUFF could result in false attribution to Texas sources of regional haze impacts on Class I areas in other states. AECT and AEP suggested that the air quality model SCICHEM be considered as an alternative to CALPUFF. SCICHEM is a stand alone plume dispersion and chemistry model that has been used in some visibility studies.

The commission has made no changes in response to these comments. Currently, CALPUFF is the only EPA-approved model for use in estimating single source pollutant concentrations resulting from the long-range transport of primary pollutants. CALPUFF and CAMx are the two models the executive director has determined are appropriate to use in modeling source emission impacts on Class I areas for the purposes of the BART rule.

AEP commented that approval of CALPUFF in source-specific exemption modeling should be examined with care given the limitations and consequences of CALPUFF modeling. AEP commented that CALPUFF is recognized to have serious limitations in its chemistry treatment and may overstate secondary particulate matter production. AEP commented that the plume treatment in CALPUFF beyond 200 kilometers is uncertain.

The commission appreciates the comment and acknowledges that CALPUFF has limitations, but has made no changes in response to these comments. The usefulness of CALPUFF for characterizing transport beyond 200 - 300 kilometers, as well as the limitations of the chemistry treatment in CALPUFF are well known and documented in the EPA document, *Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts* (December 1998). EPA notes in the final BART rule, published in the *Federal Register* on July 6, 2005, that CALPUFF can be used for purposes, such as visibility assessments addressed in the final rule, to account for the chemical transformation of SO_2 and NO_x. The commission will allow the use of the photochemical grid model, CAMx, for evaluating vis-

ibility impacts at Class I areas located beyond 300 kilometers from a source.

MODELING-OTHER

Source Environmental Sciences, Inc. commented that the first sentence of §116.1510(b) be revised to the following in order to be consistent with other TCEQ rules, regulations, and guidelines, *The owner or operator of a BART-eligible source may demonstrate, using an air dispersion model and air dispersion modeling guidelines approved by the commission, that the source does not cause or contribute to visibility impairment in a Class I area*.

The commission has made no changes in response to this comment. Since the commission will allow the use of the photochemical grid model CAMx for evaluating visibility impacts at Class I areas located beyond 300 kilometers from a source, including the additional wording of *air dispersion* in front of *model* and *modeling guidelines* would not be an appropriate characterization for numerical grid models, such as CAMx.

TXU has recommended that TCEQ authorize the use of the photochemical grid model CAMx under §116.1510(b). TXU also cites EPA guidance which notes that the use of photochemical grid models is acceptable and, in some cases, may be more accurate and appropriate to use this model.

The commission agrees with the commenter. CAMx is an approved model for exemption modeling under §116.1510(b).

MODELING OF CLASS I AREAS

Dow and TCC commented that ENVIRON's final report for the screening evaluation was not available to determine how many Class I areas need to be evaluated for source-specific exemption modeling. TCC suggested that the public comment period be re-opened upon the release of the results of the ENVIRON screening evaluation. TCC suggested that this topic be included in the informational meeting being held by the TCEQ on November 9, 2006.

The commission has made no changes in response to these comments. The final report of the ENVIRON screening evaluation is available at the Regional Haze Web site: *www.tceq.state.tx.us/implementation/air/sip/bart/haze.html*. Future addendums to the final report will be made available as soon as they are ready.

BP, Dow, TCC, and TXOGA commented that the number of Class I areas to be considered for source-specific exemption modeling is not specified in the proposed rule. BP, Dow, TCC, and TXOGA commented that if multiple Class I areas must be considered, it may increase the cost of modeling significantly. Dow commented that the TCEQ estimates for exemption expenses are low and may not even cover a CALPUFF setup and execution cost for a single source-Class I area combination. BP, Dow, TCC, and TXOGA requested that the final rule specify the number of modeling runs necessary to exempt a source from the BART Engineering Analysis requirements.

The commission has made no changes in response to these comments. The Class I areas to be considered for source-specific exemption modeling are listed in TCEQ draft modeling documents, *Screening Analysis of Potentially BART-Eligible Sources in Texas* and *Best Available Retrofit Technology (BART) Modeling Protocol to Determine Sources Subject to BART in the State of Texas*. The range of costs for exemption modeling will vary depending on a number of factors, including the complexity of the source, the size of the facility, and the proximity of the source to Class I areas. The number of modeling runs necessary to exempt a source from the BART Engineering Analysis requirements will vary source-by-source, and specifying a single number would limit sources on how they conduct their modeling.

MODELING CERTIFICATION

AECT, Dow, TCC, and TXU requested clarification of the relationship between the screening modeling and the requirement for additional analyses. AECT, Ash Grove, Dow, and TXU suggested that the final rule confirm that no additional modeling is needed if the results of the screening analysis show that no additional analyses are needed for NO_x, SO_x, or PM. Dow and TCC suggested that if the screening analysis shows that no additional analysis is needed for an air contaminant, then the owner/operator be clearly excluded from the requirement to submit additional modeling under §116.1510(b). Dow suggested that the model plant exemptions in §116.1510(c)(1) - (3) remain available in lieu of providing exemption modeling or a BART engineering analysis, if additional analyses are required.

The commission concurs that the rule should provide greater clarity concerning the TCEQ-conducted screening modeling, the need for additional analyses, and the applicability of the rule, and has revised the rules accordingly. The TCEQ's screening modeling excluded some sources from BART requirements for all pollutants; other sources were excluded for only certain pollutants. If a source was screened out of BART for one or all pollutants by TCEQ's screening modeling, then that source is not required to conduct additional modeling or BART analysis for that pollutant(s). However, sources using the CAMx model must include all the pollutants in their modeled emission inventories and visibility impact assessments. The Interagency Monitoring of Protective Visual Environments (IMPROVE) equation requires that concentrations of all pollutants (exempted or not) be included in the IMPROVE equation.

In addition, the source must review the information used as the basis for the screening modeling (emission rates, stack parameters, etc.) and certify that it is correct. The commission has revised the rules to more clearly explain the requirements for sources that were screened out in the TCEQ modeling. The exemptions in §116.1510(c)(1) - (3) remain available, independently of whether or not a source was screened out by the TCEQ screening modeling.

BART EXEMPTION SHIELD

Arkema commented that TCEQ should finalize the BART modeling exemption. Arkema supported TCEQ's proposed approach to allow facilities that can demonstrate no impact on Class I areas to opt out of BART controls. After more review, TCEQ may conclude that the modeling was not performed correctly and that a facility may actually become subject to BART. Arkema commented that TCEQ should modify the proposed rule to shield sources pursuing this option from compliance with the rule until TCEQ approves the modeling demonstration or six months after TCEQ rejects any such modeling demonstration. The six-month period will provide a source facing rejection of their modeling demonstration adequate time to prepare the required BART analysis and will ensure that a source complying with §116.1510 does not inadvertently fail to comply with §116.1520 because of participation in another part of the rule.

The commission appreciates the support for the §116.1510(b) exemption process. However, the commission does not concur that a shield for sources who submit modeling under this exemp-

tion is appropriate or necessary. In addition, such a shield or extension would tend to further delay the submission of the BART analyses. In order to develop the Regional Haze SIP, the commission needs information about BART applicability and BART controls no later than April 30, 2007.

MODELING-OTHER

AECT, Ash Grove, El Paso Electric, and TXU suggested revisions to §116.1510(b) to clarify that a BART-eligible source demonstrating that its emissions of a particular visibility-impairing pollutant do not contribute to visibility impairment at a Class I area is not required to perform BART analysis for that pollutant.

The commenters suggested changing the rule to make the modeling exemption under §116.1510(b) function on a pollutant-by-pollutant basis. The commission does not agree that the §116.1510(b) exemption should be applied on a pollutant-specific basis. Any owner or operator of a source seeking to claim this exemption must model all visibility-impairing pollutants cumulatively, even in cases where the TCEQ-conducted screening modeling (or model plant exemptions) indicate that one pollutant type would not contribute to visibility impairment.

AECT, Ash Grove, El Paso Electric, and TXU suggested that §116.1510(b) reflect that the demonstration of no impairment can be met through the CAMx modeling recently performed by TCEQ. El Paso suggested a similar revision to §116.1510(b) to clarify that modeling performed by a source in accordance with the guidelines approved by the TCEQ is sufficient to demonstrate that a source does not contribute to visibility impairment at a Class I area for the purpose of determining whether a BART analysis will be required. The commenters expressed that changes to this subsection are necessary to avoid potential disputes where a particular source models out of BART (i.e., less than 0.5 deciviews) in accordance with an approved protocol and guidelines and a third-party uses an unapproved protocol to show an impact above 0.5 deciviews.

The commission agrees with the commenters that changes are necessary to this subsection and has therefore made changes to the rule. States must submit their Regional Haze SIPs, including the BART component, by December 17, 2007. Given this relatively short time frame and the potentially large number of BART-eligible sources in Texas, the executive director conducted screen modeling, based on emissions and unit construction data obtained from those sources, to obtain a better idea of how many BART-eligible sources would then be required to implement BART controls. A primary purpose of this modeling exercise was to project the level of agency resources that would be necessary to review the source-specific exemption modeling, engineering analyses, and control determinations in time to meet the SIP submittal deadline. The commission has changed the rule to allow BART-eligible sources that submitted data to the agency to use the modeling performed by the executive director to demonstrate no visibility impairment for one or more visibility-impairing pollutants. The commission has added new §116.1510(e) to reflect that in order to use the executive director's modeling for this demonstration, a source must certify that the emissions and location information provided to the executive director in the survey and used in the modeling analysis is correct.

PROFESSIONAL ENGINEER REQUIREMENT

Dow and TCC requested that TCEQ provide flexibility regarding the submittal of the BART analysis under seal of a Texas licensed professional engineer (P.E.). TCC proposed that the requirement for submittal under seal of a P.E. apply only if the analysis is done by an independent consultant or engineering firm and not if prepared by resources internal to the company owning the source.

The intended purpose of the P.E. seal requirement for the engineering analysis is to ensure that the submittals meet a high standard of quality and completeness. This indicates that the burden of proof is on the applicant to ensure that applicable guidance and protocols were followed. A P.E. seal should reduce the amount of agency resources expended to deal with incomplete or defective submittals and enable the commission to focus resources more efficiently. This rationale for requiring each BART engineering analysis to be submitted under P.E. seal does not depend on whether the analysis was prepared internally by the owner or operator of the source or using external resources. The commission has not changed the rule in response to this comment.

BP, Dow, TCC, and TXOGA commented that Texas P.E. licensing requirements do not require in-depth knowledge of CALPUFF or CENRAP BART modeling guidelines, and air modeling skills do not necessarily require P.E. knowledge. Dow commented that out-of-state contractors may not have a Texas-licensed P.E. on staff. Source Environmental commented that no existing TCEQ rules or regulations require the sealing of an air dispersion modeling report with a P.E. seal, and the proposed requirement is unnecessarily restrictive.

The commission acknowledges that Texas P.E. licensing requirements do not specifically require direct knowledge or experience relating to the CALPUFF or CENRAP modeling. However, a reviewing P.E. should still be able to ensure that modeling staff are following applicable guidelines and protocols. The P.E. seal requirement will tend to reduce the amount of agency resources expended to deal with incomplete or defective submittals and enable the commission to focus resources more efficiently. The P.E. must certify that all of the emission and stack parameter data are accurate, and the modeling protocols were followed.

Houston Sierra Club commented that TCEQ should not assume that just because the BART analyses and modeling are submitted under the seal of a P.E. that TCEQ does not have to conduct a detailed review of every submittal. Houston Sierra Club suggested that TCEQ must *trust, but verify* each and every submittal in a detailed manner.

The commission acknowledges that the P.E. seal requirement does not guarantee that every modeling report or BART engineering analysis will be acceptable, although the commission expects that this requirement will result in an overall higher quality level for these submittals. All modeling and engineering analysis submittals will be reviewed for general completeness and to identify the magnitude of projected BART emission reductions. Submittals will be selected for detailed technical review based on a variety of factors, including, but not limited to: quantity of visibility-impairing pollutants; proximity to Class I sites; cases where the source's prospective BART strategy results in little to no improvement in visibility; or cases where the source proposes no additional control. The reviews will be performed with existing commission resources. No changes to the rule were made in response to this comment.

PARTICULATE MATTER

AEP has commented that coal fired EGUs have some of the highest efficiency on particulate matter. It recommended that TCEQ drop the requirement in the proposed rule for EGUs to

perform source level modeling to assess the visibility impact and subsequent engineering analysis of primary particulate matter from BART eligible sources.

The commission will not allow sources to eliminate source level modeling for EGUs based on controls in place. Many other source categories also have controls in place. The commission will keep the modeling requirement for all potentially BART-eligible sources to either assess the potential visibility using protocols outlined by the TCEQ or continue directly with an engineering analysis. If a source models its visibility impacts below the threshold of 0.5 deciview, no further analysis will be required. Additionally, as described in the EPA BART rule, the analysis of control options step allows the source to take into consideration any controls in use at a particular unit. Other considerations include the assessment of available retrofit control options, costs of compliance with control, remaining useful life of the facility, and energy and non-air quality environmental impacts of control options. No changes to the rule were made in response to this comment.

Ash Grove, Dow, El Paso Electric, and TCC noted that the preamble to the proposal stated that PM_{10} may be used as the indicator for PM when assessing BART-eligibility. TCC seeks clarification regarding how PM_{10} can be used as an indicator for PM when assessing BART eligibility considering the exemption in §116.1510(c)(3). This exemption states that any BART-eligible source that has a potential to emit (PTE) of less than 15 tpy of PM_{10} is not subject to BART for PM_{10}. TCC asked, when evaluating the definition of a BART-eligible source, whether it is necessary to determine both the potential to emit for PM and PM_{10} and then compare both to the 250 tpy criteria.

The commission notes that Appendix Y to CFR, Part 51, the federal BART guidelines incorporated by reference in this rule, provides that a source may use PM_{10} as an indicator for PM when comparing it to the 250 tpy cutoff for BART eligibility. Section 116.1510 contains pollutant-specific exemptions to BART control analysis and implementation requirements. Section 116.1510(c)(3) reflects the commission's decision to include in the rule the *de minimis* levels established by EPA under CFR, Part 51, Appendix Y. EPA specifically established the 15 tpy level for PM_{10}.

PUBLIC RECORDS

Houston Sierra Club commented that the public should have access to the records that an owner or operator must maintain under §116.1510(c), to demonstrate compliance with applicable exemption criteria. Houston Sierra Club commented that the public has the right to see and obtain a copy of the documents that are the basis for the exemption that was granted by TCEQ. This right of public access to these documents should be written into the rules.

No changes are made in response to this comment. Section 116.1510(c) provides three ways for smaller sources to be exempted from BART requirements due to their relatively low emission rates. The broadest exemption is the *de minimis* exemption in §116.1510(c)(3). Hundreds of sources may meet this *de minimis* exemption. Since hundreds of sources may meet this exemption, it is not practical for the commission to collect and retain information on these *de minimis* sources. The other exemptions, in §116.1510(c)(1) and (2), are based on permit limits and distance information that is already on file at the commission and available for public review.

MODELING DISTANCES

The Houston Sierra Club commented that in the rule, the distances 31.05 and 62.1 miles appear to be too close to Big Bend and Guadalupe to not have an influence. Houston Sierra Club recommends that greater distances be required before the exemption is allowed.

The commission disagrees with the commenter. The distances that the commenter is referring to are based on the model plants that the EPA developed for 40 CFR Part 51, Appendix Y. There are two model plant exemptions adopted as §116.1510(c)(1) and (2), respectively. The EPA concluded that sources meeting the stated criteria for emissions and distance from Class I areas are unlikely to have a significant effect on visibility. The commission agrees with EPA's assertion. The exemptions in §116.1510(c)(1) and (2) are pollutant specific for NO_x and SO_2, such that the owner or operator of the source would still be required to perform the BART engineering analysis and implement any applicable BART controls for other visibility-impairing pollutants (such as PM). No changes have been made to the rule.

CAIR EQUALS BART

AECT and TXU strongly concur with proposed §116.1510(d), which would provide that EGUs that are participating in the CAIR cap and trade program will not be subject to BART analysis or control requirements for NO_x and SO_2.

The commission thanks the commenters for their support.

AECT, El Paso Electric, and TXU commented that the proposed rule be revised to exclude PM_{10} from the consideration of BART-eligibility for EGUs participating in the CAIR trading program.

The rule has not been revised in response to these comments. CAIR controls only NO_x and SO_2, and not direct PM. Therefore, CAIR will not cover PM for BART. EPA has stated that BART applies to individual sources for PM if the PM emissions are above *de minimis* levels (i.e., PTE of 15 tpy) and the impact from the BART-eligible units at the source causes or contributes to visibility impairment. PM that is associated with determining BART-eligibility are direct emissions of PM, not the precursors, therefore they must be considered in determining BART eligibility for all potential BART sources, including EGUs.

The Houston Sierra Club commented that under the TCEQ's Draft Final Modeling Protocol, Screening Analysis of Potentially BART-Eligible Sources in Texas on pages 1-6 and 4-1, the Houston Sierra Club does not agree with EPA that complying with CAIR will necessarily result in sufficient SO_2 and NO_x reductions to meet the regional haze visibility requirements.

The rule has not been revised in response to this comment. The commission has taken the option of using EPA's guidance that allows states to utilize the CAIR cap and trade programs as a means to satisfy BART for affected EGUs. The TCEQ has determined that CAIR will satisfy the BART requirements for NO_x and SO_2 emissions for EGUs participating in the CAIR program. However, EPA requires that each state set reasonable progress goals as provided by the Regional Haze Rule and cannot assume that CAIR will satisfy all of its visibility related obligations.

Arkema also commented that CAIR should not equate to BART for EGUs. Their concern regarding CAIR is that individual sources that participate may either reduce emissions to meet a limit or purchase allowances to comply with the CAIR rule, and there is not a mechanism to ensure that an individual member of a cap and trade system that has a significant impact on a Class I area is required to reduce emissions. The purchase of CAIR allowances could allow EGUs to shift their BART compliance

burden to smaller, more expensive to control, sources, such as Arkema's Houston facility. Arkema advocates applying emission controls to meet agency visibility and attainment goals to the sources that can do so in the most cost-effective manner, however using an unrelated trading program to shift a regulatory burden to smaller entities should not be allowed under this proposal.

The rules have not been revised in response to this comment. The commission has taken the option of using EPA's guidance that allows states to utilize the CAIR cap and trade programs as a means to satisfy BART for affected EGUs. CAIR controls NO_x and SO_2 and not direct PM. However, CAIR will not cover PM for BART, and EGUs that meet the individual source PM emissions and are above *de minimis* levels (i.e., PTE of 15 tpy) will be required to do a BART-eligible analysis on their units to determine if the source causes or contributes to visibility impairment of Class I areas. In addition to BART, the EPA requires that each state set reasonable progress goals as provided by the Regional Haze Rule and cannot assume that CAIR will satisfy all of its visibility related obligations.

CUMULATIVE IMPACT

Houston Sierra Clubs does not understand how the TCEQ will account for the cumulative impacts that many exempted sources plus non-exempted sources will have on visibility. There should be some type of cumulative effects analysis in the rules that ensures that exempted and area sources do not lead to delays in reducing visibility obscuring pollutants or cause a failure to meet visibility time frames.

The commission understands the commenter's concern. The BART rule does not require a cumulative analysis, but a cumulative analysis is required for the Regional Haze SIP, of which BART is just a piece. The CENRAP modeling for regional haze will take into account the reductions and includes all the point, area, and mobile sources in the United States and parts of Canada and Mexico. CAMx and CMAQ will be the modeling platforms used to look at the cumulative effect of BART reductions.

BART ANALYSIS CLARIFICATION

NPS supports continuing the inclusion of all sources of particulate matter in the BART analyses.

The commission agrees to include all BART sources in PM modeling that meet the EPA criteria. EGUs and non-EGUs were included in the PM modeling. No change has been made to the rule.

Alcoa commented that the requirement to conduct an analysis of emissions control alternatives for all visibility impairing pollutants at §116.1520(a) should be revised. Alcoa commented that as proposed, an analysis is required by BART-eligible sources, as opposed to sources determined to be subject to BART. Alcoa recommended the proposed language be revised to state: *(a) Except as provided under section 116.1510(b), (c), or (d) of this title (relating to Applicability and Exemption Requirements), each BART-eligible source that is subject to BART shall conduct an analysis of emissions control alternatives for visibility-impairing pollutants determined to be causing or contributing to visibility impairment in a Class I area.*

The change recommended by Alcoa is not necessary because sources that are not subject to BART are already covered by the reference to §116.1510(b). Section 116.1510(b) is the mechanism by which sources demonstrate that they are not subject to BART. No changes were made in response to this comment.

Arkema commented that TCEQ should finalize proposed minimum emission thresholds. The commenter supports exemptions limiting applicability to the BART analysis to be required in the proposal. The commenter agrees that TCEQ limit the impact of the proposed BART regulations to those facilities that are more likely to have significant impact on Class I area visibility, while not burdening smaller facilities with no identifiable impact on visibility. The commenter expressed that the proposed emissions/distance (Q/D) relationships are appropriate.

The commission appreciates the support of the commenter. CAMx screening modeling by TCEQ has exempted many of the smaller sources. Model plants have been developed for exempting more sources. Even though there is no *de minimis* size on individual units, a source can group its smaller emission units into a pseudo-source for CALPUFF. No changes were made in response to the comment.

BART CONTROL IMPLEMENTATION

No comments were made concerning §116.1540.

MISCELLANEOUS

Houston Sierra Club is concerned that the Regional Haze SIP does not show sufficient visibility air pollutant reductions due to transboundary emissions from other states. There apparently is no guidance or direction from EPA about how attainment will be obtained in such cases. Houston Sierra Club agrees that each state must reduce its share of visibility air pollutants for its own state's Regional Haze SIP. Houston Sierra Club agrees that when one state affects the attainment of the Regional Haze SIP of a second state then the first state must reduce its visibility air pollutants to assist in attainment of the Regional Haze SIP of the second state.

The issues the commenter raises deal with the Regional Haze SIP rather than the BART rule. No changes were made to the rule.

Lehigh Cement asked for an extension of the comment period to October 9, 2006.

The commission agreed. It extended the comment period from September 25, 2006, to October 9, 2006. A notice in the *Texas Register* and an e-mail to the entire BART list serve announced this change.

Houston Sierra Club does not understand why the BART rule was not released with the SIP, since both are usually released together. The public was not able to cross-reference both documents and determine whether the rules adequately implement the SIP. The public needs both documents to review, comment on, and understand. Houston Sierra Club understands that late in 2007 the Regional Haze SIP will be released and the BART is part of that package. However, by that time the engineering analysis and modeling will be complete and the public will have lost an opportunity to compare the rules and SIP before implementation of BART analyses.

The reason for adopting the BART rule before proposing the Regional Haze SIP is that BART analyses will be part of the SIP. The companies required to carry out BART analyses need time to prepare the analyses. EPA is requiring BART information in the SIP. In Texas, the SIP requires the BART rule promulgation to collect the appropriate industry information for the SIP package. The public will have a chance to view the BART information dur-

ing the SIP proposal period and make comments. No changes will be made to the rule.

STATUTORY AUTHORITY

These new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The new sections are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA); and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to construct new facilities or modify existing facilities that may emit air contaminants, or to operate a federal source, and to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA.

The adopted new sections implement TWC, §5.103 and §5.105; and THSC, §§382.002, 382.011, 382.012, 382.017, and 382.051.

§116.1500. Definitions.

The following terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. For terms not defined in this section, the definitions contained in 40 Code of Federal Regulations (CFR) §51.301, as effective August 30, 1999, are incorporated by reference.

(1) Best available retrofit technology (BART)-eligible source--Any emissions units that comprise any of the following stationary sources of air pollutants, including any reconstructed source, that were not in operation prior to August 7, 1962, and were in existence on August 7, 1977, and collectively have the potential to emit 250 tons per year (including fugitive emissions, to the extent quantifiable) of any visibility-impairing air pollutant:

(A) fossil fuel-fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input;

(B) coal-cleaning plants (thermal dryers);

(C) kraft pulp mills;

(D) portland cement plants;

(E) primary zinc smelters;

(F) iron and steel mill plants;

(G) primary aluminum ore reduction plants;

(H) primary copper smelters;

(I) municipal incinerators capable of charging more than 250 tons of refuse per day;

(J) hydrofluoric, sulfuric, and nitric acid plants;

(K) petroleum refineries;

(L) lime plants;

(M) phosphate rock processing plants;

(N) coke oven batteries;

(O) sulfur recovery plants;

(P) carbon black plants (furnace process);

(Q) primary lead smelters;

(R) fuel conversion plants;

(S) sintering plants;

(T) secondary metal production facilities;

(U) chemical process plants;

(V) fossil fuel-fired boilers of more than 250 million BTUs per hour heat input;

(W) petroleum storage and transfer facilities with capacity exceeding 300,000 barrels;

(X) taconite ore processing facilities;

(Y) glass fiber processing plants; and

(Z) charcoal production facilities.

(2) Visibility-impairing air pollutant--Any of the following: nitrogen oxides, sulfur dioxide, or particulate matter.

§116.1510. Applicability and Exemption Requirements.

(a) The requirements of this subchapter apply to best available retrofit technology (BART)-eligible sources as defined in §116.1500 of this title (relating to Definitions).

(b) The owner or operator of a BART-eligible source may demonstrate, using a model and modeling guidelines approved by the executive director, that the source does not contribute to visibility impairment at a Class I area. A BART-eligible source that does not contribute to visibility impairment at any Class I area is not subject to the requirements of §116.1520 or §116.1530 of this title (relating to Best Available Retrofit Technology (BART) Analysis and Best Available Retrofit Technology (BART) Control Implementation). A source is considered to not contribute to visibility impairment if, as demonstrated by modeling performed by the executive director or performed in accordance with the guidelines approved by the executive director, it causes a visibility impairment of less than 0.5 deciviews at all Class I areas. The modeling demonstration must be submitted under seal of a Texas licensed professional engineer and must be received by the commission's Air Permits Division no later than April 30, 2007.

(c) The following BART-eligible sources are not subject to the requirements of §116.1520 or §116.1530 of this title for the indicated pollutant(s). Owners or operators claiming exemption under this subsection shall maintain records sufficient to demonstrate compliance with the exemption criteria, and shall make such records available upon request of personnel from the commission or any local air pollution control agency having jurisdiction.

(1) Any BART-eligible source that has the potential to emit less than 500 tons per year of combined nitrogen oxides (NO_x) and sulfur dioxide (SO_2) and that is located more than 50 kilometers from any Class I area is not subject to BART for NO_x and SO_2.

(2) Any BART-eligible source that has the potential to emit less than 1,000 tons per year of combined NO_x and SO_2 and that is

located more than 100 kilometers from any Class I area is not subject to BART for NO_x and SO_2.

(3) Any BART-eligible source that has the potential to emit less than 40 tons per year of NO_x or 40 tons per year of SO_2 is not subject to BART for NO_x or SO_2, respectively. Any BART-eligible source that has the potential to emit less than 15 tons per year of particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) is not subject to BART for PM_{10}.

(d) BART-eligible electric generating units participating in the Clean Air Interstate Rule Trading Program are not subject to the requirements of §116.1520 or §116.1530 of this title for NO_x and SO_2.

(e) Any BART-eligible source that has been screened out by the Texas Commission on Environmental Quality-conducted screening modeling is not subject to the requirements of §116.1520 or §116.1530 of this title, for the specified pollutant(s), if the owner or operator has reviewed the modeling inputs for that source and the executive director receives written certification that the inputs are correct no later than February 28, 2007.

§116.1530. Best Available Retrofit Technology (BART) Control Implementation.

(a) Each owner or operator of a best available retrofit technology (BART)-eligible source shall install and operate BART-required control equipment no later than five years after the United States Environmental Protection Agency has approved a Regional Haze State Implementation Plan for the State of Texas. Each owner or operator shall maintain the BART-required control equipment and establish procedures to ensure such equipment is properly and continuously operated and maintained.

(b) Prior to any installation of BART-required control equipment, each owner or operator of a BART-eligible source shall comply with the requirements under Subchapter B of this chapter (relating to New Source Review Permits), Subchapter F of this chapter (relating to Standard Permits) or Subchapter H of this chapter (relating to Permits for Grandfathered Facilities) as applicable to authorize the construction or modification and to establish emission limitations of BART.

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 January 12, 2007.

TRD-200700106
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 1, 2007
Proposal publication date: August 25, 2006
For further information, please call: (512) 239-0348

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL EXOTIC FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.125

The Texas Parks and Wildlife Commission adopts an amendment to §57.125, concerning Harmful and Potentially Harmful Fish, Shellfish, and Aquatic Plants, without change to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8193).

Triploid grass carp are an effective method of aquatic plant control, but by statute can only be used under a permit issued by the department (Texas Parks and Wildlife Code, §66.007). Under current rules, there is a $15 fee for a triploid grass carp permit and an additional fee of $2 per fish. The current rule also provides for the waiver of the $15 fee if the fish are released in public water. The amendment waives the $2 per fish stocking fee for triploid grass carp stocked in public waters. The intent of the department is to facilitate increased efforts to control noxious vegetation in the public freshwater of the state by waiving the stocking fee as well as the application fee. The amendment also clarifies that the department issues permits for the stocking of triploid grass carp in public as well as private waters.

The rule will function by eliminating the $2 per fish fee for triploid grass carp released in public waters, and by clearly stating that grass carp may be stocked in public waters.

The department received no comments opposing adoption of the proposed rule.

The department received one comment supporting adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the Parks and Wildlife Code, and §66.007, which requires the commission to promulgate rules governing the release of harmful or potentially harmful fish, shellfish, or aquatic plants.

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 January 9, 2007.

TRD-200700041
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 29, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.594

The Comptroller of Public Accounts adopts new §3.594, concerning margin: temporary credit, without changes to the proposed text as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9568).

In accordance with 79th Legislature, 2006, 3rd Called Session, House Bill 3, this new rule is adopted to extend the preservation date for the temporary credit. Pursuant to the comptroller's authority under Tax Code, §111.051, the due date for filing the required notice of intent is changed from March 1, 2007 to September 1, 2007.

No comments were received regarding adoption of the new section.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.111.

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 January 12, 2007.

TRD-200700107
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: February 1, 2007
Proposal publication date: November 24, 2006
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER E. ADVISORY OVERSIGHT COMMUNITY OUTREACH COMMITTEE

37 TAC §4.71

The Texas Department of Public Safety adopts new Subchapter E, §4.71, concerning the Advisory Oversight Community Outreach Committee, without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9268).

Adoption of new §4.71 is necessary in order to establish the Advisory Oversight Community Outreach Committee in accordance with House Bill 925 (79th Texas Legislature - Regular Session). The purpose of the Advisory Oversight Community Outreach Committee is to document to the Public Safety Commission trade-related incidents involving department personnel; to develop recommendations and strategies to improve community relations, department personnel conduct, and the truck inspection process at the ports-of-entry on the Texas-Mexico border; and to act as ombudsman between the department and the residents and communities in the Texas-Mexico border area and between the department and the department's personnel.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.0197(a), which authorizes the Public Safety Commission to adopt rules for the implementation and operation of the Advisory Oversight Community Outreach Committee.

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 January 10, 2007.

TRD-200700095
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: January 30, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 424-2135

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CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER C. STANDARDS

37 TAC §35.34

The Texas Department of Public Safety adopts amendments to §35.34, concerning Standards of Conduct, without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9270).

Adoption of the amendments to §35.34 are necessary in order to delete current subsection (a) which the department believes needlessly involves the Private Security Bureau in contractual disputes between licensees and clients; reformats the remaining sections and add a new subsection (n) which provides for additional standards of conduct for regulated businesses.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 January 10, 2007.

TRD-200700096
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: January 30, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 424-2135

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37 TAC §35.41

The Texas Department of Public Safety adopts amendments to §35.41, concerning Company Name Selection, without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9271).

Adoption of the amendments to §35.41 are necessary in order to add new subsections (b) and (c) which clarify the criteria used by the Bureau in evaluating company name requests and to reduce the confusion that occurs when substantially similar company names are used by unrelated entities. In addition, the title of the section has also been changed.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 January 10, 2007.

TRD-200700097
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: January 30, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 424-2135

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SUBCHAPTER M. COMPANY RECORDS

37 TAC §35.205

The Texas Department of Public Safety adopts amendments to §35.205, concerning Records Required on Commissioned Security Officers, without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9272).

Adoption of the amendments to §35.205 are necessary in order to shift the burden from the employer to the officer/employee, to ensure the accuracy of the employer's record of the officer's current residence. The amendment acknowledges that employers do not have independent information on their employees in this regard and must rely on what the employee provides to them.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 January 10, 2007.

TRD-200700098
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: January 30, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 424-2135

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SUBCHAPTER Q. TRAINING

37 TAC §35.251

The Texas Department of Public Safety adopts amendments to §35.251, concerning Application for a Training School Approval, without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9272).

Adoption of the amendments to §35.251 subsection (c) are necessary in order to update the cross-references that appear in the rule. This is a non-substantive change.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 January 10, 2007.

TRD-200700099
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: January 30, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 424-2135

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.75

The Texas Youth Commission adopts an amendment to §87.75, concerning program services for offenders with mental retardation, without changes to the proposed text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9685).

The amendment to the section removes the requirement that updates to a youth's individual case plan be documented monthly. This revision mirrors a recent amendment to §87.1 of this title, which provides for updates to the individual case plan in 30, 60 or 90-day intervals, depending on a youth's classification and restriction level. The justification for amending the section is to ensure consistency among agency rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the accomplishment of its functions.

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 January 10, 2007.

TRD-200700091
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 30, 2007
Proposal publication date: December 1, 2006
For further information, please call: (512) 424-6014

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CHAPTER 111. CONTRACTS
SUBCHAPTER B. CONTRACTS FOR OTHER THAN YOUTH SERVICES

37 TAC §111.31

The Texas Youth Commission adopts an amendment to §111.31, concerning contracting for services, without changes to the proposed text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9685).

The amendment removes a redundant provision regarding the threshold at which approval of the deputy executive director is required. Any contract valued at or above $5000 must be approved by the deputy executive director, regardless of its duration. The provision in this rule which requires that contracts with terms exceeding 12 months be approved by the deputy executive director will be removed, as such contracts will generally be valued above the $5000 threshold. The justification for amending the section is elimination of a redundant approval authority requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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 January 10, 2007.

TRD-200700092
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 30, 2007
Proposal publication date: December 1, 2006
For further information, please call: (512) 424-6014

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CHAPTER 119. AGREEMENTS WITH OTHER AGENCIES

37 TAC §119.23

The Texas Youth Commission adopts an amendment to §119.23, concerning canteen operations, without changes to the proposed text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9686).

The amendment updates a reference to another state agency to reflect the consolidation of several state agencies. The justification for amending the section is the use of current state agency names in the commission's rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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 January 10, 2007.

TRD-200700093
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 30, 2007
Proposal publication date: December 1, 2006
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 809, §§809.1, 809.2, 809.4, 809.5, 809.11 - 809.20, 809.41 - 809.44, 809.46 - 809.48, 809.61 - 809.63, 809.71 - 809.79, 809.91 - 809.93, 809.101 - 809.105, 809.121 - 809.124, 809.201 - 809.205, 809.221 - 809.226, 809.228, 809.229, 809.231 - 809.233, 809.235, 809.251 - 809.253, 809.271 - 809.273, and 809.281 - 809.288, relating to Child Care and Development Rules, in its entirety, as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8625).

The Commission adopts the following new sections of Chapter 809, relating to Child Care Services *without* changes, as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8625):

Subchapter A, General Provisions, §809.1

Subchapter B, General Management, §§809.13, 809.14, 809.17 - 809.18 and 809.21

Subchapter C, Eligibility for Child Care Services, §§809.42, 809.43, 809.45 - 809.49, and 809.52 - 809.54

Subchapter D, Parent Rights and Responsibilities, §§809.72, 809.73, and 809.75

Subchapter F, Fraud Fact-Finding and Improper Payments, §§809.114, 809.116, and 809.117

Subchapter G, Appeal Procedures, §809.131 and §809.132

The Commission adopts the following new sections of Chapter 809, relating to Child Care Services *with* changes, as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8625):

Subchapter A, General Provisions, §809.2 and §809.3

Subchapter B, General Management, §§809.11, 809.12, 809.15, 809.16, 809.19, and 809.20

Subchapter C, Eligibility for Child Care Services, §§809.41, 809.44, 809.50, and 809.51

Subchapter D, Parent Rights and Responsibilities, §§809.71, 809.74, 809.76, and 809.77

Subchapter E, Requirements to Provide Child Care, §§809.91 - 809.93

Subchapter F, Fraud Fact-Finding and Improper Payments, §§809.111 - 809.113 and §809.115

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency every four years. The Commission's Child Care and Development Rules, Chapter 809, were reviewed in 2005 with the goals of:

--removing administrative and operational procedures that have become unnecessary or are contained in other rules;

--updating terminology and definitions;

--including recent statutory requirements;

--removing obsolete provisions;

--streamlining and simplifying rule language; and

--promoting integrated support services for workforce services.

Some provisions in Chapter 809 were established when the Texas Department of Human Services--now consolidated within the Texas Health and Human Services Commission (HHSC)--administered child care services. Other provisions were written when child care operated as a separate department within the Agency. As a result, Chapter 809 contains administrative procedures that subsequently have been included in other chapters of this title.

The purpose of the repeal of Chapter 809 and adopted new Chapter 809 is to:

--simplify and clarify rule language and definitions;

--remove obsolete provisions;

--promote operational efficiencies;

--include new policy initiatives; and

--include new statutory language.

Where possible, the rules remove administrative or procedural language that may be duplicated in:

--other chapters of this title;

--the Agency-Local Workforce Development Board (Board) Agreements;

--the Financial Manual for Grants and Contracts; and

--other procedural or administrative documents.

Repealed Chapter 809 contains 13 subchapters and 75 sections. New Chapter 809 reorganizes, consolidates, and streamlines the child care rules to 7 subchapters and 46 sections. The consolidation and reorganization of the child care rules is designed to create subchapters based on the five primary parties involved in the subsidized child care system:

1. The Commission, as the lead agency for the federal Child Care and Development Fund (CCDF)

2. The Boards and child care contractors that administer and manage the system

3. The children who are receiving child care services

4. The parents who are eligible for child care services

5. The child care providers who receive the child care subsidies

The Commission has retained many of the provisions in the repealed rules. However, in many cases, the provisions have been consolidated into different subchapters. For example, the repealed rules have three separate subchapters relating to the eligibility requirements for child care services. The new rules retain many of these provisions, however, they are consolidated into one subchapter related to the eligibility for child care. Similarly,

the repealed rules have two separate subchapters relating to the requirements for child care providers; the new rules consolidate the requirements into a single subchapter.

Because of the reorganization of the child care rules, these changes are better accomplished by the repeal of the current rules and adoption of new rules.

Figure: 40 TAC Chapter 809--Preamble provides a summary of the adopted rule changes.

Figure: 40 TAC Chapter 809--Preamble

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts new Subchapter A, General Provisions, as follows:

Subchapter A contains the general provisions of the Child Care Services rules, which include the short title and purpose; definitions of terms used throughout Chapter 809; and the provisions related to requesting a waiver of the child care rules.

§809.1. Short Title and Purpose.

Section 809.1(a) states that the short title of this chapter may be cited as the "Child Care Rules." Repealed Chapter 809 provides the short title as the "Child Care and Development Rules." The Commission removes the words "and Development" from the title of the rules to emphasize that these rules govern the use of any Commission funds used for child care, not simply the child care funds from CCDF.

Section 809.1(b) states that the purpose of the rules is to interpret and implement the requirements of state and federal statutes and regulations governing Commission-funded child care services, including quality improvement activities. This purpose remains the same as the purpose stated in repealed Chapter 809.

Section 809.1(b) also states that the Commission funds governed by the rules include CCDF funds allocated to local workforce development areas (workforce areas) through the allocation formula described in §800.58 of this title. Additionally, the child care rules govern the use of private donated funds; public transferred funds; and public certified expenditures that are used as state match for CCDF federal matching funds. The rules also govern the use of CCDF funds used for child care for children receiving protective services. In addition, these rules govern the use of other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title.

Section 809.1(b) specifically lists the funds governed by this chapter to emphasize that the intent of the child care rules is to govern the use of any Commission-funded child care, including donated funds and certified expenditures used as state match for federal CCDF matching funds, as well as funds allocated by the Commission, such as WIA funds or other funds that may become available to the Commission and allocated to the workforce areas.

Finally, §809.1(c) provides that the rules contained in this chapter shall apply to the Commission, Boards, their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

The new rules do not include provisions contained in repealed Subchapter A relating to the application of the rules in a workforce area in which there is no certified Board. These provisions were included in the rules when child care services were transferred from the Texas Department of Human Services (now the Texas Health and Human Services Commission) and are no longer necessary because each workforce area currently has, and is expected to maintain, a certified Board.

Additionally, the provisions in repealed Subchapter A relating to the Train Our Teachers (TOT) Award are not retained as the program is no longer funded by the Commission.

Texas Labor Code §302.006 directs that the TOT program is a permissible rather than a required program of the Commission. The Commission no longer funds TOT in order to maximize the amount of funds available for direct child care services.

Comment: One commenter supported the effort to clarify that the intent of the rules is to cover all aspects of Commission-funded child care. The commenter stated that this will be of great benefit in Boards' efforts to further integrate services.

Response: The Commission appreciates the comment and agrees that the rule language will facilitate the integration of workforce services.

§809.2. Definitions.

Section 809.2 sets forth the definitions for terms used throughout new Chapter 809. It incorporates certain definitions found in other subchapters of repealed Chapter 809; certain definitions found in the CCDF State Plan; and new terms and definitions that are used throughout Chapter 809.

Attending a job training or educational program

The CCDF regulations at 45 C.F.R. §98.16(f)(3) require that the CCDF State Plan set forth how the state defines "attending" in regard to an individual's attendance in a job training or educational program. The CCDF State Plan states that an individual is "attending a job training or educational program" if the individual:

--is considered by the program to be officially enrolled in the job training or educational program;

--meets all attendance requirements established by the program; and

--is making progress toward successful completion of the program as determined by the Board.

Section 809.2(1) includes the definition of "attending a job training or educational program," that is consistent with the CCDF State Plan.

Comment: One commenter noted that a customer must be making progress toward successful completion of the program as determined by the Board. The commenter sought clarification on the Commission's expectation to fulfill this requirement and asked if a written statement from an official of the training or education program would suffice or if the Commission expected staff to complete degree plans and measure the parent's progress toward completion. The commenter expressed desire for Boards to have the flexibility to obtain a written statement from the training or education program similar to statements currently received to verify the parent is meeting attendance requirements rather than requiring staff to track the degree or training plans to measure the parent's progress.

Response: The Commission appreciates the commenter's request for clarification. As noted in §809.13(d)(1), a Board must develop policies related to how it determines that the parent is

making progress toward successful completion of a job training or educational program as described in §809.2(1). Each Board has the discretion to make that determination. However, it is recommended that Boards design policies and procedures to ensure that the documentation is verified by the education or training program.

Child

Section 809.2(2) defines a "child" as an individual who meets the general eligibility requirements in this subchapter for receiving child care. This definition is not changed from the repealed definition, except that the repealed definition contains the requirement that the child must reside with the parents. This requirement is set forth in new Subchapter C related to the General Eligibility for Child Care.

Child care contractor

Section 809.2(3) defines "child care contractor" as an entity or entities under contract with the Board to manage child care services. The term is retained from repealed Chapter 809, however, it is now defined. By defining "child care contractor," the Commission intends to include one or more entities that may be contracted by the Board to manage one or more functions related to the delivery of child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

Child care services

Section 809.2(4) defines "child care services" as child care subsidies and quality improvement activities funded by the Commission. This definition is designed to incorporate child care subsidies and reimbursements paid to providers on behalf of eligible parents for direct child care for eligible children, as well as eligible child care quality improvement activities funded by the Commission. The intent is to provide in rule a general term that may be applied to both direct child care subsidies and quality activities that a parent or provider may receive.

Child care subsidies

Section 809.2(5) defines "child care subsidies" as Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child. The Commission's intent is to distinguish in rule language, when necessary, the difference between Commission-funded child care services for direct child care and Commission-funded child care services for quality improvement activities.

Child with disabilities

Section 809.2(6) defines a "child with disabilities" as a child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered to be incapable of performing the routine activities of daily living if the child requires assistance in performing tasks (major life activities) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking, learning, talking, seeing, hearing, breathing; and working.

The new definition, especially as it relates to activities of daily living is based on the definition of "major life activities" found in the U.S. Department of Education regulations at 34 C.F.R. §104.3(j).

Educational program

CCDF regulations at 45 C.F.R. §98.16(f)(4) require the state to provide in the CCDF State Plan how the state defines a "job training and educational program" for the purposes of determining eligibility for a parent who is attending a job training or educational program. The Commission defines the term "educational program" separately from the term "job training program" in order to allow for the provision of time limits for parents participating in educational programs as set forth in §809.41, A Child's General Eligibility for Child Care Services, which will not be applied to parents attending job training programs.

The definition of an "educational program" is based on the definition provided in the CCDF State Plan. Section 809.2(7) defines "educational program" as a program that leads to:

--a high school diploma;

--a General Educational Development (GED) credential; or

--a postsecondary degree from an institution of higher education.

Family

For purposes of determining family size and family income in order to determine a parent's eligibility for child care services and to assess the parent share of cost, §809.2(8) defines the term "family" as the unit composed of a child eligible to receive child care services, the parents of that child, and household dependents. This definition of a "family" is identical to the definition in the repealed rules.

Household dependent

Section 809.2(9) defines the term "household dependent" as an individual living in the household who is one of the following:

--an adult considered as a dependent of the parent for income tax purposes;

--a child of a teen parent; or

--a child or other minor living in the household who is the responsibility of the parents.

Although similar to the repealed definition, the new definition clarifies that the adult must be a dependent of the parent.

Comment: One commenter suggested the term should be changed from "household dependents" to "household members" to include family structures where an adult resides in the same home as part of a family and contributes to the family income but is not considered a "dependent" of the parent, thereby making a person eligible for child care who would not otherwise be if the other adult's income was to be included. The commenter stated that it would not be unfair to expand the eligibility calculation to include the incomes of individuals who are household members but not considered "family."

Response: The Commission welcomes suggestions that attempt to ensure CCDF funds are given only to those who are actually in need. Although the Commission understands the commenter's concerns, the Commission believes that this change would necessitate further clarification of how to determine if the other adult is "part of the family" and "contributes to the family income." For example, the suggested change could mean that the income of a college student who temporarily resides with a relative for the summer and is earning income for school during the summer may be counted as family income, even though the student's income probably does not contribute to the family income.

Improper payments

Section 809.2(10) defines "improper payments" as payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts. This definition is consistent with the definition provided in the CCDF State Plan. The Commission notes that child care reimbursement payments are made to providers, not to parents (as stipulated in §809.93(a)); therefore, the definition of improper payments does not include parents as recipients of improper payments. However, a parent shall be responsible for repayment of any improper payment made on behalf of the parent if the parent has been found to have committed fraud or other actions, as set forth in §809.117(b).

Job training program

CCDF regulations at 45 C.F.R. §98.16(f)(4) require the state to provide in the CCDF State Plan how the state defines a "job training program." Therefore, the Commission bases the definition of a "job training program" on the definition provided in the current CCDF State Plan. Section 809.2(11) defines a "job training program" as a program that provides training or instruction leading to:

--basic literacy;

--English proficiency;

--an occupational or professional certification or license; or

--the acquisition of technical skills, knowledge, and abilities specific to an occupation.

Comment: One commenter stated clarifying the type of programs that would qualify as "job training programs" is helpful.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: One commenter requested clarification on whether parents will now be allowed to participate in these activities alone and still receive at-risk child care because the activities listed in this section had not been allowable activities under current rules.

Response: The Commission disagrees that the activities have not been allowable. Even though the activities were not specifically delineated in the repealed rules, the activities listed have been in the CCDF State Plan as allowable job training activities.

Comment: One commenter asked if the Boards will be allowed the flexibility to further define these training programs and time limits for participation.

Response: There are no time limits on participation in job training activities. It is not necessary to set time limits for job training programs, as these programs are typically of finite duration. As long as the parent is meeting the minimum hourly activity requirement established by the Board and is making successful progress toward completion of the program, then the parent is eligible for subsidized child care services.

Concerning the flexibility to further define job training activities, Boards have the flexibility to specify which training programs in the workforce area meet the definition of a job training program and may list activities that constitute "instruction leading to" one of the identified areas. However, the Commission believes that the definition of a job training program should remain as broad as possible to allow parents to participate in job training that best suits their needs.

Listed family home

Section 809.2(12) defines a "listed family home" as a family home, other than the child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c). This term is used, but not specifically defined, in repealed Chapter 809. The Commission includes the definition of such homes because the new rules contain the provision that Boards may choose to include a listed family home as an eligible provider (as long as the Board ensures health and safety requirements are met). The Commission removes the word "unregulated" from the definition to align with §42.052 of the Texas Human Resources Code. Although listed family homes are not licensed or registered with DFPS and are not inspected by DFPS, listed family homes are governed by statutory requirements in Chapter 42 of the Texas Human Resources Code and are required to have background checks performed by DFPS. Therefore, listed family homes should not be considered "unregulated" family homes.

Comment: One commenter stated that the Board does not want to include listed family homes as eligible providers.

Response: The Commission appreciates the comment and points out that §809.91(b) allows Boards the discretion to include or exclude listed homes as eligible providers.

Military deployment

Section 809.2(13) defines "military deployment," as it relates to the continuity of care for children with parents in the military, as the temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents of a child enrolled in child care. This includes deployed parent(s) in the regular military, military reserves, or National Guard.

This definition is modified from the repealed rules to include any military deployment away from the parent's military installation or place of residence, not just combat deployment as provided in the repealed rules. The intent is to encompass parents in the military who have been assigned combat deployment as well as to parents who have military assignments to assist in national emergencies.

Parent

Section 809.2(14) defines a "parent" as an individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing *in loco parentis* (in place of the parent). Unless otherwise indicated, the term applies to a single parent or both parents, and the term parent and parents are used interchangeably.

The definition is similar to the repealed definition of a parent except for the addition of the phrase "or person standing *in loco parentis*." The repealed definition of a parent requires legal guardianship, which is determined through a court order and may involve the termination of parental rights of the natural parent. The Commission recognizes that situations exist in which the child's natural parent (or adoptive parent or stepparent) may be unavailable to care for the child, making it necessary for the child to be cared for by an individual who is not the legal guardian. For example, the parent may be in the active duty military stationed away from the home and have placed the child under the temporary care of a relative. The parent also may be incarcerated and have placed the child under the temporary care of a relative. In these cases, the individuals caring for the

child may require child care in order to work. The Commission also recognizes that there may be other situations that would require an individual who is not the child's legal guardian to become the child's primary caretaker.

Therefore, the Commission includes the phrase "or person standing *in loco parentis*" in order to allow individuals who are caring for a child while the child's parent is absent to meet the definition of a parent for child care eligibility purposes. CCDF regulations at 45 C.F.R. §98.16(f)(9) require states to define "*in loco parentis*" in the CCDF State Plan and the Commission intends to amend the CCDF State Plan to do so. This will provide the Commission with flexibility in modifying and expanding the specific cases in which a person who is standing in for the parent may meet the definition of a parent and be eligible for child care services. Additionally, the Commission will provide guidance to the Boards regarding the types of documentation necessary to determine that the individual meets the definition of "*in loco parentis*."

Comment: Six commenters supported the proposed change to the definition of "parent" to include a person standing *in loco parentis* and appreciated the flexibility to determine when a caretaker is acting *in loco parentis* so child care may be authorized in these situations. The commenters shared the view that it will greatly benefit many relatives who are not the legal guardians, but who are responsible for the care and supervision of children needing child care assistance. The commenters stated that this simple definition change streamlines the process from that which these individuals currently are experiencing.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: Three commenters requested clarification on the minimum documentation required to determine what qualifies as *in loco parentis*, and whether self-declaration is enough.

Response: The Commission agrees that clarification on the documentation required to determine *in loco parentis* is needed. Since September 2006, the Commission has accepted requests to waive the legal guardianship requirement in the now-repealed rules. Reviewing and acting on these requests has enabled the Commission to compile a list of the main categories of reasons for *in loco parentis* status and the minimum acceptable documentation and verification required to approve the requests. This information and guidance will be forwarded to the Boards as soon as possible after the rules become effective. Therefore, the Commission modifies the rule language to include that determinations of *in loco parentis* status shall be in accordance with Commission policies and procedures.

The Commission does not anticipate that self-declaration from the caretaker will be sufficient to determine *in loco parentis*. The Commission intends for the documentation to be independently verified by a third party such as another local, state, or federal government or other duly authorized individual to verify the status of the parent and the child.

Comment: One commenter agreed with adding a person standing *in loco parentis* to the definition of parent and asked that the Commission adopt a broad definition for this term to encompass "power of attorney" or a notarized written statement that is accepted by other state and federal agencies.

Response: The Commission appreciates the comment and is fully aware of the struggles and realities of family life when parents leave their child without leaving documentation that makes it easy for those who step in to care for the child to obtain needed child care assistance. However, the Commission also has a responsibility to balance this awareness with the need to ensure that waiver requests are not being used to circumvent the eligibility requirements or to abuse the system. To this end, the documentation requested helps to prove the caregiver is indeed the primary caregiver of the child and that the natural parent is absent and, in fact, is not available to care for the child. A power of attorney or a notarized written statement alone will not suffice to establish that the person claiming to be the caretaker indeed is the child's primary caregiver or serve as an independent verification of the reason for care and the parents' inability to care for their own child.

Protective services

CCDF regulations at 45 C.F.R. §98.16(f)(7) require the state to provide in the CCDF State Plan how the state defines the term "protective services" as it relates to the provision of child care. The CCDF State Plan defines "protective services" as services provided when:

--the child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without the intervention of Child Protective Services (CPS);

--the child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

--the child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

Therefore, §809.2(15) defines "protective services" as set forth in the CCDF State Plan.

Provider

Section 809.2(16) defines the term "provider" as a:

--regulated child care provider;

--relative child care provider; or

--at the Board's option, a listed family home subject to health and safety requirements.

The general term "provider" is used in the new rules to signify the provisions that will apply to every eligible child care provider type. The repealed rules stipulate that a "provider" must have a "Provider Agreement" with the Board (or the Board's child care contractor). The repealed rules also include a definition of a "self-arranged provider." Self-arranged child care (SACC) providers do not require a Provider Agreement. Therefore, the Commission has removed from the rules the distinction between providers with an agreement and SACC providers.

However, the new rules retain the distinction between regulated child care providers and unregulated relative child care providers. The Commission retains this distinction in order to emphasize that parents have the choice of provider types allowed under the CCDF regulations at 45 C.F.R. §98.30, including eligible relatives.

Comment: Three commenters supported the change in the definition of the term "provider" and believe removing the distinction between a "provider" and a "SACC provider" will simplify the child care system.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Regulated child care provider

Section 809.2(17) defines a "regulated child care provider" as a provider caring for an eligible child in a location other than the eligible child's own residence that is:

--licensed by DFPS;

--registered with DFPS;

--licensed by the Texas Department of State Health Services as a youth day camp; or

--operated and monitored by the United States military services.

This definition sets forth the same minimum requirements for providers as in repealed Chapter 809, with the added requirement--resulting from public comment--that the child care provider must be caring for the eligible child in a location other than the child's own residence. The requirement is consistent with the federal definitions of "center-based care," a "family child care provider," and a "group home child care provider" as stipulated in 45 C.F.R. §98.2.

Comment: One commenter stated that prohibiting relatives from receiving subsidies for caring for a child who resides with the relative (as provided in §809.91(e) of the adopted rules) seems to conflict with what regulated providers are allowed to do. For example, the Board had a situation in which a parent who owned and operated a licensed child care facility was also eligible to receive child care services for her three children and the parent enrolled the children at her facility. The Board attempted to disallow this, however, Agency monitors stated that it was allowable and the Board was required to reimburse the parent for caring for her own child.

Response: The Commission appreciates the comment and modifies the rules to address the issue of providing care in a residence in which both the child and the child care provider resides. The intent of prohibiting subsidies to relatives who reside with the child is to ensure that public child care funds be used to assist parents who do not have access to child care in the home. The Commission believes that child care is available to the parent if the relative currently resides with the child. This prohibition does not extend to care provided at locations other than the child's and the provider's own residence. The Commission assumes that the child care facility referenced in the comment is a licensed child care center, which is, by DFPS requirements, not the child's own residence. The Commission assumes that, in the situation described, the parent does not have access to child care in the child's or the parent's residence; therefore, enrolling the child in the parent's child care facility is an appropriate use of Commission funds.

The Commission agrees with the premise of the comment that the prohibition against a relative provider and eligible child living in the same residence should be consistent in all home-based child care settings and not only in relative care settings. The prohibition against using Commission child care funds for care in locations that serve as both the provider's and the child's residence is consistent with CCDF regulations. CCDF regulations at 45 C.F.R. §98.2 define both "family child care provider" and "group home child care provider" as care "in a private residence other than the child's residence." Additionally, a "center-based child care provider" is defined in federal CCDF regulations as care provided "in a nonresidential setting."

Therefore, in order to address the commenter's concerns about providing a consistent standard for subsidizing care in the child's own residence for all eligible providers, including relative and regulated providers, the Commission modifies the definition of a regulated provider in §809.2(17) to include the requirement that the regulated provider must provide care in a location other than the child's own residence. This is consistent with the CCDF definition of family child care providers and group home child care providers, as well as the requirement that center-based care be in a nonresidential setting. Additionally, the Commission modifies the definition of a listed family home in §809.2(12) to state that the home must be a residence other than the child's own residence.

Relative child care provider

Section 809.2(18) defines a "relative child care provider" as an individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

--the child's grandparent;

--the child's great-grandparent;

--the child's aunt;

--the child's uncle; or

--the child's sibling (if the sibling does not reside in the same household as the eligible child).

The list of eligible relative child care providers is based on the list of eligible providers in federal regulations at 45 C.F.R. §98.2. Federal regulations require that the child's sibling, who is also the relative child care provider, shall not reside in the same household as the eligible child. The Commission extends this restriction, with certain stated exemptions, for all relative child care providers, as discussed in the explanation of §809.91 (regarding the minimum requirements for providers).

Residing with

The CCDF regulations at 45 C.F.R. §98.16(f)(5) require the state to provide in the CCDF State Plan how the state defines "residing with" as it relates to the federal requirement that the child is residing with an eligible parent. The CCDF State Plan states that the child is "residing with" the parent if the child's primary place of residence is the same as the parent's primary place of residence. Section 809.2(19) defines the term "residing with" as set forth in the CCDF State Plan.

Teen parent

Section 809.2(20) defines a "teen parent" as an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child. This definition is the same as in the repealed rules.

Working

The CCDF regulations at 45 C.F.R. §98.16(f)(6) require the state to provide in the CCDF State Plan how the state defines "working" as it relates to the federal requirement that the parent of the child is "working" (or attending a job training or educational program). The CCDF State Plan defines "working" as:

--an activity for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

--an activity to assist individuals in obtaining employment including on-the-job training, job creation through wage subsidies, work experience, and community service programs.

Section 809.2(21) modifies this definition slightly and defines "working" as:

--activities for which one receives monetary compensation such as salary, wages, tips, or commissions;

--job search activities (subject to the requirements in §809.41(d)); or

--participation in Choices or Food Stamp Employment and Training (FSE&T).

The new definition includes job search activities. Additionally, §809.41(d) establishes certain limitations on the provision of child care during job search activities.

Comment: One commenter asked if the rule would apply to at-risk families or only those participating in other Commission-funded programs. If this new definition does apply to at-risk families, the commenter asked whether there was a time limit for parents to participate in these work activities. Another commenter requested that additional clarification be provided regarding the term "community service programs."

Response: The Commission appreciates the comments and has modified the rule language to clarify the work activities. The rule language had included the definition of "working" as described in the CCDF State Plan. However, this definition included activities allowed for Choices participants, such as community service and subsidized employment. It is not the Commission's intent that these activities be considered "working" for non-Choices parents. The Commission modifies the language to state that participation in Choices or FSE&T meets the definition of "working."

Comment: Two commenters requested clarification on job search as a work activity. One of the commenters specifically asked whether parents would be allowed to come into at-risk child care only on a two- or four-week job search since job search is now clearly defined as a work activity or if they will be required to meet one of the other defined work or training activities when they initially come into child care.

Response: The job search provisions in §809.41(d)(1) state that CCDF child care (i.e., funds allocated to Boards pursuant to §800.58 of this title) for job search activities may be available for currently enrolled children in order for parents to search for work because of interruptions in the parents' employment.

Finally, the definitions of "Board" and "TANF" (Temporary Assistance for Needy Families) are not included in the new rules because each is defined in §800.2 of this title; therefore, it is duplicative to redefine the terms in this chapter.

§809.3. Waiver Request.

Section 809.3 retains the provision in repealed Chapter 809 allowing the Commission to waive child care rules upon request from a person directly affected by the rule. The criteria for granting the waiver request also remain the same. The Commission may grant the waiver if the Commission determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations.

Comment: Four commenters asked for the waiver request rule to be clarified to state that a parent must be determined ineligible before requesting a waiver.

Response: The Commission disagrees that the parent should be determined ineligible prior to submitting a waiver. Such a change would imply that parents may submit the waiver as part of or in conjunction with the appeal of the determination of ineligibility. The waiver provision should not be used for parents to appeal a determination of ineligibility.

However, the Commission assumes the concern is that after an individual submits a request to waive a certain rule to the Commission and the Commission approves it, the child care contractor determines that the individual is ineligible due to not meeting the income limits or is not working or in training or education. Therefore, the Commission has modified the rule language to require that prior to a parent submitting a waiver request, the parent must have been determined to meet the minimum eligibility requirements in §809.41(a). Specifically, the parent's child must be under 13 years of age (or at the option of the Board be a child with disabilities under the age of 19); the parent's income must be below the Board's income limit; and the parent must be working or attending a job training or educational program.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts new Subchapter B, General Management, as follows:

Subchapter B contains the general management provisions required for a Board to plan, manage, and administer child care services. Similar to repealed Subchapter B, new Subchapter B contains rule provisions related to Texas Workforce Development Board Plans (Board plans), policies, coordination of services, consumer education, quality improvement activities, and the rules for securing local match for CCDF. Subchapter B also combines many of the provisions related to Board management of child care services found throughout repealed Chapter 809. These provisions include the maintenance of a waiting list for child care services, assessing the parent share of cost, and provider reimbursements.

§809.11. Board Responsibilities.

Section 809.11 identifies the specific responsibilities of a Board in administering child care services.

Section 809.11(a) states that a Board is responsible for the administration of child care. The Commission retains this provision from repealed Chapter 809, but removes the identification of a Board as "certified" and the phrase "with a local plan approved by the Governor" as this language is included in the definition of a Board in Chapter 800 of this title.

Section 809.11(b) requires a Board to ensure that access to child care services is available through all Texas Workforce Centers within a workforce area. This provision and purpose is retained from repealed Chapter 809 with an additional clarification that a Board shall ensure access to child care services through Texas Workforce Centers.

Section 809.11(c) identifies child care services as support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title. This provision and purpose is retained from repealed Chapter 809, however, the Commission adds language stating that child care is a "support service" for employment and workforce services. The Commission's intent is to emphasize that child care is not a workforce and job training service in itself, but is an important support for individuals participating in those services.

Section 809.11(d) requires a Board to give the Commission, upon request, access to child care administration records and submit any related information for review and monitoring

pursuant to Commission rules and policies. This provision and purpose is retained from repealed Chapter 809 without change.

Comment: Three commenters questioned the rule language in §809.11(c) stating that a Board shall provide child care services as a support service for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of Commission rules. One commenter stated that most parents receiving the subsidy are not participating in any other workforce program. Two other commenters stated that the language implies that workforce clients, such as those participating in WIA, are a priority; however, they are not included as a priority in §809.43.

Response: The Commission appreciates the comments and acknowledges that the language could have been interpreted to mean that participants in workforce services receive first priority. That is not the Commission's intent. The repealed language stated that child care services are "part of" workforce training services. The Commission's intent was to modify this language slightly by stating that child care services are "a support service to" workforce training services. The Commission has clarified this language in the adopted rules.

Comment: Two commenters requested clarification on whether funding of activities for quality improvement or support to Texas Rising Star (TRS) or State Center for Early Childhood Development (State Center) providers is considered supportive services.

Response: The primary purpose of CCDF funds is to serve as a support service that allows parents who do not have child care to become and remain employed and enhance their ability to participate in training or education activities leading to employment. The fact that some CCDF funds are used to encourage and increase the quality of care provided does not change the overall function of child care as a support service for working parents or parents participating in education or training activities.

§809.12. Board Plan for Child Care Services.

Section 809.12 identifies the requirements and goals of a Board's plan for child care services. In repealed Chapter 809, this section is titled "Board Planning and Policies for Child Care Services" and includes subsections related to Board planning, Board policies, and Board coordination activities with other child care and early development programs. The new rules maintain the same purpose but delineate these provisions into three sections.

Section 809.12(a) states that a Board shall develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services. These provisions are the same as in the repealed rules.

Section 809.12(b) provides the goal of the Board plan. The goal, as in the repealed rule, is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.

Section 809.12(c) requires Boards to design and manage the Board plan to maximize the delivery and availability of safe and stable child care services to assist families who are seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending job training or educational programs. This provision is unchanged from the repealed rules.

Comment: Five commenters asked to have the term "quality" removed from §809.12(c) since Boards are not funded for quality improvement activities.

Two of the commenters added that placing children into any licensed child care center does nothing to improve the quality of child care. The availability of child care is a separate issue from quality child care.

Response: The Commission disagrees with the comment that the Boards are not funded for quality improvement activities. While it is true that the Texas Legislature has emphasized that Commission-funded child care be focused on providing direct child care, as long as performance targets for direct care are met, §809.16 allows for the funding of nondirect care quality improvement activities designed to improve school readiness, early learning, early literacy, and Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) child care referral efforts.

However, the Commission understands that the term "quality child care" can have many different interpretations. To some, a quality child care facility is one in which strict standards regarding child-to-adult ratios are met. To others, especially parents who currently have informal and sporadic child care arrangements, a quality child care facility could be any regulated provider.

With these various interpretations of the term "quality," the Commission agrees that including the term may be misleading and has removed the term from the adopted rules. The intent of the provision is to state that Boards shall design and manage their Board plans to maximize the delivery of safe and stable child care services while the parents work or attend job training or education activities. The rule language has been modified to reflect this intent.

Comment: One commenter stated that the word "quality" should be removed because Boards have been discouraged from sanctioning providers who are not in compliance with the minimum standards of TDFPS Child Care Licensing.

Response: Boards are required to ensure that the program and fiscal integrity of the system is maintained so the state can make the most efficient and effective use of its resources. However, sanctioning providers who are in noncompliance with certain minimum DFPS standards is not within the Boards' purview. Furthermore, to help them make informed choices, parents have access to the compliance history of providers through consumer education. If parents choose to place their child in a facility, they should be given that option. The Commission points out, however, that §809.91(d) provides if a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible regulatory violations, the Board or its child care contractor shall report the information to the appropriate regulatory authority.

§809.13. Board Policies for Child Care Services.

Section 809.13 relates to a Board's policies for child care services.

Section 809.13(a) requires Boards to develop, adopt, and modify policies for the design and management of the delivery of child care services in accordance with the provisions in Chapter 801 of this title. Section 801.51 requires that Boards adopt policies in a public process in accordance with the requirements of the Open Meetings Act (Texas Government Code, Chapter

551). This requirement is retained from repealed Chapter 809. The Commission emphasizes the importance of public input and access to Board policies, especially as they relate to the Board's eligibility requirements, parent reporting and documentation requirements, and the requirements for child care providers.

Section 809.13(b) requires a Board to maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request. The purpose of this provision is unchanged from the repealed rules.

Section 809.13(c) requires a Board to submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board. This language is identical to the language in the repealed rules. The intent of this provision is to allow the Commission to maintain a complete record of Board child care policies in order to research current practices of the Boards and to include current Board policies, as necessary, in applicable federal or state reports. It is not the intent of the Commission to approve Board policies.

Section 809.13(d) lists required Board policies and the specific child care rule requiring the policy. The policies relate to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);

(2) the maintenance of a waiting list as described in §809.18(b);

(3) assessing a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay parent's share of cost;

(4) the maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers who offer transportation;

(5) family income limits as described in Subchapter C (related to Eligibility for Child Care Services);

(6) the provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);

(7) minimum activity requirements for parents as described in §§809.48, 809.50, and 809.51;

(8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);

(9) the frequency of eligibility redetermination as described in §809.42(b)(2);

(10) Board priority groups as described in §809.43(a);

(11) the transfer of a child from one provider to another as described in §809.71(b)(2);

(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;

(13) attendance standards and procedures as provided in §809.92(b)(3), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);

(14) providers charging the difference between their published rates and the Board's reimbursement rate as provided in §809.92(d); and

(15) procedures for investigating fraud as provided in §809.111.

Required Board policies are found throughout the repealed rules with no single place in rule that itemizes the required policies. New §809.13(d) provides a complete list of required child care policies cited throughout the chapter.

Comment: Two commenters supported the clarification and consolidation of the required Board policies in §809.13(d) and considered it helpful to the Boards.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: Three commenters recommended the word "develop" be stricken from §809.13(a) because staff develops the policies based on federal and state regulations then makes recommendations to Boards.

Response: The Commission disagrees that the word "develop" should be stricken. The reference to "Board" includes the staff members on whom the Board members rely to prepare the research and make policy recommendations.

Comment: One commenter stated that it also would be beneficial for each Board area to have the flexibility to modify its policies.

Response: Boards do have the flexibility to modify policies. Such flexibility is expressly provided in §809.13(a), which states that "A Board shall develop, adopt, and *modify its policies*. . ."

§809.14. Coordination of Child Care Services.

Section 809.14 relates to the coordination of child care services in order to identify entities that a Board must coordinate with when developing its Board plan and policies to design and manage child care services.

Section 809.14(a) requires a Board to coordinate with federal, state, and local child care and early development programs and representatives of local governments in developing its Board plan and policies for the design and management of the delivery of child care services, and to maintain written documentation of coordination efforts. This provision is unchanged from the repealed rules.

Section 809.14(b) requires that a Board shall coordinate with school districts and Head Start and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care services are available to meet the needs of low-income parents who are working or attending a job training or educational program.

The Commission includes this provision in order to implement the intent of the 78th Texas Legislature, Regular Session (2003) enacted in Senate Bill (SB) 76 and by the 79th Texas Legislature, Regular Session (2005) in SB 23. These two actions of the Legislature created, then subsequently amended, §29.158 of the Texas Education Code to require coordination of services among the Commission's subsidized child care system and school districts and local Head Start or Early Head Start programs.

Although it is a new provision in rule, it is not a new requirement placed on Boards. In December 2003, the Commission issued a Workforce Development (WD) Letter requiring Boards to coordinate with school districts and local Head Start or Early Head Start programs, to the greatest extent practicable, to provide full-day and full-year child care services to meet the needs of low-income working parents.

The Commission received no comments on this section.

§809.15. Promoting Consumer Education.

Section 809.15 relates to Promoting Consumer Education and provides the consumer education information that Boards are required to provide parents pursuant to federal CCDF regulations at 45 C.F.R. §98.33. This section retains the provisions from the repealed rules without substantive changes.

Section 809.15(a) requires a Board to promote informed child care choices by providing consumer education information to parents who are eligible for child care services; parents who are placed on a Board's waiting list; parents who are no longer eligible for child care services; and applicants who are not eligible for child care services.

Section 809.15(b) requires that the consumer education information include--at a minimum--information about 2-1-1 Texas; the Web site and telephone number of DFPS to allow parents to obtain information on health and safety requirements; a description of the full range of eligible child care providers; and a description of programs available in the workforce area relating to school readiness and quality rating systems.

Section 809.15(c) requires Boards to cooperate with HHSC to provide 2-1-1 Texas with information on child care services.

Comment: Six commenters asked that the rule be amended to specify that Boards need only provide a parent a copy of the consumer education guide once per year and upon request thereafter due to the number of clients who revolve in the system and the operational costs of providing brochures.

Response: The Commission disagrees that the rule should specify the distribution frequency of the consumer education information. Each Board has the flexibility to determine the frequency of the distribution. There is nothing in rule language to imply that the information must be provided each and every time a parent's eligibility is redetermined. The Board has the discretion to provide the information during the parent's initial eligibility and once a year thereafter. However, the Commission does not intend that the information be provided only on request.

§809.16. Quality Improvement Activities.

Section 809.16 relates to allowable quality improvement activities. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.16(a) provides that nondirect care quality improvement activities shall be used only for collaborative reading initiatives; school readiness, early learning, and literacy; or local-level support to promote child care consumer education provided by 2-1-1 Texas. The language also stipulates that this section applies to CCDF funds allocated by the Commission pursuant to §800.58 of this title, and includes local public transferred funds and local private donated funds.

Section 809.16(b) states that allowable quality activities may include professional development and training for child care providers, or the purchase of curriculum and curriculum-related support resources for child care providers.

Section 809.16(c) states that allowable quality activities may be designed to meet the needs of children in any age group eligible for child care services, including children with disabilities.

Section 809.16(d) states that in funding quality improvement activities, a Board may give priority to child care facilities that are participating in the integrated school readiness models developed by the State Center; implementing components of school readiness curricula as approved by the State Center; or participating in or voluntarily pursuing participation in TRS Provider Certification.

Section 809.16(e) states that expenditures certified by a public entity as provided may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

The Commission received no comments on this section.

§809.17. Leveraging Local Resources.

Section 809.17 relates to leveraging local resources to match federal funds. The section identifies the types of funds that are acceptable as match and provides instructions on certifying, monitoring, and submitting matching funds to the Commission. The provisions in this section--with the following exception--have not changed substantially from the repealed rules.

The Commission does not include language from the repealed rules that requires a Board to secure private and public funds. The Commission encourages rather than requires Boards to secure local match in order for Boards to receive all available federal matching funds. Boards are not required to secure local funds in order to receive certain child care funds. However, a certain amount of federal matching funds allocated to a Board is available to the Board only if it secures the necessary local matching funds; otherwise, the funds will be deobligated from the Board and reallocated to Boards that are able to secure the necessary matching funds.

Section 809.17(a) encourages Boards to secure local public and private funds for the purpose of receiving matching federal funds. Subsection (a) also encourages Boards to secure additional local funds in excess of the amount required to match federal funds allocated to the Boards in order to maximize their potential to receive additional federal funds should they become available. Finally, this subsection states that a Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

Section 809.17(b) relates to the types of funds the Commission accepts as local match. Section 809.17(b)(1) states that the Commission accepts as local match funds from a private entity that are donated without restrictions that require their use for a specific individual, organization, facility, or institution; or an activity not included in the CCDF State Plan or allowed under this new chapter. Additionally, the funds cannot revert back to the donor's facility or use; cannot be used to match other federal funds; and must be certified by both the donor and the Commission as meeting these adopted requirements. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53(e)(2).

Section 809.17(b)(2) relates to the Commission's acceptance of funds from a public entity that are transferred without restrictions requiring their use for an activity not included in the CCDF State Plan or allowed under this chapter. Additionally, the funds cannot be used to match other federal funds, and cannot be federal funds unless the funds are authorized by federal law to be used to match other federal funds. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53.

Section 809.17(b)(3) relates to the Commission's acceptance of funds by a public entity that certifies that the expenditures are for an activity included in the CCDF State Plan or allowed under this chapter; are not used to match other federal funds; and are not federal funds unless the funds are authorized by federal law to be used to match other federal funds. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53(e)(1).

Section 809.17(c) states that a Board must submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

Section 809.17(d) relates to completing the local match process. This subsection requires a Board to ensure that private donations and public transfers of funds are submitted and paid to the Commission and that public certifications are considered to be complete when a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible child care services.

Section 809.17(e) states that a Board shall monitor the funds secured for match.

Comment: Six commenters noted that §809.17(a) provides that a Board's performance in securing local match may make the Board eligible for incentive awards. However, they also noted that they were not aware of the Commission having awarded any Boards with incentive funds.

Response: The Commission recognizes and appreciates the Boards' efforts to secure local match. Although an incentive award always may not be possible due to budget constraints, the ability of the Boards to secure the local match also draws down federal money, which in turn enables the Boards to provide a broad range of quality services to their respective areas.

§809.18. Maintenance of a Waiting List.

Section 809.18 relates to the maintenance of a waiting list to provide child care services, and the requirement that policies be established to maintain the list.

Section 809.18(a) states that a Board shall ensure that a list of parents waiting for child care services, because of lack of funding or lack of providers, is maintained and available to the Commission upon request. This provision is retained from the repealed rules except for the removal of "self-arranged providers" as a category of providers. In addition, the requirement to specify the reason for being on the waiting list is not included because the Commission believes that it is unnecessary.

Section 809.18(b) requires that Boards establish a policy for the maintenance of a waiting list. Section 809.18(b)(1) states that a Board shall establish a policy for the maintenance of a waiting list that includes the process for determining that the parent is potentially eligible for child care services before placing the parents on the waiting list. The Commission believes that it is important to ensure that parents have a reasonable expectation that they could be eligible for child care services if funding becomes available. Placing parents on the Board's waiting list without conducting a basic, but informal, review of the potential eligibility of the parent may lead to a false expectation that if the parent is placed on the waiting list, then the parent is eligible for child care services.

The process for reviewing the potential eligibility of a parent prior to placing the parent on the waiting list is to be determined by the Board. The Commission does not require that the eligibility screening include verifying or documenting eligibility. The Board's screening process may simply require the parent to provide an estimate of family income and family size, the age of the child needing care, and the parent's work, training, or educational situation. Additionally, the Commission encourages Boards to partner with their local 2-1-1 Texas provider to coordinate the screening of potential eligibility for child care services.

Section 809.18(b)(2) requires that a Board establish a policy for the maintenance of a waiting list to identify the frequency with which the parent information is updated and maintained on the waiting list. Boards should develop such a policy in order to inform parents that information regarding their interest in child care and assessing for basic eligibility may be required to be updated on a regular basis.

Comment: One commenter stated his Board does not have a waiting list at this time and has always conducted a preliminary screening for eligibility before placing someone on the waiting list.

Response: The Commission commends the initiative and proactive measures to efficiently manage the number of children on a waiting list for child care.

§809.19. Assessing the Parent Share of Cost.

Section 809.19 relates to assessing the parent share of cost to identify the criteria that a Board must use when assessing, reducing, and providing exemptions from the parent share of cost. These provisions are largely retained from the repealed rules.

Section 809.19(a)(1) states that for CCDF funds allocated by the Commission pursuant to its allocation rules in §800.58 of this title, including local public transferred funds and local private donated funds, a Board shall set a parent share of cost policy that results in a parent share of cost being assessed to all parents, except for the exemptions set out in paragraph (2) of this subsection. Additionally, the rules state that the parent share of cost should be a sliding fee scale based on the family's size and gross monthly income, and it may also consider the number of children in care. However, the parent share of cost cannot exceed the cost of care.

These provisions are largely retained from the repealed rules. However, the Commission has inserted the words "sliding fee scale," which were omitted from the repealed rules. The Commission adds this provision in the parent share of cost in order to align Commission rules with federal Child Care and Development Block Grant (CCDBG) law and federal CCDF regulations at 45 C.F.R. §98.42.

Federal child care law at 42 U.S.C. 9858c(c)(5) requires states to "establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services" under CCDBG. The CCDBG law, 42 U.S.C. 9858n(12), defines a sliding fee scale as "a system of cost sharing by a family based on income and size of the family." This requirement is implemented in CCDF regulations at 45 C.F.R. §98.42(b), which states that the "sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate."

The repealed Commission rules include the federal requirement that a Board's parent share of cost policies be based on family income and family size as well as allow consideration for the number of children in care. The rules, however, do not specify a sliding fee scale as stipulated in the federal CCDBG law and CCDF regulations. Most Boards use a relatively flat percentage of family income--typically nine percent--to determine the parent share of cost for one child. Most Boards increase this percentage to 11% of the family income when two or more children are in care. Furthermore, most Boards do not include family size as a factor unless the family size is seven members or more.

The Commission acknowledges that the Boards' parent share of cost policies have been in the approved CCDF State Plan

for several years. Therefore, the Commission is not requiring Boards to change their parent share of cost policies as a result of this rule change. The rule change is designed to align the language in Commission rules with the federal regulatory language.

However, the Commission is concerned that improvements be made to the parent share of cost policies. The intent of requiring a sliding fee scale is to ensure that families at very low incomes pay a lower percentage of their income than families at the higher end of the income eligibility limit. Additionally, increasing the share of cost for families at the higher income levels will better prepare these families to pay for child care if they experience wage increases that would make them ineligible for child care services.

Basing the parent share of cost on a relatively flat percentage of income, and starting that percentage at 11% for two children in care, may be particularly burdensome for families transitioning off Choices. For example, because Commission rules exempt Choices families from paying a parent share of cost, a former Choices family will transition from paying nothing for child care while participating in Choices to paying up to 11% of the family income once the family is no longer eligible for Choices child care. As a result, many former Choices parents may forego Transitional child care services and may become more at risk of returning to TANF.

However, the Commission understands that requiring Boards to adopt more gradual sliding fee schedules could affect the Commission's performance measures related to the average cost per child by potentially decreasing the total amount of parent share of cost that a family at low income would pay. Additionally, the change would require substantial changes to the child care automation systems. Therefore, the Commission has determined that further analysis of the impact of such a change in rule should be conducted before Boards are required to modify their parent share of cost policies to align more closely with the sliding fee scale based on family income and family size requirements.

The Commission will work closely with Boards to determine and analyze the potential impact of using a gradual sliding fee schedule, specifically as it affects:

--family resources and self-sufficiency;

--the Commission's legislative cost per child performance measures; and

--the Commission's child care automation systems.

The Commission notes, however, that new §809.19(b) retains the provision in the repealed rules that child care funded through non-CCDF sources shall include a sliding fee scale that may be the same or different from the scale in §809.19(a).

Section 809.19(a)(2) states that parents who are participating in Choices, in FSE&T services, or parents who have children who are receiving protective services are exempt from paying a parent share of cost.

Section 809.19(a)(3) provides that teen parents (who are not in a group that is specifically exempted from a parent share of cost) are assessed a parent share of cost. The rule also contains the provision in the repealed rules that the teen parent's share of cost is based solely on the teen parent's income. However, the adopted rules add language to state that the parent share of cost also be based on the teen's family size as defined in §809.2(8). This provision is also added to clarify that the income and family size of the parents of the teen parent are not included in assessing the teen parent's share of cost.

Section 809.19(b) provides that for child care services funded from sources other than CCDF, a Board shall set a parent share of cost policy based on a sliding fee scale. The fee may be the same as or different from the provisions contained in §809.19(a). This provision is retained from the repealed rules.

Section 809.19(c) states that a Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. This provision is retained from the repealed rules.

Section 809.19(d) states that a Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.

Section 809.19(e) states that the Board or its child care contractor cannot waive the assessed parent share of cost under any circumstances. The rule also clarifies that this provision does not apply to parents who are exempt from being assessed a parent share of cost as described in §809.19(a)(2).

Section 809.19(f) states that if the parent share of cost based on family income and family size is calculated to be zero, the Board or its child care contractor must not charge the parent a minimum share of cost. This is a new provision in rule. However, it is not a new requirement. The policy is based on previous Commission guidance provided to the Boards through Technical Assistance (TA) Bulletin #60, issued April 7, 2004. This language is added to clarify that although all parents should be assessed a parent share of cost based on income and family size, if that assessment is calculated to be zero because the family has no allowable documented income, then the parent should not be required to pay a minimum parent share of cost. Parents, especially teen parents and students who have no documented income, are not receiving TANF or participating in Choices and, therefore, are not exempt from the parent share of cost, are most at risk of going on public assistance. The Commission believes that charging these parents a parent share of cost will place an undue hardship on the family and make the family more vulnerable to going on public assistance.

Comment: Six commenters supported the Commission's efforts in ensuring full compliance with federal law and in conducting a thorough analysis of the potential impact before modifying the parent share of cost policies.

Response: The Commission appreciates the support of the rules.

Comment: Five commenters asked the Commission to consider automation support changes to the local application for the Boards to assist in analyzing the impact of changes to their parent fee policy. One commenter believed that a change to the parent share of cost would be acceptable as long as there is a way to pick the appropriate wages and percentages in the automated local application for the workforce area and to make this change to existing clients at recertification would make it more manageable.

Response: The Commission intends to conduct a thorough analysis of the potential impact of using a gradual sliding fee schedule on areas such as family resources and self-sufficiency, the legislative cost per child performance measures, and the child

care automation systems. Naturally, this will include discussion with Boards and their staff to look at the affected areas. This analysis will be done before the Boards are asked to modify their policies.

Comment: One commenter believed the current parent share of cost scale used by the Board's contractor to assess eligibility is a "sliding fee scale" since it varies depending on the income level and number of children and takes into account other factors such as participation in certain programs or those who have just entered the workforce or have large families. The commenter stated that changing the fee structure would result in much confusion and cost to reassess parents' fees, and likely result in fewer children being served.

Response: The Commission's intent is to align its rules with the federal law and regulatory language. Although this Board may have a more gradual scale based on the family income and adjust the scale based on the number of children in care, the Board policy does not base the scale on the family size, which is a requirement of the CCDF regulations. The Commission appreciates the commenter's concerns about the problems that would result from the change and reiterates that it will conduct a thorough analysis of the issue to assess the potential impact to the Board, parents, system application, and others.

Comment: One commenter suggested that §809.19(a)(1)(B) should be reworded to state that the Board's parent share of cost policy should result in the parent share of cost: "(B) Being an amount based on a sliding fee scale which takes into account the family's size and gross monthly income (as defined in §809.44) . . ."

Response: The Commission disagrees that the rule language should be changed to include that the parent share of cost *takes into account* the family size and gross monthly income. As mentioned previously, the federal regulations at 45 C.F.R. §98.42 are clear and state that the parent share of cost shall be *based on* the income and size of the family. The federal regulations do not state that these criteria should simply be taken into account. The Commission rule language should, at a minimum, follow the federal requirements.

However, the Commission agrees with the suggestion that the rule language should state that the parent share of cost should result in "an amount" determined by a sliding fee scale rather than result in a sliding fee scale. The intent of the rule is that the share of cost results in an "amount." Therefore, the Commission modifies the rule language to clarify this point.

Comment: Three commenters requested clarification on when and how DFPS would assess a parent's share of cost as provided in §809.19(a)(2)(C). One commenter added that if the Commission is now requiring Boards to assess a parent's share of cost for DFPS children then the Commission must increase the amount of administrative and operational funding given to Boards.

Response: The Commission emphasizes that this language has not changed from the repealed rules. It is entirely up to DFPS to include an assessment of parent cost when it makes a referral. Additionally, the language is clear that the assessment is to be done by DFPS and not the Board's child care contractor.

Comment: Four commenters requested that the Commission remove the language in §809.19(c) stating that a Board shall have a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. One commenter stated that, at the direction of the Commission, some Boards have changed their operations so that providers are not reimbursed if parents fail to pay their share of cost.

Response: The Commission appreciates the comments; however, the Commission does not agree that the language should be removed. The rule language requires Boards to have a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. This rule does not prescribe what that policy should be. Additionally, the Commission is not aware of providing direction to the Boards regarding this issue. The Board policy could state that providers are not reimbursed if a parent fails to pay the parent share of cost. However, a Board could decide to reimburse providers if the parent fails to pay the parent share of cost.

Comment: Four commenters recommended that the language in the repealed §809.46(d)--that providers are solely responsible for collecting the parent's share of cost--be reinstated.

Response: The Commission agrees that providers should be responsible for collecting the parent share of cost. The language in repealed §809.46(d) is included in adopted §809.92(a)(1). Even though the statement that the provider has the "sole" responsibility has been removed from rule language, the intent and effect of the language in §809.92(a)(1) remain the same. Providers have the responsibility in Commission rules to collect the parent share of cost. The repealed rules placed this provider responsibility in the subchapter related to general Board responsibilities. Thus, it was necessary to indicate clearly in the repealed rules that the providers had the "sole" responsibility for collecting the parent share of cost in order to clarify that this was not the responsibility of the Board or the child care contractor. The new rules place this responsibility in Subchapter E (Requirements to Provide Child Care), thereby clearly indicating that this is the responsibility of the provider.

§809.20. Maximum Provider Reimbursement Rates.

Section 809.20, relating to maximum provider reimbursement rates, specifies the criteria to be used in establishing maximum reimbursement rates for child care providers. The provisions in this section are retained from the repealed rules.

Section 809.20(a) requires that Boards establish maximum reimbursement rates based on local factors, including a market rate survey provided by the Agency. The Commission retains the provision that maximum reimbursement rates should be set at a level to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

Section 809.20(b) provides that Boards shall establish graduated reimbursement rates for child care providers participating in integrated school readiness models developed by the State Center and Texas Rising Star Providers.

Section 809.20(c) provides that the minimum reimbursement rates established under §809.20(b) must be at least five percent greater than the maximum rate established for providers not meeting the requirements of §809.20(b) for the same category of care up to, but not to exceed, the provider's published rate.

Section 809.20(d) states that a Board or its child care contractor must ensure that providers who are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. In addition, a Board is required to ensure that a professional, who is familiar with as-

sessing the needs of children with disabilities, certifies the need for the additional rate. The Commission further adds that the higher rate also may be paid in order that a provider may obtain equipment necessary for the care of a child with disabilities.

Section 809.20(e) allows a Board to determine whether to reimburse providers who offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, does not exceed the maximum reimbursement rate established in subsection (a) of this section.

Comment: One commenter suggested that §809.20(e) and (f) be combined to state that a Board may determine whether to reimburse providers who offer transportation, as long as the combined total of the provider's published rate, plus the transportation rate, does not exceed the maximum reimbursement rate established in subsection (a) of this section.

Response: The Commission agrees that this suggestion streamlines the rule language and has modified it accordingly.

Comment: One commenter stated the market rate survey for the commenter's workforce area has some toddler rates and preschool rates that are higher than infant rates. The commenter stated that those rates were not correct. The commenter also stated that the methodology used for the market rate survey "lacks a lot."

Response: The Commission understands the concerns expressed. Although the comment did not elaborate on what is lacking in the survey methodology, the Commission reviews the market rate survey methodology prior to the survey and often makes adjustments. However, the Commission disagrees that the survey does not reflect the child care market in the workforce area. Although the commenter's workforce area did have a few rates slightly higher for toddlers and preschool than for infants--primarily part-time rates at the 65th to 75th percentile--the Commission points out that all of the average rates for toddlers and preschool children in the workforce area are lower than the average rates for infants for each child care facility type in the workforce area.

Comment: Seven Boards commented on the "equal access" language in §809.20(a). Some of the commenters asked for clarification on the definition of "equal access" in the local market. The commenters stated that the Boards are unable to comply with the equal access requirement or performance measures if they have no control over the number of units that are assigned to them, nor is it possible to establish accurate maximum rates based on local factors or the market rate survey because of the limitations placed on the Boards in increasing provider rates. The Boards pointed to the comment in the preamble of the federal regulations that states if rates are set at the 75th percentile then the Administration for Children and Families (ACF) would consider this equal access. Using the Commission-funded market rate survey as a guide, the Boards are significantly below the 75th percentile that ACF considers necessary to allow for equal access.

Response: The Commission appreciates the request for clarification on "equal access" as it relates to provider reimbursement rates. CCDF regulations at §98.43(b) require a Lead Agency to provide a "summary of facts relied on to determine that its payment rates ensure equal access" to subsidized child care services comparable to services provided to families not receiving child care subsidies. The regulations continue that, at a minimum, the Lead Agency shall include the following when making this determination:

(1) How a choice of the full range of providers (e.g., center, group, family, and in-home care) is made available;

(2) How payment rates are adequate based on a local market rate survey; and

(3) How copayments based on a sliding fee scale are affordable.

Therefore, according to the CCDF regulations, reimbursement rates alone are not the deciding factor in determining equal access--but are only one factor in determining equal access. Providing parents with the full range of providers as well as having affordable copayments based on a sliding fee scale must also be considered in determining equal access.

Regarding the third criterion for determining equal access--how copayments based on a sliding fee scale are affordable--the Commission points to the previous discussion in §809.19 of the rules related to Boards establishing a sliding fee scale.

Regarding the first criterion for determining equal access--the choice of the full range of providers--the Commission is committed to providing parents with the full range of provider categories (defined in CCDF regulations at 45 C.F.R. §98.2 as center-based child care, group home child care, family child care, and in-home care), and to demonstrating that parents have access to the full range of providers. In the 2005-2006 CCDF State Plan, the Commission noted that 50% of all regulated facilities in the state provided care for Commission-subsidized children. In FY'06, this percentage increased slightly to 51%. The Commission also demonstrates that parents, in fact, have been accessing all types of providers. In FY'06, 73% of licensed child care centers, 58% of all licensed child care homes, and 15% of all registered child care homes cared for Commission-subsidized children. (The Commission believes that the relatively low percentage of registered child care homes is a function of the overall number of these providers, and not related to lack of access to these facilities. In fact, the data show that parents seem to be choosing licensed centers over registered homes.)

When evaluating equal access, the Commission encourages Boards to analyze and monitor these percentages for their workforce areas to determine that parents have access to each provider type.

Regarding the second criterion for determining equal access--adequate payment rates based on a market rate survey--the Commission also points to the lengthy discussion of this issue in the preamble to the CCDF Final Rule, 45 C.F.R. Parts 98 and 99 (*Federal Register*, Vol. 63., No. 142, July 24, 1998, pages 39957-39960). The discussion in the preamble addresses three topics:

(1) Reimbursement rates should take into account variations in the cost of providing care in different child care settings, different age groups, and to children with special needs;

(2) Prohibiting reimbursement rates based on a family's eligibility or financial status; and

(3) Suggesting a "benchmark for states to consider" that rates set at the 75th percentile of the market rate would be considered as providing equal access.

The Board reimbursement rates clearly take into account variations in the cost of providing care in different settings and to different age groups. Further, Commission rules at §809.20(d) provide for increased rates for providers caring for children with special needs. Additionally, Boards do not have reimbursement rate policies that establish different rates based on a family's in-

come or eligibility status (e.g., Choices or FSE&T). As a result, the Commission believes that equal access is provided using these criteria.

The Commission believes that the "suggested benchmark" of the 75th percentile is provided only to indicate that payment rates set at this level would be considered as providing equal access. It should not, however, be interpreted to mean that the 75th percentile should be the sole standard in determining equal access.

Therefore, in the context of the entire discussion related to equal access in the preamble to the CCDF regulations, the "suggested benchmark" of the 75th percentile is only one part of how a state may determine how its reimbursement rates provide equal access to child care services.

§809.21. Determining the Amount of the Provider Reimbursement.

Section 809.21 states the actual reimbursement that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum rate or the provider's published rate, whichever is lower, less the parent share of cost assessed and adjusted when the parent share of cost is reduced; and any child care funds received by the parent from other public or private entities. These provisions are retained from the repealed rules.

The Commission received no comments on this section.

Repealed Provisions Related to General Management and Board Responsibilities

The Commission removes the requirement that a Board must ensure parental choice by recruiting, training, and maintaining a sufficient number of providers to offer parents a full range of categories of care and types of providers of child care. The Commission further removes the requirement that Boards must recruit and train providers. The Commission believes that recruitment and training does not ensure parent choice. It is the Commission's intent that making consumer education information available to parents, as required in §809.15, ensures that parents have available to them the full range of provider types and child care options.

The Commission also removes the requirements related to procurement, management of finances, information management and reporting, performance standards, and timely billings as these provisions are included generally in Chapter 800, specifically in Subchapter C. Performance and Contract Management, and in the Agency-Board Agreement; therefore they are unnecessary in this chapter.

Comment: One commenter stated that there are many other references to other chapters of rules, but there are no references within Chapter 809 to the child care match obligation and deobligation language in Chapter 800.

Response: The Commission believes that its rule provisions related to child care match obligation and deobligation are complete in and of themselves and do not require citing in Chapter 809.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission adopts new Subchapter C, Eligibility for Child Care Services, as follows:

Subchapter C of the child care rules contains the provisions related to determining initial and continued eligibility for child care services; provisions related to general eligibility requirements, priority of services, and calculating income; and the eligibility requirements for Choices child care, TANF Applicant child care, FSE&T child care, and Transitional child care. Additionally, Subchapter C contains the child care eligibility requirements for children living at low incomes, including child care for children with disabilities and teen parents, as well as provisions related to child care for children served by special projects. Finally, the subchapter contains the continuity of care provisions related to continued eligibility for child care services.

§809.41. A Child's General Eligibility for Child Care Services.

Section 809.41 relates to a child's general eligibility for child care services.

Section 809.41(a)(1) states that, except for a child receiving or needing protective services, a child may be eligible for child care services if the child is under 13 years of age or, at the option of the Board, a child with disabilities under 19 years of age.

Additionally, §809.41(a)(2) states that the child must reside with a family whose income does not exceed the income limit established by the Board, not to exceed 85% of the state median income for a family of the same size. The child must also reside with a parent who requires child care in order to work or attend a job training or educational program.

The general eligibility requirements in §809.41(a) are similar to the repealed provisions with additional language to clarify that the age and residency requirements for a child needing or receiving protective services are provided in §809.49. The provisions related to a child's general eligibility mirror the CCDF requirements in 45 C.F.R. §98.20.

Section 809.41(b) retains the provision from the repealed rule requiring a Board to establish policies, including time limits, for the provision of child care while the parent is attending an educational program.

Additionally, §809.41(c) provides the requirement that child care must be available to a parent for four years, if the parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

Section 809.41(c) reflects the language contained in the Commission's general appropriations requiring that child care service recipients 17 years of age or older with a high school diploma or GED who wish to acquire an Associate's Degree must continue to be eligible for child care benefits for a period "not to exceed four years for an educational program" if that program will prepare the recipient for a job in a high demand occupation with an upward career path as determined by a local workforce Board. Because the legislative language could be read to allow Boards to limit child care under these circumstances to less than four years, the proposed rule was intended to clarify the original intent--to ensure that child care remains available for parents who are enrolled in these types of educational programs for a sufficient amount of time in which to complete the program. These programs typically require two years of full-time attendance, which may not be possible for some parents. However, as noted by two commenters, in order to care for a family, attend school, and work, some parents may require additional time to complete the program. The Commission agreed that it did not wish to place constraints on Boards' ability to address the needs of parents who are working diligently toward a degree, yet may be forced to take a smaller course load because of work and family. The Commission has, therefore, modified the language of §809.41(c) to make it clear that parents are ensured

four years of child care services, consistent with the appropriations language. However, the rule does not require Boards to cap services at four years under the circumstances described, so long as the parent meets all other eligibility requirements and is making progress toward a degree. The Commission will revise the currently effective WD Letter 22-06 to ensure that all boards are aware of this provision.

The Commission notes that the adopted definition of a parent's attendance in an educational program at §809.2(1)(C) includes the stipulation that the individual is making progress toward successful completion of the program as determined by the Board. Therefore, although §809.41(c) provides that child care services shall continue for four years for parents enrolled in certain associate degree programs, a parent's continued receipt of child care services is contingent upon the parent's successful progress toward completion of the degree.

Finally, §809.41(d) sets forth the requirements for the provision of child care in order for the parent to conduct job search activities. As in §809.2(21), the definition of "working," job search is included as an allowable work activity. The Commission's Choices rules at §811.27(b) limit job search for Choices participants to four consecutive weeks and a total of six weeks in a federal fiscal year. The Commission's FSE&T rules §813.31 have a similar provision. Additionally, the adopted child care rules limit Transitional child care during job search to four weeks for former TANF recipients who are not employed at the time their temporary cash assistance expires. However, other Commission rules do not address job search time limits for other Commission-funded child care.

Therefore, §809.41(d) states that unless otherwise subject to job search limitations as stipulated in other Commission rules (specifically, §811.27(b) for Choices participants and §813.31 for FSE&T participants), for child care funds allocated by the Commission pursuant to its child care allocation rules in §800.58 of this title (i.e., CCDF), a child currently receiving child care services may be eligible for continued services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment. The rules also stipulate that for child care services funded by the Commission from sources other than those specified in §800.58 of this title (i.e., non-CCDF sources), child care services during job search activities are limited to four weeks within a federal fiscal year. Establishing a job search limitation on a federal fiscal year basis is consistent with the Commission's current Choices and FSE&T rules.

Comment: Four commenters supported limiting job search to four weeks within a federal fiscal year. One of the commenters suggested using 28 days instead of four weeks given that it is easier to calculate. One of the commenters stated that four weeks is consistent with the Board's policy. However, the commenter asked if the four weeks could be split into two, two-week time frames.

Response: The Commission appreciates the comments. It is the Commission's intent to allow Board discretion in calculating a four-week period within a federal fiscal year. Therefore, Boards may use 28 days instead of four weeks and split the four-week period into two, two-week periods.

Comment: Four commenters requested clarification regarding the proposed rule limiting job search to four weeks within a federal fiscal year as it applies to two-parent families. The commenters asked if this rule applied to a two-parent family or to an individual. One of the commenters suggested that this limit be on an individual rather than a family to eliminate an adverse impact for two-parent families.

Response: The Commission understands that there may be breaks in each parent's employment and it is the intent of the Commission that each parent in the family be allowed up to four weeks of job search if the parent becomes unemployed while the child is enrolled in child care. However, the Commission emphasizes that the other parent must be participating in work, education, or job training activities for the required minimum number of hours for a single-parent family.

Comment: One commenter asked for clarification regarding how the four-week time period is applied when multiple child care funding sources are used for an individual within a federal fiscal year. For instance, the commenter asked whether a parent who received four weeks of job search while enrolled in WIA-funded child care would also be eligible for an additional four weeks of job search if he or she started receiving CCDF-funded care within the same federal fiscal year.

Response: The intent of §809.41(d) is to establish rules for all Commission-funded child care during job search activities and, to the greatest extent practicable, make the provisions consistent with child care for job search activities for parents participating in Choices and FSE&T Both Choices and FSE&T allow job search for a specified length of time in order to assist unemployed participants with finding employment. For both of these workforce services, once the parent finds employment and no longer is eligible for the service, the parent may be eligible for at-risk child care. If the former Choices or FSE&T parent is enrolled in at-risk child care, but becomes unemployed during the same fiscal year, then the parent will be eligible for up to four weeks of child care in order to search for work under the newly adopted §809.41(d)(1). The same principle will be applied for former participants of workforce services using other Commission-funded child care. If a former WIA participant who has used four weeks of WIA-funded child care in order to search for work under §809.41(d)(2) locates employment, the parent then may be enrolled in at-risk child care. If the parent receiving at-risk child care becomes unemployed, then the parent is eligible for four weeks of child care under the provisions of §809.41(d)(1).

Comment: Seven commenters supported the proposed rule to limit job search. However, the commenters disagreed with limiting job search to four weeks per fiscal year. Clients eligible for the program typically have low-paying, entry-level jobs that lay off when times are slow, reduce hours irregularly, or the clients have transportation problems. The commenters suggested limiting the number of job searches to two, four-week periods per year. This will also help reduce caseload work and provide continuity of care for their children by not having to drop the children and put them on the waitlist. The commenters identified a list of typical reasons for job searches. One of the seven commenters stated that the Board limits its clients to two job searches every six months. At the most, limiting job searches to two a year or one every six months would be a more prudent action that would be giving parents a chance to stay in our programs and continue in the workforce, which is our first and foremost goal. One of the commenters stated that the Board policy is 40 business days within the client's eligibility year, which is more reasonable and easier to track.

Response: The Commission disagrees with extending the amount of time for job search activities. However, these rules

allow Boards the discretion to make this population--i.e., individuals searching for jobs--a priority on the waitlist.

The Commission points out that, under the repealed rules, job search was allowed only for four weeks and only for parents eligible for Transitional child care who were not employed when their TANF time limits expired. The repealed rules did not have provisions for child care during job search for at-risk parents with children currently enrolled in child care. Rather than limiting job search as the comment implies, the adopted rules now allow job search for these parents.

Comment: One commenter stated that the Board policy allows parents to "bank" days allotted for job search if they are not used during that year.

Response: The Commission disagrees with carrying over to the next fiscal year unused days allotted for job search during that year. The Commission believes that this policy would allow a parent to remain eligible for child care for several months even though the parent is not employed. The intent of providing child care during job search activities is to allow a child to remain in the child care setting while the parent is temporarily unemployed. The Commission does not intend that child care continue to be provided for long-term periods of unemployment.

Comment: One commenter suggested that the job search provision be effective in Fiscal Year 2008 since the job search time frame is linked to a federal fiscal year. The commenter expressed concern that the Board may lose appeals since clients were not notified of the requirement during their intake or recertification appointment during the fiscal year in which the rules become adopted.

Response: The Commission understands the commenter's concern, and notes that for parents with children currently enrolled in child care, Boards may make this provision effective at the parent's next recertification. However, for new clients, the rule is effective immediately.

Comment: Regarding the time limits for education programs, two commenters stated that there is no provision in the rule for parents attending an associate's degree program on a part-time basis while working to have additional time to complete the degree program. The commenters asked if the Commission would allow Boards the flexibility for parents attending school and also working to be given additional time, as needed, to complete an associate's degree program.

Response: The proposed language was intended to clarify that child care remains available for parents who are enrolled in associate degree programs designed to prepare the parent for a job in a high demand occupation with an upward career path. These programs typically require two years of full-time attendance; however, as the commenters point out, many parents must combine school with work which--when coupled with the demands of raising small children--may extend the time necessary to complete a degree program. The Commission shares the commenters' concerns that the rule not constrain Boards from addressing the needs of parents who are working diligently toward a degree, yet may be forced to take a smaller course load because of work and family. Therefore, the Commission modifies the language of §809.41(c) to make it clear that parents are ensured four years of child care services; however, the rule does not require Boards to cap services at four years under the circumstances described, so long as the parent meets all other eligibility requirements and is making progress toward a degree.

Comment: One commenter asked if the time limits in §809.41(c) related to child care during education refers to time limits for education or time limits for child care. Specifically, the commenter asked whether a parent who had already been in school for four years is entitled to child care.

Response: The time limits refer to the provision of child care while the parent is attending an education program. If the parent previously had been in school for four years, but did not receive child care during those four years, then the parent may be eligible for child care services. However, the Commission points out that §809.41(b) allows Boards to establish policies for the provision of child care while the parent is attending an education program. The only specific requirement for a Board's policy is that a parent enrolled in an associate's degree, as described in §809.41(c), shall be given four years of child care in order to complete the degree program, as long as the parent is making progress toward successful completion of the program as determined by the Board.

§809.42. Eligibility Determination and Verification.

Section 809.42 relates to eligibility determination and verification for child care services.

Section 809.42(a) states that a Board shall ensure that its child care contractor verifies eligibility for child care services prior to authorizing child care.

Section 809.42(b) requires that eligibility for child care be redetermined:

--anytime there is a change in family income or other information that could affect eligibility to receive child care; and

--with established frequency, at the Board's discretion.

Section 809.42(a) and (b), regarding the verification of eligibility prior to authorizing child care and provisions of eligibility redetermination, are similar to the repealed sections.

Section 809.42(c) requires Boards to ensure that a public entity certifying expenditures for direct child care determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child is under 13 years of age, or--at the option of the Board--be a child with disabilities under 19 years of age. The public entity should also verify that the child resides with:

--a family whose income does not exceed 85% of the state median income for a family of the same size; and

--a parent who requires child care in order to work or attend a job training or educational program.

CCDF matching fund regulations at 45 C.F.R. §98.53(c)(2) require that state expenditures used to match CCDF funds, including public certified expenditures, be for allowable services or activities that meet the goals and purposes of CCDF. Section 809.42(c) is a new requirement designed to clarify that public child care expenses that are certified as CCDF match represent expenses for child care services that meet the minimum CCDF eligibility requirements in 45 C.F.R. §98.2.

The Commission notes that public certified expenditures that represent expenditures for quality improvement activities may be for any quality improvement activity allowed by CCDF regulations in 45 C.F.R. §98.51. This provision also is included in §809.16(e) relating to Quality Improvement Activities.

Comment: One commenter disagreed with the requirement that Boards must ensure that a public entity certifying expenditures verify that direct care expenditures are for eligible children. The commenter stated that institutions of higher education and community colleges do not have the expertise to determine if someone is eligible for child care based on the Board's income and participation requirements. This is the responsibility of the Board's contractor.

Response: The Commission disagrees that public entities do not have the capacity or expertise to certify direct care expenditures of children who meet federal child care eligibility criteria. The Commission previously issued guidance to the Boards on this matter. WD Letters 45-06, Change 1 and 45-06, Change 2, state that contributors must agree to certify that the expenditures of public funds used as local match are eligible for federal match. The intent of including this in rule is to establish that public certified funds must meet the federal CCDF eligibility guidelines as they relate to the child's age, family income and participation in work, and education or training. The public certified expenditures do not have to be limited to families that meet the more stringent Board requirements.

Child care services provided by public entities such as municipal governments and public education institutions typically have their own income requirements. Thus, the entities are equipped to determine income eligibility for the children they serve. Additionally, these entities, especially education institutions, can also verify the education or employment status of the parents of the children they serve. Because the federal CCDF regulations do not require a minimum number of work, education, or job training hours, it is not necessary that the public entities verify the parents' hours in these activities. Rather, they need to verify only that the parents are participating in these activities.

§809.43. Priority for Child Care Services.

Section 809.43 relates to priority for child care services. CCDF regulations at 45 C.F.R. §98.44 require states to give priority to:

--children in families with very low income; and

--children with special needs.

The priority in §809.43 reflects the above CCDF priority groups.

Section 809.43(a) states that a Board shall ensure that child care services are prioritized among three priority groups. The first priority group provided in §809.43(1) reflects the federal priority for children in families with very low incomes. Child care services are assured for children in the first priority group, which includes parents eligible for:

--Choices child care;

--TANF Applicant child care;

--FSE&T child care; and

--Transitional child care.

The first priority group in §809.43(1) is similar to the first priority group in the repealed rules. The Commission specifically includes TANF Applicant child care as a first priority group to align with the continuity of care provisions. The Commission retains this continuity of care provision and, therefore, includes TANF Applicant child care as a first priority group.

Additionally, child care for parents participating in FSE&T is listed as a priority for service in Board contracts. If child care is not provided, Boards may not sanction FSE&T participants who require child care to participate in services. Therefore, the Commission includes parents participating in FSE&T as a first priority group for child care services.

Section 809.43(2) sets forth the second priority group, which reflects the federal priority group related to serving children with special needs. The second priority group is served subject to the availability of funds and includes, in order of priority:

--children who need to receive protective services child care;

--children of a qualified veteran;

--children of a foster youth;

--children of teen parents; and

--children with disabilities.

Children who need to receive protective services are included in the second priority group under the repealed rules. The Commission adds children of teen parents and children with disabilities to the second priority group as these groups are defined in the CCDF State Plan as children with special needs. Therefore, inclusion of these children as a priority reflects the federal priorities in CCDF regulations 45 C.F.R. §98.44.

Additionally, the 79th Texas Legislature, Regular Session (2005), enacted House Bill (HB) 2604, which added §302.014 to the Texas Labor Code. The new section of the Texas Labor Code requires that veterans receive priority of service for training or assistance under a job training or employment assistance program or service, and applies to services funded in whole or in part by state funds. Additionally, the 79th Texas Legislature, Regular Session (2005), enacted SB 6, which added, among other actions, §264.121 to the Texas Family Code, which directs the Commission and Boards to prioritize and target services to meet the needs of foster youth and former foster youth.

Therefore, in order to implement HB 2604 and SB 6, the Commission adds veterans and foster youth to the second priority group for child care services.

Section 809.43(3) states that the third priority group includes any other priority adopted by the Board. This provision is the same as in the repealed rules.

Further, §809.43(b) states that a Board shall not establish a priority group based on the parent's choice of individual provider or provider type. This new provision prohibits a Board from establishing a priority group based on a provider or a type of provider. Allowing Boards to establish priority for parents based on parent choice of a particular provider or provider type influences a parent's choice of providers and may unduly limit parent choice in direct opposition to the federal regulations at 45 C.F.R. §98.20, regarding parental choice.

Comment: Four commenters stated that §809.11 implies that workforce clients, such as WIA, are a priority group, but are not included as a priority in §809.43.

Response: The Commission's intent in §809.11 is to identify child care services as support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title. Child care is not a workforce and job training service in itself, but is an important support for individuals participating in those services. As mentioned previously, the Commission has modified language in §809.11 to clarify this intent. Therefore, parents participating in workforce services, such as WIA, are not a first or second pri-

ority group. However, the Board has the discretion to include WIA as a priority in the third priority group.

Comment: Four commenters expressed the opinion that teen parents should be a higher priority than children of veterans or foster youth. The commenters stated that the Board has more teen parents in its population, and this change could result in more high school dropouts since teens may not be able to attend high school or GED programs. One of the two commenters believed that the Boards should locally identify target groups and their priority of services.

Response: The Commission's intent is to implement the legislative direction in HB 2604 and SB 6 as enacted by the 79th Texas Legislature, which established children of veterans and children of foster youth as state priorities. Because of the legislative charge, the Commission has placed these populations in the second priority group, above children of teen parents and children with disabilities.

The Commission disagrees that this lowers the priority of teen parents and children with disabilities. In fact, the opposite is true. Under the repealed rules, these populations were listed as examples of groups that may be included in the third priority group--the Board-determined priority group. The adopted rule elevates these populations to the second priority group and makes them a statewide priority.

§809.44. Calculating Family Income.

Section 809.44 relates to calculating family income for determining eligibility. The adopted list of income inclusions is intended to be income sources that are verifiable and easily documented.

Comment: Two commenters expressed appreciation regarding the changes required in calculating family income to that which is verifiable and easily documented.

Response: The Commission appreciates the comment.

Section 809.44(a) states that, unless otherwise required by federal or state law, family income for purposes of determining eligibility includes the monthly total of the following items for each member of the family (as defined in §809.2(8)):

Total gross earnings

Section 809.44(a)(1) includes as income gross earnings including wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned. This provision is similar to that in the repealed rules.

Comment: One commenter suggested clarifying the phrase "total gross earnings before deductions are made for taxes." The commenter assumed that this means federal (or state) income taxes withheld from wages by the employer. However, the commenter stated that the word "deductions" is a term of art in the tax world, and it might be interpreted by some to mean the Schedule A itemized deductions for certain taxes.

Response: The Commission agrees and has modified the rule to remove the phrase "before deductions are made for taxes" from the rule language.

Comment: One commenter asked if the definition of income was the same as adjusted gross income for federal income tax purposes.

Response: As mentioned previously, the Commission has followed the federal income tax guidelines, specifically using Form 1040, as closely as possible. In particular, the Commission has followed the itemized "Income" section of Form 1040 and not the "Adjusted Gross Income" section. In keeping with the intent to include verifiable income, the Commission believes that expense deductions used to determine the Adjusted Gross Income may be difficult to document and verify.

The Commission recognizes that an income tax form may not be the best instrument for determining and verifying income. The tax form reflects income that may be up to one year old. The parent's actual income at the time of enrollment or recertification actually may be lower than what was reported on the individual's previous tax return. As a result, using the income tax as a guide, the Commission has determined that the list of income inclusions should include verifiable wages and other income, with as few exemptions for expenditures as possible.

Comment: Two commenters requested clarification on whether severance packages are considered income for the purpose of child care eligibility.

Response: The Commission intends that such income be included as gross wages income. According to the Internal Revenue Service (Publication 525: Taxable and Nontaxable Income), income from severance packages is included in taxable gross wages. Therefore, this income should be included when determining child care eligibility.

Net income from self-employment

Section 809.44(a)(2) includes as family income the net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm. Including net income from self-employment is retained from the repealed rules.

The Commission simplified the language from the repealed rules by including net income from both farm and non-farm self-employment into one provision related to self-employment. Furthermore, the Commission simplified the language by removing examples of business-related expenses that are deducted from the gross receipts from self-employment. The Commission determined that these deductions should not be specified in the rule language and may be determined by the Board. The Commission notes, however, that a Board should consider deducting business-related expenses that are allowable under tax deductions as provided by U.S. Department of Treasury Internal Revenue Service and itemized in Schedule C related to Profit or Loss From Business and Schedule F related to Profit or Loss From Farm.

Pensions, annuities, life insurance, and retirement income

Section 809.44(a)(3) includes pensions, annuities, and retirement income (including Social Security retirement benefits and veteran's pensions) in the income calculation. Payments include any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance. This provision is comparable to that in the repealed rules.

Comment: One commenter suggested inserting the word "life" before "insurance" under the "pensions, annuities, insurance, and retirement" income category. Otherwise, it might be interpreted to mean that all manner of insurance payments, such as automobile and health, are to be included.

Response: The Commission agrees with the suggestion and has incorporated it in the adopted rules.

Taxable capital gains, dividends, and interest

Section 809.44(a)(4) includes taxable capital gains, interest, and dividends including capital gains from the sale of property and earnings from dividends of stock holdings, and interest on savings or bonds. This is a slight modification to the repealed rules, which describe capital gains only in relation to the sale of property.

Comment: In the "Taxable capital gains, dividends, and interest" category, one commenter asked whether the adjective "taxable" modifies only capital gains, or whether it also modifies "dividends and interest." This might be important if, for example, a family member receives tax-exempt interest from municipal bonds.

Response: The Commission clarifies that the term "taxable" refers to capital gains, dividends, and interest.

Rental income

Section 809.44(a)(5) includes rental income consisting of net income from boarders or lodgers, rental of a house, homestead, store, or other property. This provision is retained from the repealed rules.

Comment: One commenter stated that §809.44(a)(5) related to rental income does not provide for deduction of any of the expenses associated with the rental property, such as property taxes, utilities, repairs, and maintenance, which suggests that the gross, and not the net, rental income amount is to be included in the calculation. The commenter contrasted this with §809.44(a)(2), which makes clear that business and farm expenses are to be deducted. The commenter asked whether this was intentional.

Response: The Commission appreciates the comment. The rule language did not include the specific reference to "net" rental income. However, the preamble to the rules states that net income from rental property would be included. The Commission has modified the rule language to clarify the intent, as stated in the preamble, that rental income should be net income. The repealed rules allowed for deductions for property taxes, insurance payments, maintenance, and interest on mortgage payments. The intent of the adopted rules is to allow deductions for these expenses, as well as other expenses that may be allowed under the federal income tax guidelines.

Comment: One commenter suggested substituting "income from rental of a house, homestead, store, or other property" with "income for the rental of any real or personal property" as this would simplify the language.

Response: The Commission appreciates the suggestion. However, the Commission believes that the language is sufficient.

Public assistance payments

Section 809.44(a)(6) includes public assistance payments including TANF cash assistance, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general cash assistance (such as from a county or city). Although similar to language in the repealed rules, the Commission adds language in order to specify that Social Security Disability Insurance and Supplemental Security Income are included in the income calculation.

Income from estate and trust funds

Section 809.44(a)(7), as in the repealed rules, includes income from estates, trust funds, inheritances, or royalties.

Unemployment compensation

Section 809.44(a)(8), as in the repealed rules, includes unemployment compensation payments from private or governmental unemployment insurance and strike benefits while a person is unemployed or on strike.

Workers' compensation income, death benefit payments or other disability payments

Section 809.44(a)(9), as in the repealed rules, includes income from workers' compensation payments. These payments include compensation received periodically from private or public sources for on-the-job injuries. The adopted language clarifies that worker's compensation death benefit payments are included as income.

Spousal maintenance or alimony

Section 809.44(a)(10) includes spousal maintenance or alimony including any payments made to a spouse or former spouse under a separation or divorce agreement. This provision mirrors content in the repealed rules, however, the Commission adds a brief description of the income included.

Child support

Section 809.44(a)(11), similar in content to the repealed rules, includes court-ordered or informal child support cash payments, maintenance, or allowance used for current living costs provided by a parent for a minor child. The Commission clarifies that this does not include the value of noncash or in-kind support such as diapers, baby formula, or other items for the child. The Commission believes that determining the value of these items would place an undue burden on the child care contractor and the parent.

Court settlements or judgments

Section 809.44(a)(12) includes a new provision to count court settlements or judgments as income, including awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits. The Commission believes that this income source meets its goal of including documented and verifiable income sources. The Commission also proposes that family income not include compensatory damages that are awarded to reimburse individuals for personal physical injury or physical sickness because these awards are typically awarded to pay for medical bills or ongoing medical expenses and are not retained by the individual as income.

Comment: Two commenters disagreed with including income from court settlements or judgments. One of the commenters stated that it would be difficult to ascertain if the income was a result of compensatory damages. Another commenter expressed concern regarding the funds from awards that may be necessary to pay for ongoing medical costs or other costs that may be unusual in various circumstances.

Response: The Commission appreciates the comment and modifies the rule language to clarify that income resulting from punitive, noneconomic damages or compensation for lost wages shall be included if the court settlement or judgment clearly awards damages among these categories. The Commission believes that it is reasonable to request that the parent provide the terms of the court settlement to verify this information. The Commission also emphasizes that this rule includes

noneconomic damages and does not include compensation for economic damages that may be necessary to pay for ongoing expenses, such as medical costs.

As provided in the repealed rules, the Commission states in §809.44(b) that income to the family that is not included in §809.44(a) is excluded in determining the total family income.

Section 809.44(b) specifically excludes the following income sources:

Food stamps

Section 809.44(b)(1), consistent with the repealed rules, excludes food stamps from the income calculation.

Certain monetary allowances for children of Vietnam veterans

Section 809.44(b)(2), consistent with the repealed rules and federal guidelines, also excludes monthly monetary allowances for children of Vietnam veterans born with certain birth defects.

Educational scholarships, grants, and loans

Section 809.44(b)(3) excludes from the income calculation all educational scholarships, grants, and loans. The repealed rules specifically named only federal scholarships, grants, and loans (e.g., Pell Grants, Perkins Loans) as excluded.

Comment: Two commenters agreed with the Commission's proposed rule to exclude income from all educational scholarships, grants, and loans. This rule will add uniformity with the current rule of excluding federal financial assistance. This will aid students applying for child care services.

Response: The Commission appreciates the comment.

Earned Income Tax Credit (EITC)

Section 809.44(b)(4) excludes the Earned Income Tax Credit (EITC) and the Advanced EITC. While EITC may be a large amount of income, including it as income may discourage working families from applying for the tax credit. EITC and Advanced EITC are not a required inclusion in the repealed rules, thus this provision is consistent with those rules.

Individual Development Account (IDA) withdrawals

Section 809.44(b)(5) excludes IDA withdrawals as income. IDAs are not a required inclusion in the repealed rules and excluding these payments encourages the use of IDAs, which supports asset-building for low-income families.

Tax refunds

Section 809.44(b)(6) excludes tax refunds from the income calculation as this is simply a refund of a parent's income that was overpaid in taxes. This is not a change from the repealed rules, as tax refunds are not a required inclusion.

VISTA and AmeriCorps stipends

Section 809.44(b)(7) excludes VISTA and AmeriCorps living allowances and stipends. This is consistent with Food Stamp benefits eligibility, which also excludes these allowances and stipends. The repealed rules do not require these payments to be included in the income calculation.

Noncash or in-kind benefits in lieu of wages

Section 809.44(b)(8) excludes noncash or in-kind benefits received in lieu of wages, such as reduced rent if a parent works as a part-time maintenance person for an apartment complex. Verifying and placing a value on noncash benefits increases the administrative burden on Board contractors. The repealed rules do not require this provision to be counted as income.

Foster care payments

Section 809.44(b)(9) excludes foster care payments as income. These are payments from DFPS to foster parents to reimburse the individuals for caring for foster children. DFPS disregards the income of foster parents when authorizing care for foster children. However, foster parents also may need child care for their own children. Foster care payments intended to support the foster child should not be counted as income when determining eligibility for the foster parents' own children. This is a change from the repealed rules, which include foster care payments.

Comment: Three commenters agreed with the Commission's proposed rule to exclude foster care payments and noncash or in-kind benefits.

Response: The Commission appreciates the comments.

Comment: One commenter disagreed with excluding income from foster payments. The commenter stated that these payments are to be used for child care or other needs of the foster parent and should not be excluded in determining eligibility for child care.

Response: The Commission disagrees with the comment and believes that foster care payments are intended to support the foster child and should not be counted as income.

Special military pay or allowances

Section 809.44(b)(10) excludes from income special military pay or allowances, which include subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger. While the repealed rules include "armed forces pay," it is not clear if this includes special military pay and allowances such as housing allowances and combat pay. This change allows for the inclusion of basic pay, but specifically excludes the special military pay and allowances.

§809.45. Choices Child Care.

Section 809.45 sets forth provisions for a parent to be eligible to receive Choices child care.

Section 809.45(a) states that a parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title. The proposed eligibility for Choices child care is similar to the provisions in the repealed rule. However, the new language is intended to simplify the eligibility requirements. The repealed language includes references to the parent receiving TANF and participating in Choices. Because Choices is the employment and training program for TANF recipients, the reference to the receipt of TANF is extraneous language and has been removed.

Additionally, the repealed rules include a provision for child care for children of conditional and sanctioned families who must demonstrate cooperation prior to the resumption of TANF assistance. Because these families must continue to participate in Choices as part of their effort to demonstrate cooperation, the reference to conditional and sanctioned families is not necessary. As long as the parent is participating in Choices--regardless of the parent's TANF status--the child is eligible for Choices child care.

Section 809.45(b) states that a parent who has been approved for Choices, but is waiting to enter an approved initial component

of the program, may receive up to two weeks of child care services when child care services will prevent loss of the Choices placement, and if child care is available to meet the needs of the child and parent. This provision is retained from the repealed rules.

The Commission received no comments on this section.

§809.46. Temporary Assistance for Needy Families Applicant Child Care.

Section 809.46 relates to a parent's eligibility for TANF Applicant child care. The provisions in this section are largely unchanged from the repealed rules. However, these provisions are located in the section entitled "Workforce Orientation Applicant Child Care" of the repealed rules. The name change is intended to clarify that this type of child care is provided to TANF applicants who, prior to TANF certification, become employed or have increased earning that would make them ineligible for TANF. The reference to Workforce Orientation for Applicants (WOA) in the repealed rules implies that the child care is for parents while they are attending the required WOA activities. However, this is not the case. TANF Applicant child care is intended to provide child care in order to enable TANF applicants to accept employment or increased wages and thus, avoid having to go on public assistance.

Section 809.46(a) states that a parent is eligible for TANF Applicant child care if the parent receives a referral from HHSC to attend a WOA but locates employment or has increased earnings prior to TANF certification and needs child care to accept or retain employment. Although similar to the repealed rules, new §809.46(a) removes extraneous language regarding criteria for eligibility. Subsection (a) also adds language to include individuals who not only become employed prior to TANF certification, but also have increased earnings prior to TANF certification, which would make them ineligible for TANF.

Section 809.46(b) provides that to receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA--unless the voluntary termination was for good cause connected with the parent's work. This provision is retained from the repealed rules, but modified from 30 hours to 25 hours in order to align the language with the 25 hour minimum activity requirement for Transitional and at-risk eligibility.

Section 809.46(c) states that subject to the availability of funds and the continued employment of the parent, TANF Applicant child care must be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in the provisions related to at-risk child care, §§809.50 - 809.52, whichever occurs first. This provision is the same as in the repealed rules.

Section 809.46(d) states that parents who are employed less than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. TANF Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week. This provision is modified from the repealed rules, which require a minimum of 30 hours a week. This provision is changed to align with the minimum activity hours required for at-risk child care.

Section 809.46(e) provides that, subject to the availability of funds, a parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care provided the parent is otherwise eligible under any provision contained in §§809.50 - 809.52 (related to at-risk child care). This provision is retained from the repealed rule.

The Commission received no comments on this section.

§809.47. Food Stamp Employment and Training Child Care.

Section 809.47, relating to a parent's eligibility for FSE&T child care, states that a parent is eligible to receive child care services if the parent is participating in FSE&T in accordance with the provisions of 7 C.F.R. Part 273, and whose case plan remains open. This provision is unchanged from the repealed rule.

The Commission received no comments on this section.

§809.48. Transitional Child Care.

Section 809.48 relates to a parent's eligibility for Transitional child care.

Section 809.48(a) states that a parent is eligible for Transitional child care services if the parent has been denied TANF because of increased earnings, or has been denied temporary cash assistance within 30 days because of the expiration of TANF time limits. Additionally, the parent must need child care to work or attend a job training or educational activity for a combination of at least 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

Section 809.48(a) includes a new provision that requires parents receiving Transitional child care to be engaged in work, education, or training activities for at least 25 hours per week (50 hours per week for two parents). The intent of this provision is to align the activity requirements for Transitional child care with the requirements for at-risk child care.

Section 809.48(b) allows Boards to establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for children in families at risk of becoming dependent on public assistance, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size. This provision is retained from the repealed rules.

Section 809.48(c) states that Transitional child care shall be available for a period of up to 12 months from the effective date of the TANF denial; or a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program. This provision is contained in the repealed rules; however, the Commission includes language related to the caretaker exemptions in order to reference the Texas Human Resources Code. This reference to the Texas Human Resources Code clarifies that the caretaker exemption refers to parents caring for a physically or mentally disabled child or parents caring for a child under the age of one.

Section 809.48(d) states that former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under §809.48(e), shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed. This provision is retained from the repealed rules.

Section 809.48(e) states that former TANF recipients who are engaged in a Choices activity and are denied TANF because of receipt of child support, shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board. This provision mirrors the repealed rules and reflects the requirements in Texas Human Resources Code §31.012(e).

Comment: Two commenters thanked the Commission for the proposed rule requiring Boards to apply the 25-hour work requirement to parents receiving Transitional child care. This will allow job training or educational programs to align with at-risk child care requirements. Additionally, the proposed rule will allow for more continuity between Choices, Transitional, and income-eligible child care assistance. It will also decrease the likelihood of families going back on TANF when their Transitional benefits end and they are not eligible for income-eligible child care because they have fallen below the 25-hour work requirement.

Response: The Commission agrees and appreciates the comments.

Comment: One commenter stated that Transitional child care currently has an hourly participation requirement that is subjective to the case manager, as long as the client is gainfully employed. However, regular self-referred clients have a minimum participation requirement of 25 hours per week. Therefore, the Transitional requirement in the new rules is not the same as for other low-income parents.

Response: The Commission is concerned with the statement that parents receiving Transitional child care currently have a "subjective" hourly participation requirement determined by the case manager as long as the parent is "gainfully employed." Placing a minimum hourly participation requirement on Transitional child care was not allowed in the repealed rules. Furthermore, any requirement placed on a parent should not be "subjective to the case manager." Additionally, the Commission language in §809.48(a)(3) related to the minimum activity requirement for Transitional child care is identical to the language in §809.50(a)(2) and §809.51(a)(2), which sets forth the minimum activity requirement for children living at low incomes and children with disabilities. Therefore, the Commission disagrees that the Transitional minimum activity requirement is not the same as the requirement for low-income parents.

§809.49. Child Care for Children Receiving or Needing Protective Services.

Section 809.49 relates to eligibility for children needing protective services. Boards are required to ensure that determinations of eligibility for children needing protective services are performed by DFPS. Boards also must ensure that child care continues as long as authorized and funded by DFPS. These provisions are retained from the repealed rules.

Section 809.49(a) states that DFPS may authorize child care for a child under court supervision up to age 19. The provision allowing DFPS to authorize child care for a child under court supervision up to age 19 is a new provision included to align with the CCDF State Plan. Additionally, this language mirrors the language in CCDF regulations at 45 C.F.R. §98.20 regarding a child's eligibility for CCDF child care.

Section 809.49(b) ensures that requests made by DFPS for specific eligible providers are enforced for children in protective services. This provision is retained from the repealed rules.

The Commission received no comments on this section.

§809.50. Child Care for Children Living at Low Incomes.

Section 809.50 relates to child care services for children living at low incomes. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.50(a) states that a parent is eligible for child care services under this section if the family income does not exceed the income limit established by the Board, provided that the income limit does not exceed 85% of the state median income for a family of the same size. Further, child care must be required in order for the child's parents to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.

Section 809.50(b) allows a Board to reduce the requirement in §809.50(a) if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

Section 809.50(c) states that for purposes of meeting the activity requirements in §809.50(a), each credit hour of postsecondary education will count as three hours of education activity per week. The language also states that each credit hour of a postsecondary education condensed course counts as six education activity hours per week. This language is consistent with previous Commission guidance and aligns with current practice.

Comment: Four commenters suggested including the provisions of WD Letter 30-04, issued July 23, 2004, on calculating postsecondary condensed course credit hours for child care eligibility.

Response: The Commission agrees with the suggestion and adds language in §809.50(c) and §809.51(c) stating that each credit hour of a postsecondary education condensed course counts as six education activity hours per week.

Comment: One commenter stated that the rule equating one semester hour to three hours of weekly education activity would mean that 10 credit hours would meet the minimum activity requirement. However, the commenter stated that most schools consider twelve semester hours as a full-time student.

Response: The Commission appreciates the comment. However, the Commission recognizes that low-income parents pursuing an education cannot afford to be enrolled in education on a full-time basis. It is not the intent of the Commission to require low-income parents to be enrolled the equivalent of a full-time student, as many of these low-income parents also must work. The intent of the provision related to calculating education hours is to provide a reasonable amount of activity hours for each semester hour, thus allowing these parents to work and attend school.

§809.51. Child Care for Children with Disabilities.

Section 809.51 relates to eligibility for child care services for a child with disabilities. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.51(a) provides that a child with disabilities is eligible for child care services if:

--the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and

--child care is required in order for the child's parents to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

Section 809.51(b) states that a Board may allow a reduction to the requirement regarding minimum hours in §809.51(a)(2) if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

Section 809.51(c) states that for the purposes of meeting the educational requirements stipulated in §809.51(a)(2), each credit hour of postsecondary education will count as three hours of education activity per week. The language also states that each credit hour of a postsecondary education condensed course counts as six education activity hours per week. This language is consistent with previous Commission guidance and aligns with current practice.

The Commission received no comments on this section.

§809.52. Child Care for Children of Teen Parents.

Section 809.52 addresses the eligibility for child care services for children of teen parents. This section is similar to provisions for children of teen parents in the repealed rules.

Section 809.52(a) notes that a child of a teen parent may be eligible for child care if the teen parent needs child care services to complete high school or the equivalent, and the teen's family income does not exceed the income eligibility limit established by the Board. Boards may establish a higher income eligibility limit for teen parents provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

Section 809.52(b) states that the teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8). The repealed rules require that the teen parent include the income of the teen's parents, if the teen parent is residing with the teen's parents. However, the adopted rules in §809.19(a)(3) retain the provision in the repealed rules that the parent share of cost shall be based solely on the teen's family income and family size. The provisions in §809.52(b) align the income methodology used to determine eligibility for teen parents with the methodology for determining the parent share of cost for teen parents by removing the provision that the teen include the income of the teen's parents when determining income eligibility.

Comment: Nine commenters agreed with the proposed rule that excludes the income of a teen's parents. The commenters stated that it is burdensome to collect income documentation from the grandparents of eligible children.

Response: The Commission appreciates the comments.

§809.53. Child Care for Children Served by Special Projects.

Section 809.53 relates to eligibility for child care services for children served by special projects. The provisions in this section are similar to the repealed rules.

Section 809.53(a) states that special projects developed under federal and state statutes or regulations may add groups of children eligible to receive child care.

Section 809.53(b) provides that the eligibility criteria as stated in the statutes or regulations shall control for the special project, unless otherwise indicated by the Commission.

Section 809.53(c) states that the time limit for receiving child care for children served by special projects may be specifically prescribed by federal or state statutes or regulations according to the particular project; otherwise, the Commission may set the time limit depending on the purpose and goals of the special project and the availability of funds.

The Commission received no comments on this section.

§809.54. Continuity of Care.

Section 809.54 concerns continuity of care for children enrolled in child care services. The provisions in this section were modified slightly from the repealed rules.

Section 809.54(a) provides that enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under §809.54(b).

Section 809.54(b) states that except as provided by §809.76(b), relating to child care not continuing during appeal, a child should not be removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group in §809.43. This provision specifies that if child care is not to continue during the appeal process, then the continuity of care provisions in this subsection shall not apply.

Section 809.54(c) retains the current provisions related to continuity of care for children formerly receiving child protective services. The adopted rules state that in closed DFPS Child Protective Services cases (DFPS cases) in which child care is no longer funded by DFPS, the following shall apply for Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board, or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for the child care services for up to six months after the DFPS case is closed.

Section 809.54(c)(1), regarding Former DFPS Children Not Needing Protective Services Child Care, states that if the family meets income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide child care subject to the availability of funds. To receive care under §809.54(c)(2), Former DFPS Children Not Needing Protective Services Child Care, the parent must be working or attending a job training or educational program.

Section 809.54(d) provides that a Board shall ensure that no children of military parents in military deployment have a disruption of child care services or eligibility because of the military deployment.

Section 809.54(e) states that a Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

Section 809.54(f) allows Boards to encourage parents of other children to temporarily utilize the space the child under court-

ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.

Section 809.54(g) states that a Board must ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation do not lose their place on the waiting list.

Finally, §809.54(h) states that a Board must ensure that parents who do not choose to accept temporary child care to fill a position do not lose their place on the waiting list.

Comment: Two commenters requested clarification on assessing parent's share of cost to Former DFPS Children Needing Protective Services. The commenters stated that the rules are clear that families do not have to meet income or work eligibility requirements but the rules do not address parent's share of cost.

Response: The Commission's intent is to ensure continuity of care for children formerly receiving child protective services, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need. The Commission agrees that the rule is clear that the parent or caregiver of the child is not required to meet the income eligibility requirements or work requirements. The Commission intends that the Boards follow the provision in §809.19(a)(2) and continue to exempt these families from the parent share of cost, unless DFPS assesses a parent share of cost.

Comment: Two commenters disagreed with the Commission allowing Boards to encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider. The commenter stated that this is not cost effective for case managers to determine eligibility since the parents may only be offered child care for one month. Shortly after parents are enrolled, they will be terminated and offered the opportunity to appeal the decision. This is a burden on providers who might turn away other children who would be enrolled for a longer period of time.

Response: The Commission understands the commenter's concern regarding utilizing the space temporarily during a period in which a child under court-ordered custody or visitation arrangements is absent. However, the rule language is clear that it is the Board's option to make the best use of the space and serve other children if desired.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission adopts new Subchapter D, Parent Rights and Responsibilities, as follows:

Subchapter D contains the provisions related to parent rights and responsibilities. Specifically, the subchapter contains the rules related to parental choice, general parent rights, parent eligibility documentation and reporting requirements, parent appeal rights, and the parent responsibility agreement (PRA).

§809.71. Parent Rights.

Section 809.71 provides the list of parent rights. The adopted rules require that a Board's child care contractor must provide the list of parent rights in writing. The Commission emphasizes that by providing the list of rights in writing, especially the parent's right to be informed of the reporting requirements and appeal rights, the parent is better able to meet the requirements to determine eligibility, thus avoiding the termination of child care. Other than adding the requirement that the parent be informed of parental rights in writing, the list of parental rights is similar to the list in the repealed rules.

Section 809.71 states that a Board shall ensure that the Board's child care contractor informs parents of their rights in writing.

Section 809.71(1) states that parents have the right to choose the type of child care provider that best suits their needs and to be informed of all child care options available to them including consumer education information described in the §809.15.

Section 809.71(2) states that parents have the right to visit available child care providers before making their choice of a child care option.

Section 809.71(3) states that parents have the right to receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another.

Section 809.71(4) states that parents have the right to be informed that a provider may charge the parents the difference between the Board's reimbursement and the provider's published rate.

Sections 809.71(1) - (3) have not changed substantially from repealed Chapter 809. However, the Commission provides new language in §809.71(a)(4) to include a parent's right to be informed of the Commission rules and Board policy related to providers charging the parent the difference between the Board's reimbursement rate and the provider's reimbursement rate as stipulated in §809.92. Section 809.92(c) prohibits providers who accept Commission-funded child care subsidies from charging parents who are exempt from being assessed a parent share of cost that is the difference between the child care subsidy and the provider's published rate. For parents who are assessed a parent share of cost, the Commission rules do not prohibit providers from charging parents the difference between the child care subsidy and the provider's published rate. However, §809.92(d) allows Boards to have a policy that extends this prohibition for all parents eligible for child care services. Informing a parent of the Commission rules and Board policy will allow the parent to ask the provider about the provider's particular policy. Thus, the parent will be in a better position to make child care placement decisions for their children.

Sections 809.71(5) - (8) state that a child care contractor shall inform parents of their right to:

--have representation when applying for child care services;

--receive notification of their eligibility for child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility;

--receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

--have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential.

Section 809.71(9) retains the provisions in the repealed rules related to notifying the parent that child care services will be denied, delayed, reduced, or terminated. The rules retain the provision that a parent has the right to receive written notification at least 15 days before the denial, delay, reduction, or termination of child care services.

Additionally, §809.71(9) retains the provision in the repealed rules that notification of denial, delay, reduction, or termination of child care services is not required if child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services. The notification and effective date of such action is provided by the Choices caseworker or DFPS.

Section 809.71(10) retains the following provisions from the repealed rules:

--the parent has the right to receive 30-day written notification if child care services are to be terminated to make room for a first priority group described in §809.43(a)(1) (specifically, Choice child care; TANF Applicant child care; FSE&T child care; and Transitional child care);

--written notification of denial, delay, reduction, or termination of child care services shall include information regarding other child care options for which the recipient may be eligible; and

--the notice may be provided on the earliest date on which it is practicable if the 30-day notification interferes with the ability of the Board to comply with its duties regarding the number of children served or requires the expenditure of funds in excess of the amount allocated to the Board.

Additionally, §809.71(11) and (12) retain the language in the repealed rules that the parent has the right to:

--reject an offer of child care services or voluntarily withdraw the child from child care unless the child is in protective services; and

--be informed by the Board's child care contractor of the possible consequences of rejecting or ending child care that is offered.

Section 809.71(13) adds a new requirement that parents be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73. The Commission proposes to add this requirement in order to ensure that parents are aware of the eligibility documentation and reporting requirements. By ensuring that a parent is aware of these documentation and reporting requirements, the parent will be in a better position to avoid possible adverse actions due to the failure to provide necessary documentation or the failure to report required information to the child care contractor.

Section 809.71(14) provides that the child care contractor inform the parent of the appeal rights as described in §809.74. This provision is retained from the repealed rules.

Section 809.71(15) adds a new requirement, based on public comment, that parents be informed of the Board's attendance policies. The Commission believes that informing each parent of the requirements for child care, including attendance requirements, will reduce the risk of a parent's termination from care because of a child's excessive absences.

Comment: One commenter requested clarification on how the rule change requiring the list of parent rights in writing would be imposed for Choices clients.

Response: The list of parent rights could be provided to the parent by the Choices caseworker.

Comment: One commenter asked whether the "five-day no show/no contact" should be included in §809.71(9)(A) related to a parent's notification of termination rights. The commenter stated that this has always been considered a voluntary withdrawal.

Response: The Commission assumes that the "five-day no show/no contact" statement is part of the Board's attendance policy. The Commission agrees and modifies the rule language by adding §809.71(15) stating that parents have the right to be informed of the Board's attendance policy described in §809.13(d)(13).

§809.72. Parent Eligibility Documentation Requirements.

Section 809.72 relates to parent documentation requirements for determining eligibility for child care services. Section 809.72(a) retains the requirement from the repealed rules that parents provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures. Also retained is the stipulation in §809.72(b) that a parent's failure to submit eligibility documentation may result in denial or termination of child care services.

Section 809.72 has not changed from the repealed rules, except that the new section removes the reference to nonpayment for SACC claims. The reference to self-arranged providers is unnecessary because the Commission no longer distinguishes between providers with an agreement and self-arranged providers.

The Commission received no comments on this section.

§809.73. Parent Reporting Requirements.

Section 809.73 provides the parent reporting requirements for child care services.

Section 809.73(a) retains the repealed provisions that a parent must report to the Board's child care contractor, within 10 days of the occurrence, the following:

--changes in family income;

--changes in family size;

--changes in work, or attendance in a job training or educational program; or

--any other changes that may affect the child's eligibility or parent's share of cost for child care.

The Commission adds to the parent reporting requirements that the parent must report the receipt or the awarding of any child care funds from other public or private entities. Under the repealed rules and retained in new §809.21, child care providers are required to report the amount of other funds received by the parent for child care. Section 809.73(a)(4) also requires parents to report the receipt of such subsidies to the child care contractor. It is the intent of the Commission that the responsibility for reporting the receipt of other funds used for child care be shared by the parent and the child care provider.

Finally, the Commission removes the parent's requirement to report the loss of TANF or Supplemental Security Income assistance grants. This provision is unnecessary because a parent's public assistance payments, including TANF and Supplemental Security Income, are included as family income and a parent is already required by §809.73(a) to report changes in family income.

Section 809.73(b) retains the repealed provision that failure to report changes may result in:

--termination of child care;

--recovery of payments by the Board, the Board's child care contractor, or the Commission; or

--fact-finding for suspected fraud.

Section 809.73(c) also retains the repealed provision that the receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

The Commission received no comments on this section.

§809.74. Parent Appeal Rights.

Section 809.74, related to parent appeals, contains many of the same provisions in the repealed rules. However, the section includes new language to clarify when a parent may appeal under Chapter 809 and when a parent may appeal under other chapters of Commission rules.

Section 809.74(a) states that a parent may request a hearing pursuant to Subchapter G of this chapter (relating to Appeal Procedure) if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor. The Commission clarifies that if a decision of ineligibility is made by the child care contractor, then the parent may appeal pursuant to the procedures set forth in this chapter. The Commission's intent is to ensure that child care appeals related to nonparticipation or noncompliance with other workforce services--services in which the child care contractor does not determine eligibility--are conducted pursuant to the appeals process of the particular workforce service.

Section 809.74(b) states that a parent may have an individual represent them during this process. This provision has not changed from the repealed rules.

Section 809.74(c) states that a parent of a child in protective services may not appeal pursuant to Subchapter G of this chapter, but shall follow the procedures established by DFPS. The adopted section has not changed from the repealed rules.

Section 809.74(d) states that if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title. Similarly, §809.74(e) states that if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the FSE&T caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title. As mentioned previously, the Commission's intent is to ensure that child care appeals related to nonparticipation or noncompliance with other workforce services--such as Choices or FSE&T--are conducted pursuant to the appeals process of the particular workforce service.

The Commission received no comments on this section.

§809.75. Child Care during Appeal.

Section 809.75 provides the requirements for the provision of child care during appeal. The provisions in this section are not substantively changed from the repealed provisions.

Section 809.75(a) states that for a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.

Section 809.75(b) provides that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced or terminated because of:

--excessive absences;

--voluntary withdrawal from child care;

--change in federal or state laws or regulations that affect the parent's eligibility;

--lack of funding because of increases in the number of enrolled children in state and Board priority groups;

--a sanctions finding against the parent participating in the Choices program;

--voluntary withdrawal of a parent from the Choices program;

--nonpayment of parent fees; or

--a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care.

Section 809.75(c) states that the cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

Comment: Eight commenters suggested amending the reasons when child care does not continue during an appeal process to include late payments of parent fees or amounts owed on repayment plans, and instances when clients fail to submit documentation to redetermine their eligibility prior to their end date. One of the commenters stated that allowing child care to continue during the appeal process when parents fail to submit redetermination documentation ultimately causes a hardship for parents. The denial is virtually always upheld under these circumstances, and parents are left owing a large amount of money for child care that was provided during the appeal. The Board does not allow parents back into care if they have outstanding fees, so this effectively prevents them from ever getting back into care.

Response: The Commission disagrees with adding these actions to the list of reasons when a client does not receive child care during appeal. The Commission believes that there may be legitimate reasons why the parent could not submit redetermination documents in a timely manner. There may be documents needed for redetermination, such as grades from colleges or schools or work hour documentation from employers, that the parent relies on other individuals to provide. The Commission believes that the parents must be given the opportunity to provide an explanation of why the documents were not provided on time, as well as a reasonable amount of time for the documents to arrive.

The Commission understands the hardship on parents who ultimately do not submit the documents, and whose appeal is denied. However, weighing the potential impact on a parent whose appeal is denied against the impact of losing child care on a parent who ultimately submits the required documents, the Commission believes the decision should be in favor of allowing the appeal process to continue--with child care--in order to allow parents the opportunity to complete the eligibility process.

The Commission also disagrees that child care should not continue during an appeal due to the parent's late payment of parent fees or other amounts owed. The Commission notes that §809.75(b)(7) states that child care shall not continue during appeal due to the parent's nonpayment of parent fees. However, if the parent pays the required share of cost or other amounts

owed--although the payment is late--the parent should be allowed to continue in care.

Comment: One commenter suggested amending the reasons when child care does not continue during an appeal process to include instances when a parent does not meet the 25-hour participation rule.

Response: The Commission disagrees with adding this to the list of reasons when a parent does not receive child care during an appeal. The Commission believes that one of the reasons for continuing child care during appeal is to allow the parent to appeal a decision that the parent believes was made in error. The child care contractor may have based the decision that the parent was not meeting the hourly requirement on incorrect assumptions, or the child care contractor may have made a mistake in calculating the required number of hours. For these reasons, the Commission believes that child care should continue during the appeal, if the reason for denial was the contractor making a determination that the parent is not meeting the minimum hourly activity requirements.

§809.76. Parent Responsibility Agreement.

Section 809.76 contains the requirements for the PRA.

Section 809.76(a) retains the provision from the repealed rules that the parent of a child receiving child care services is required to sign a PRA as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the PRA must be reviewed at each eligibility redetermination.

Section 809.76(b)(1)(A) retains the repealed stipulation that the PRA require that each parent shall cooperate with the Office of the Attorney General of Texas (OAG) to establish paternity and enforce child support. However, the adopted rules clarify that this is required only for cases in which the child has a noncustodial parent. The Commission emphasizes that this provision of the PRA is not necessary if both parents of the child reside with the child and paternity and child support is not an issue. Additionally, the Commission includes language that allows a certain amount of flexibility in how a parent can demonstrate compliance with the paternity and child support provisions of the PRA.

The repealed rules related to the PRA do not specify when it is or is not necessary to cooperate with OAG. Some Boards interpreted the rule to require parents to open a child support case with OAG, even though paternity is acknowledged and the custodial parent is receiving child support, although the child support is not in the OAG child support system. Other Boards interpreted the rule to mean that if the custodial parent can demonstrate that a non-OAG-managed arrangement exists with the noncustodial parent for child support, then it would not be necessary for the parent to cooperate with OAG to establish or enforce that arrangement.

Additionally, parents with non-OAG-managed child support arrangements may decide that requiring the noncustodial parent to enter into a child support arrangement through OAG would jeopardize the receipt of any child support and jeopardize the current custodial arrangements. The custodial parent may forego receiving subsidized child care in order to retain child support and custody arrangements.

Section §809.76(b) clarifies that if a parent cannot produce documentation of receipt of child support, the parent will be required to open a child support case with OAG. The rule language specifically allows a parent to maintain an existing non-OAG-managed child support arrangement with the noncustodial parent, thus making it unnecessary to cooperate with OAG to enforce child support. The rule also specifies the documentation the custodial parent must produce in order to verify that paternity has been acknowledged and child support is being provided by the noncustodial parent.

Therefore, §809.76(b)(1)(A) stipulates that the PRA must require each parent to cooperate with OAG to establish paternity of the parent's children and to enforce child support. Additionally, the rules state that parents can demonstrate cooperation with the OAG by:

--providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or

--opening a child support case with OAG and providing documentation that the parent is cooperating with the OAG.

Additionally, §809.76(b)(1)(B) states that the parent may also provide documentation to the Board's child care contractor showing that the parent has an arrangement with the noncustodial parent for child support and is receiving child support on a regular basis. Such documentation must include evidence of child support history.

Although the Commission is not requiring parents to open a child support case with the OAG if the parent has an arrangement for child support with the noncustodial parent, the Commission intends that the Board require custodial parents to provide documented evidence that child support is being provided by the noncustodial parent.

Section §809.76(b)(2) retains the repealed provision of the PRA that each parent must not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code Chapter 481, and abstain from alcohol abuse.

Section §809.76(b)(3) also retains the repealed provision of the PRA related to school attendance. The new language clarifies that each parent must ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a GED credential, or is specifically exempted from school attendance by Texas Education Code §25.086.

Section 809.76(c) states that failure by the parent to comply with any of the provisions of the PRA shall result in sanctions as determined by the Board, up to and including terminating the family's child care services. The new section has not changed from the repealed rules.

Comment: One commenter stated that the proposed rule to allow a parent receiving child support through a non-OAG-managed arrangement benefits parents in these situations. The commenter also pointed out the difficulty of sanctioning a parent for noncooperation. The commenter stated that if there was not a sanction, a parent may have more of an incentive, and, therefore, be more likely to report and provide verification of child support received through an informal agreement with the noncustodial parent. However, the commenter pointed out that if the sanctions were removed for these cases, there could be the possibility for abuse of the system.

Response: The Commission appreciates the comment and understands the concern about the sanctions. However, the Commission believes that without the possibility of a sanction, the parent will not actively attempt to comply with the PRA.

Comment: Two commenters requested clarification about being able to count in-kind support to meet the child support requirements of the PRA. The commenters suggested that in-kind support should count as compliance with the child support requirements of the PRA, as the noncustodial parent is supporting the child.

Response: The Commission agrees with the comment that in-kind support may be counted as complying with the child support requirements of the PRA. The Commission intends to allow Boards a certain amount of flexibility in how a parent can demonstrate compliance with the paternity and child support provisions of the PRA. As stated previously, the Commission is concerned that parents with non-OAG-managed child support arrangements may decide that requiring the noncustodial parent to enter into a child support arrangement through OAG could jeopardize the receipt of any child support or current custodial arrangements. The Commission is sensitive to the fragile nature of low-income families and does not intend to prohibit a child support arrangement that is working and providing needed support, even noncash support, to children. It is the Commission's belief that the provision of any child support, including in-kind support, benefits the child and demonstrates parent responsibility for the child.

Therefore, the Commission modifies language in §809.76(b)(1)(B) to clarify that the documentation verifying the non-OAG-managed arrangement may include evidence of in-kind child support.

Comment: One commenter requested clarification of what is acceptable documentation for evidence of child support payment history. The commenter stated that this is an overly burdensome requirement for an informal child support agreement.

Response: Each Board may decide what type of documentation is acceptable. The Commission disagrees that this is an overly burdensome requirement. The Board is allowed to develop simple and cost-effective documentation requirements, as long as the requirements include verification that the noncustodial parent provides child support and that the custodial parent confirms the receipt of child support either through cash payments or in-kind support.

Comment: One of the commenters asked if Boards could make a determination that the parent is cooperating for child support enforcement and accept a self-attestation document.

Response: The Commission believes that a statement from the noncustodial parent alone does not confirm that the custodial parent received the child support. The documentation provided must be confirmed by the custodial parent. The Commission believes that verifiable documentation of the child support (e.g., bank statements from both parents showing both the payment from the noncustodial parent's account and the deposit into the custodial parent's account; or canceled checks to the custodial parent from the noncustodial parent) may be available in most cases. However, the Commission understands that some informal arrangements involve in-kind support or cash transactions that may not include checks or bank deposits. In these cases, the Commission intends that both parents verify that child support is provided.

Comment: One commenter requested clarification whether the school attendance requirement of the PRA applies to all children in school or only those receiving child care services.

Response: The Commission believes that the statement in §809.76(b)(2) that "each family member younger than 18 years of age attends school regularly" is clear. The rule applies to each family member, not only to the children receiving child care services.

Comment: One commenter requested guidance regarding parameters for school attendance policies for parents receiving child care services. The commenter stated that the Board requires school attendance documentation, but the Board does not know what to do about school absences. The commenter stated that the Commission has not provided guidance on the number of absences that are acceptable and whether Boards should terminate child care services because of absences from school.

Response: The Commission allows Boards the flexibility to establish guidelines for school attendance. Moreover, the Commission disagrees that guidance has not been provided related to termination of child care due to noncompliance with PRA school attendance provisions. Section 809.76(c) clearly provides Boards with the ability to terminate child care due to noncompliance with school attendance.

Comment: Ten commenters requested that the Commission repeal all sections of the PRA except for the sections related to cooperation with the OAG for paternity and child support. The commenters stated that the Commission has clearly stated that Boards should not duplicate the statutory authority of DFPS as it relates to child care regulation. However, the commenters stated that requiring Boards to verify compliance with the other provisions of the PRA, particularly school attendance, duplicates the responsibilities of other state agencies since Boards do not have statutory authority. One of the commenters stated that older children in a family who do not receive child care services should not be under the jurisdiction of the child care rules. Another of the commenters stated that HHSC reviews school attendance at every certification for all clients, and it has been a nightmare. Verifying school attendance is double work for both HHSC and the Commission. The commenters stated that these requirements increase operational costs and are solely complied with because they are in the rules and because of compliance monitoring. The commenters also stated that the PRA is not a federal requirement and should be repealed.

Response: The Commission appreciates the commenters' acknowledgement of the importance of the PRA child support provisions. However, the Commission disagrees that all sections of the PRA except for the sections related to child support should be repealed. Even though the provisions of the PRA are not specifically required by federal law or federal regulations, the Commission notes that one of the actions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 involved consolidating federal child care funds and amending the Child Care and Development Block Grant Act. Therefore, personal responsibility is a fundamental tenet of federal child care funding. The Commission places a strong emphasis on the tenets of personal responsibility and believes that to assist parents in obtaining and maintaining employment by subsidizing child care services for the parents, the parents should refrain from activities that may ultimately put them at risk of either losing the employment or of being unable to advance toward self-sufficiency. The Commission believes that refraining from alcohol and drug abuse, as well as maintaining school attendance, assists parents in ensuring a lifestyle that will ultimately break the cycle of poverty and lead to sustained self-sufficiency.

The Commission also disagrees that the school attendance provisions of the PRA duplicate the work of school districts. The provisions also are not designed to require Boards or child care contractors to enforce school attendance, which is performed by local school districts. Boards can establish simple procedures that require parents to obtain documentation from school districts verifying that school attendance requirements are being met. Additionally, the Commission disagrees with the statement that the child care PRA duplicates the work of HHSC's PRA for TANF parents. The PRA requirements in §809.76(b) apply only to parents who are not required to sign a PRA for TANF under §31.0031 of the Texas Human Resources Code.

Comment: One commenter requested that the Commission research and estimate the Boards' costs in complying with the PRA, specifically the school attendance requirements for all school-age children.

Response: The Commission understands the Boards' challenges in verifying that the customer is complying with the PRA. However, the Commission points out that the PRA requirements have been in Commission rules since 1997 and that the Boards are in a better position to document the actual costs associated with complying with the PRA.

§809.77. Exemptions from the Parent Responsibility Agreement.

Section §809.77 states that notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:

--the paternity of the child cannot be established after a reasonable effort to do so;

--the child was conceived as a result of incest or rape;

--the parent of the child is a victim of domestic violence;

--adoption proceedings for the child are pending;

--the parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;

--the child may be physically or emotionally harmed by cooperation; or

--the parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

Section 809.77 includes additional exemptions from the repealed rules in order to align the child care PRA exemptions with TANF PRA exemptions in HHSC rules, 15 TAC §372.1154(a)(4). These exemptions address situations relating to a child involved in a pending adoption proceeding, a parent working with an adoption agency to decide whether to place the child for adoption, or a child or parent who may be physically or emotionally harmed by cooperation.

The Commission received no comments on this section.

Repealed Provisions Related to Parent Rights and Responsibilities Not Retained in the New Rules

The Commission removes the repealed provisions related to parent rights that involve "enrollment agreements." Enrollment agreements are between the parents of the child and the child care provider. The purpose of the enrollment agreements is to detail the agreed-upon terms between both parties. The repealed rules require parents to comply with the enrollment agreement. Under the repealed rules, a parent's failure to comply with the enrollment agreement results in having child care denied or terminated.

The Commission believes that the child care rules should be silent on enrollment agreements because these agreements are between the parents of a child and the individual child care provider. The child care provider, including a provider caring for nonsubsidized children, has the discretion to deny or terminate care in that child care facility in situations in which the parent does not comply with the agreed-upon terms.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission adopts new Subchapter E, Requirements to Provide Child Care, as follows:

The repealed rules have two subchapters devoted to requirements for child care providers, one subchapter for providers with agreements and one subchapter for SACC providers.

The new chapter removes the distinction between providers with agreements and SACC providers. The Commission's intent is that the rules related to child care providers be applied to every eligible provider type and to not have one set of rules for providers with agreements and another set for SACC providers. Therefore, Subchapter E contains the requirements for child care providers receiving child care subsidies. This subchapter provides the minimum requirements for providers, provider responsibilities and reporting requirements, and the provisions for reimbursing providers.

Comment: Two commenters stated that removing the distinction between a provider and a SACC provider would simplify the child care system.

Response: The Commission appreciates the comment.

§809.91. Minimum Requirements for Providers.

Section 809.91(a) requires the Boards to ensure that child care subsidies are paid only to providers listed in §809.2(16). The eligible providers include:

--regulated child care providers;

--relative child care providers; and

--at the Board option, listed family homes.

As defined in §809.2(17), regulated child care providers are the same as the eligible providers with agreements and SACC providers as set forth in the repealed rules and include entities that are:

--licensed by DFPS;

--registered with DFPS;

--licensed by the Texas Department of State Health Services; or

--operated and monitored by the U.S. military services.

As defined in §809.2(18), a relative child care provider is an individual who is at least 18 years of age and is, by marriage, blood relationship, or court decree, one of the following:

--the child's grandparent;

--the child's great-grandparent;

--the child's aunt;

--the child's uncle; or

--the child's sibling (who does not reside in the same household as the eligible child).

Finally, the Commission includes listed family homes, as defined in §809.2(12), as eligible providers.

A listed family home is a family home that is listed with, but not licensed or registered by, DFPS. Listed family homes are, under the repealed rules and at the Board's option, eligible providers.

Other than prohibiting relative providers who reside with the eligible child from being eligible relative providers (as discussed below), the Commission emphasizes that the eligible provider types have not changed under the new rules. Licensed centers and homes, registered and listed homes, as well as eligible relatives, continue to be eligible child care providers. The rules designate each of these provider types as eligible providers and the requirements in Subchapter E apply to each provider type equally.

Section 809.91(b) states that if a Board chooses to include a listed family home as an eligible provider, the Board must ensure that there are local health and safety laws or regulations in effect designed to protect the health and safety of the children being cared for in listed family homes.

The Commission retains listed family homes as an eligible provider in order to provide parents with a full range of provider types. However, CCDF regulations at 45 C.F.R. §98.41 require that providers, with the exception of eligible relative providers, meet certain health and safety requirements under state or local law. At a minimum, the local or state health and safety laws or regulations must include the prevention and control of infectious diseases (including immunizations); building and physical premises safety; and minimum health and safety training appropriate to the provider setting.

Because listed family homes are not required by DFPS to meet health and safety requirements (pursuant to CCDF regulations at 45 C.F.R. §98.41 listed above), these providers are eligible only if the Board ensures that there are local laws or regulations that meet the requirements of 45 C.F.R. §98.41 in place.

Section 809.91(c) states that a Board shall not place requirements on regulated providers that are higher than state licensing requirements, except as provided for in the TRS Provider Certification. The subsection also prohibits Boards and child care contractors from placing requirements on regulated child care providers that have the effect of monitoring the providers for compliance with state child care licensing requirements.

The intent of this prohibition is to emphasize that DFPS has the statutory authority under Texas Human Resources Code, Chapter 42 to regulate and monitor child care providers for health and safety requirements, which include the health and safety requirements of the CCDF regulations at 45 C.F.R. §98.41. As long as the provider is licensed or registered by DFPS, then the provider is assumed to be meeting the health and safety requirements of state law and to be an eligible provider.

Also, the Commission removes the provisions contained in the repealed rules related to general liability insurance requirements because liability insurance requirements for the provider are the responsibility of DFPS and new §809.91(c) prohibits Boards from placing any additional requirements on providers that are related to the authority of DFPS to regulate child care providers. The Commission emphasizes that having liability insurance is an important requirement for all licensed child care providers, not just providers receiving child care subsidies. As a child care industry-wide licensing requirement, it is under the jurisdiction of DFPS and it is not the Commission's or the Boards' role to monitor for compliance or require additional insurance above the state licensing requirements.

However, §809.91(d) provides that if a Board or a Board child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or Board contractor must report such violations to the appropriate regulatory agency. This provision is retained from the repealed rules.

The adopted rules at §809.91(e) limit child care services provided in the child's own home to relatives who do not reside with the eligible child. This is consistent with federal regulations at 45 C.F.R. §98.30(e)(1)(iv), which allow states to establish limitations on child care services provided in the child's own home. The Commission notes that the preamble to the CCDF Final Rule, 45 C.F.R. Parts 98 and 99 (*Federal Register*, Vol. 63., No. 142, July 24, 1998, page 39949) states: "Child care administrators have faced a number of special challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. For that reason, we give Lead Agencies complete latitude to impose conditions and restrictions on in-home care." The preamble continues: "The Lead Agency must continue to allow parents to choose in-home child care. However, since this care is provided in the child's own home it has unique characteristics that deserve special attention." Lead Agencies are also required to state the reasons for any limitations on in-home care in the CCDF State Plan.

The Commission specifically acknowledges the challenge related to determining the appropriateness of payments to in-home providers, particularly relative providers residing in the same house as the eligible child. The Commission intends that child care funds be maximized to the greatest extent possible in order to serve parents who require child care in order to work or attend a job training or educational program. The Commission believes that, as a general principle, a relative who resides with the child should not be eligible to receive a subsidy in order to care for the child, because the relative is available in the child's home to care for the child while the parent is working or attending a job training or educational program. At the end of State Fiscal Year 2006 (August 31, 2006), there were 27,174 children on the Boards' waiting lists. The Commission believes that with so many children currently waiting to receive child care services, the limited resources to fund child care must not be used to subsidize individuals who are in the child's household and are available to care for the child. Rather, the funds should be used to provide child care services to parents who require child care and do not have access to care.

The Commission also points to the challenge of monitoring in-home child care providers, particularly unregulated relative providers who are residing in the same house as the eligible child. Child care contractors face many challenges in monitoring and verifying attendance for relative providers. Limiting in-home care to relatives who do not reside with the eligible child reduces the risk of fraud or improper payments. When a relative provider is required to go to the child's home in order to care for the child and, conversely, when a parent is required to take the child to the relative's residence, there is a greater certainty that the care is actually being provided to the child. Although this will not eliminate the possibility of fraud or improper payments, the

Commission believes that this rule may help reduce the risk of such actions.

Comment: Three commenters requested clarification of whether this rule to not allow relative providers to reside in the same household as the child includes children of teen parents. Another commenter, a grandmother who was currently caring for her grandchild while the child's mother was attending high school, expressed concerns that this would place an undue burden on the child and family.

Additionally, seven commenters disagreed with the proposed change and stated that it will have an adverse effect on Boards' area performance, those who live in rural areas, or those who have irregular work hours. The commenters contend that transportation barriers and shortages of available day cares to accommodate irregular work or school hours will deter parents from getting child care.

Response: The Commission appreciates the comments and has made several changes to the rule language to address the concerns raised by the commenters. The Commission has removed from the definition of a relative child care provider the stipulation that the relative reside in a separate household than the eligible child. However, while the Commission continues to believe that, in principle, the child and the child care provider should, in most cases, not reside in the same residence, it recognizes that certain situations may exist in which relative in-home care may be the best option available to the parent.

The Commission understands and appreciates the unique family situation of teen parents. Teen parents are attending high school or working toward a GED and, in most cases, continue to reside with their parents. The Commission considers it a goal of subsidized child care to assist teen parents in obtaining a high school diploma or GED. In order to assist these parents in reaching this goal, Commission rules contain several provisions unique to teen parents. For example, even if the teen is residing with the teen's parents, Commission rules require that only the teen's income be used to calculate the teen parent's eligibility and parent share of cost. Additionally, children of teen parents are typically infants and the availability of infant care may be limited.

The Commission recognizes this unique home situation of teen parents as well as the challenges that teen parents--and the parents of teen parents--face. Therefore, the Commission has modified the rule language to allow an exception for children of teen parents to the prohibition against the relative provider and the child residing in the same house.

Although the Commission disagrees that the requirement that the relative not reside with the child will have an adverse impact on performance, the Commission appreciates the comment concerning the potential impact on working parents in rural areas or those who have nontraditional (e.g., nights and weekends) or irregular work hours. The Commission also appreciates the concerns related to transportation barriers and the potential lack of available child care for infants, especially in rural areas.

Again, the Commission points to guidance in the preamble to the CCDF Final Rule, 45 C.F.R. Parts 98 and 99 (*Federal Register*, Vol. 63., No. 142, July 24, 1998, page 39949), which acknowledges that "There are a number of situations in which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. . . . Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes."

In establishing limits for in-home care, the CCDF preamble urges "child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may place in the ability of parents to manage work and family life."

The Commission agrees with the commenters and the guidance in the CCDF preamble. Therefore, the Commission adds language in §809.92(e) stating that the eligible child and the relative child care provider must not reside in the same household unless:

(1) the eligible child is a child of a teen parent; or

(2) the Board's child care contractor determines and documents that other child care providers are not reasonably available to the parent. The rules also provide that factors used to determine the reasonable availability of child care may include, but are not limited to:

(A) the parent's work schedule;

(B) the availability of adequate transportation; or

(C) the age of the child.

Comment: Six commenters supported the change to not allow relative providers to reside in the same household as the child. One noted that this change will help reduce the possibility of relative provider fraud and help the Boards use their funds more effectively. The commenter also stated that in most cases the eligible relative lives in the home and is already caring for the children without receiving compensation prior to enrolling in the child care program. The parent will insist that the relative could not care for the children without receiving payment and Boards have no mechanism to prove otherwise. This will prevent those situations and allow us to use our child care funds more effectively.

Response: The Commission agrees with the comment and appreciates the support of the general principle that relative child care providers not reside in the same house as the child. However, as stated previously, the Commission has modified the rule language to allow a child of teen parents to be cared for by relatives in the child's own home. Rule language is also modified to allow flexibility for situations in which other child care providers are not available due to reasons such as the parent's work schedule, the lack of adequate transportation, or the age of the child.

Comment: Six commenters requested flexibility in implementing the rule to not allow relative providers to reside in the same household as the child. One commenter requested that the rule be implemented immediately for new clients but for existing ones to gradually phase it in over an extended period to give them time to make alternate child care arrangements. One commenter suggested that current clients be notified of this new rule when they recertify and be allowed at least 30 days to make alternate arrangements and if the client cannot find alternate child care to allow exemptions from the rule. One commenter recommended existing clients be given until their next recertification to find alter-

nate child care. Another expressed concern that this rule could become an issue with the teen parents but saw it as a manageable issue if Boards had time to implement the rule and work with the teen parents.

Response: The Commission appreciates the comments and understands the issues related to implementation. In addition to the exceptions described above, the Commission's intent is that Boards must implement this rule immediately for new clients, but may wait until the next recertification period to implement this rule for existing clients.

Comment: Two commenters expressed concern about the documentation and monitoring that will be required to prove that the residences are different and asked if self-attestation would be acceptable.

Response: The Commission appreciates the commenter's concerns about the possibility of increased staff time to process the documentation and monitor as needed. However, self-attestation will not suffice. The Commission maintains that Boards can develop procedures that require valid documentation from both the relative and the parent that establishes separate residency (such as utility bills, property tax statements, or rental agreements).

Comment: Five commenters disagreed with the rule to not allow relative providers to reside in the same household as the child and expressed the hardship this rule change would have on families. One commenter was a grandmother who wrote that aside from the money she gets from child care, her only other source of income is from Social Security. The children's mother goes to school, works, and receives food stamps. The children are on WIC, Medicaid, and child care assistance. She stated they depend on the income being paid to her for their existence. Another commenter stated that if the relative's only source of income is from the child care subsidy and it stops, then that person would have to find another job, which would leave no one in the home available to care for the children.

Three additional commenters disagreed with the rule to not allow relative providers to reside in the same household as the child by stating that the rule would create an inconvenience to the parent and child. Two commenters were grandmothers caring for grandchildren whose parents work irregular hours. The commenters shared examples of the various schedules that the parents work and described the hardship it would create and the impact it would have on the child to wake her up in the late hours or take her out in inclement weather. Another grandmother stated that her grandchild does not respond well to other child care settings and that relative care in the relative and child's home is the best option for the family.

Response: The Commission understands the commenters' concerns and is aware of the personal impact this rule may have on them and others similarly situated. However, CCDF funds are limited and difficult choices must be made to ensure that as many eligible customers as possible receive child care. The primary purpose of CCDF funds is to serve as a support service that allows the parents who do not have child care to become and remain employed and to enhance their ability to participate in training or education activities leading to employment. It is not intended to supplement the income of those who reside in the same household and who are able and otherwise available to care for the child. Currently, there are thousands of children on waiting lists for child care. Each child is equally important and deserving. Many of these children do not have an adult at home to care for them while their parent is at work or school, and their families may be struggling as well. The intent of this rule is to provide funds for families who do not have a reliable, available adult in the household who can care for the child. However, as stated previously, the Commission has modified the rule language to allow children of teen parents to be cared for by relatives in the children's own home. The rule language is also modified to allow flexibility for situations in which other child care providers are not reasonably available to the parent.

Comment: One Board requested the Commission to clarify whether the rules allow Boards to deny a relative care arrangement when the relative provider is a sex offender, child abuser, or has been convicted of a serious crime. The commenter also asked if a Board can perform background checks on prospective relative providers and use CCDF funds to pay for these background checks.

Response: The Commission appreciates the comment. The Commission understands the Board's--and the general public's--concern that government-funded child care services be used to care for children in safe and stable settings, including in relative care settings. The Commission also is aware of the recent reports of parents having their children cared for by relatives who are registered sex offenders. Although parent choice is a firm principle of the Commission, child care funds should not be used to reimburse relatives who are registered sex offenders--even if that is the parent's choice. The Commission strongly believes that this would place the child in a potentially unsafe care situation. The Commission is entrusted by the citizens of Texas to be a responsible steward of public funds. The Commission believes that it is reasonable and right to require that Commission funds for child care not be used to subsidize child care provided by registered sex offenders. Therefore, the Commission has included in §809.91(f) of the adopted rules the requirement that an individual appearing on the Texas Department of Public Safety's (DPS) Sex Offender Registry (pursuant to Chapter 62 of the Texas Code of Criminal Procedure) is not eligible to be a relative child care provider. The DPS Sex Offender Registry is available to the general public. Therefore, child care contractors will be required to verify that the relative child care provider chosen by the parent is not listed in the registry prior to authorizing care.

The Commission also directs the Boards' child care contractors to implement this rule as soon as practicable, and for new relative child care providers, no later than the effective date of these adopted rules. Additionally, child care contractors shall ensure that relative providers currently caring for Commission-subsidized children do not appear on the DPS Sex Offender Registry. Care should be immediately terminated if a relative provider appears on the registry and the child should be immediately placed with a different child care provider.

The Commission also understands and shares the commenter's concern related to individuals convicted of serious crimes who may also be chosen by the parent as a relative child care provider and whether a Board can require a criminal background check prior to authorizing care. While the DPS Sex Offender Registry is a public database accessible to all Texans, access to criminal records is limited to certain entities designated by the Texas Legislature for specific purposes. For example, the Agency has been given legislative authority to perform background checks on potential employees, while DFPS has been given statutory authority to perform background checks on individuals operating and working at regulated child care operations (including listed

family homes). However, the Legislature has not granted the Agency or the Boards the authority to perform criminal background checks on relative child care providers.

Therefore, because the Agency and Boards currently lack the statutory authority to conduct criminal background checks on relative providers, the Commission has determined that it cannot modify its rules to require background checks for relative providers. However, the Commission will continue to review the legal and statutory issues surrounding criminal background checks for relative child care providers to identify options for the provision of those background checks for this population.

§809.92. Provider Responsibilities and Reporting Requirements.

Section 809.92 contains provisions related to provider responsibilities and reporting requirements.

Section 809.92(a) states that a Board shall ensure that providers are given written notice of and agree to their responsibilities and requirements as stated in this subchapter before enrolling a child.

Though references to provider agreements have been removed in rule, the Commission emphasizes that it is important to require providers to agree in writing to the requirements in this subchapter prior to enrolling children. The Commission does not suggest that the written instrument referenced in §809.92(a) be named anything in particular. Boards may refer to the instrument as a "provider agreement," a "contract," a "terms and condition of service," or other name as they see fit. However, as Boards develop the written instrument for the providers, the Commission emphasizes the requirements in §809.91(c) that Boards must not place requirements on a regulated provider that exceed state licensing requirements or have the effect of monitoring the provider for compliance with state licensing requirements.

Section 809.92(b) consolidates the responsibilities and reporting requirements for providers into one section. The provisions in the subsection are retained from other sections of the repealed rules. The Commission's intent is to simplify provider responsibilities and reporting requirements and also to clarify that these requirements apply to each provider type.

Section 809.92(b)(1) states that providers are responsible for collecting the parent share of cost as assessed under §809.19 prior to the delivery of child care services. This provision is unchanged from the requirement in the repealed rules. Section 809.92(b)(2) requires providers to collect other child care funds received by the parents described in §809.21(2). This provision is also retained from the repealed rules. Section 809.92(b)(3) requires providers to report to the Board or the Board's contractor instances in which the parent fails to pay the assessed parent share of cost. This provision is added to the final rules based on public comment. Although not specifically stated in the repealed rules, providers had assumed the responsibility for reporting unpaid parent share of cost fees to the Boards. The adopted rules now incorporate this responsibility on the part of the provider. Finally, §809.92(b)(4) provides the minimum attendance reporting and tracking procedures required of providers. These provisions are also retained from the repealed rules.

Under §809.92(c), providers are prohibited from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate, as determined in §809.21, to parents who are exempt from the parent share of cost assessment under §809.19(a)(2). Specifically, a provider shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate to parents who are participating in Choices and FSE&T, as well as parents who have children that are receiving protective services.

There is nothing in federal law, federal regulation, state law, or in repealed Chapter 809 that prohibits providers from charging parents the difference between the Board's reimbursement rate and the provider's published rate (if the published rate is higher than the Board's reimbursement rate). Under the repealed rules, Boards could have a policy that prohibited providers from charging parents the difference between what the general public pays and the subsidy paid by the Board to the provider. In fact, 25 of the 28 Boards currently prohibit this practice for providers who have an agreement with the Board.

The practice of providers charging parents the difference allows those child care providers whose published rates are higher than the Board's reimbursement rate to recover the cost of services provided to subsidized children. On the other hand, it also allows child care providers--including providers caring for children of parents participating in Choices or FSE&T, who are exempt from the parent share of cost--to charge parents for the unsubsidized portion of the parents' child care costs. This increases the cost of child care for low-income working families and may jeopardize the ability of working families to access affordable child care. Furthermore, the practice also limits the choice of providers that a parent may be able to afford. Additionally, there is a possibility that a Choices individual who cannot find a provider that will not charge the parent for any unsubsidized portion of the provider's rate may be eligible for a "good cause" exemption from the work requirements.

During the rule development process, the Commission considered prohibiting providers from charging *all* families the difference between the Board's reimbursement rate and the provider's published rate. However, the Commission determined that this prohibition for all families may discourage providers from accepting subsidized children, thus potentially limiting the number of providers from which a parent may choose. Therefore, to ensure that families who are exempt from a parent share of cost assessment (parents participating in Choices or FSE&T and parents with children receiving protective services) have access to affordable child care, the rule prohibits providers that accept children in Commission-funded child care from charging these families an additional amount to make up the difference between their rates for the general public and the subsidy they receive from the Board for families who do not pay a share of the child care cost.

Additionally, §809.92(d) allows Boards to adopt a more strict policy if they so choose. Boards may adopt a policy prohibiting providers from charging all parents receiving subsidized child care services the difference between the subsidy and the provider's published rate. Even though several Boards already have a policy on what can be charged for the balance of the child care cost, Boards will need to reconsider and adopt or readopt their policies with these changes.

The Commission will monitor and evaluate the impact of this provision to determine if it causes an undue burden to be placed on child care providers or limits the choice of providers for parents.

Comment: Six commenters stated that the proposed language should include a requirement that providers must inform the Board or the contractor if a parent does not pay the provider his or her share of cost.

Response: The Commission agrees with the commenters and has added the requirement in §809.92(b)(3).

Comment: Two commenters agreed with the rules to prohibit providers from charging the difference between the Board reimbursement rate and the provider's published rate for parents who are exempt from the parent share of cost.

Response: The Commission appreciates the comments.

Comment: One commenter requested that this group be expanded to include individuals whose assessed parent fee is zero because the parent does not have any countable income (as allowed under §809.19(f)). This would extend the prohibition to many teen parents and other students who have no countable income.

Response: The Commission agrees and modifies §809.92(c) to include parents whose assessed parent share of cost is calculated to be zero. The Commission agrees that if the parent does not have any countable income, then the provider should not charge the parent the difference between the reimbursement rate and the provider's published rate, as this would create an undue financial burden on the parent, particularly on teen parents.

Comment: The Commission received four comments from Boards that currently allow regulated providers to charge low-income parents the difference in their published rates and the Boards' maximum reimbursement rates. While two Boards supported this rule, the Boards were cognizant of the fact that it has created a hardship for some parents receiving child care services. However, the two Boards stated that had the Boards not adopted this policy, many regulated providers in their workforce areas stated that they would no longer be able to accept subsidized children because of the low reimbursement rates.

Two other Boards also stated that providers in their workforce areas may decide that it will not be financially possible to continue to accept subsidized children if they cannot collect from the parents any unsubsidized portion of their published rates. One of the Boards stated that most providers in the workforce area are aware when they accept a subsidized child instead of a private-pay child, they will lose approximately $1,000 per year or more. The Board also stated that regardless of whether the Board chooses to forbid or allow providers to charge the difference for all parents, there is the potential to negatively impact either parents or providers.

Response: The Commission appreciates the comments. The comments summarize the issues faced by the Commission during the rule development process. The Commission is aware of the possibility that providers may choose to not accept subsidized children unless the provider can charge the parent the difference between the reimbursement rate and the provider's published rate. The Commission, however, is concerned that charging parents the difference creates a hardship for low-income families receiving child care subsidies. This is especially true of families at very low incomes, such as those participating in Choices and FSE&T Families participating in these programs, as well as parents with children receiving protective services, have the most fragile economic situations. For that reason, the Commission has always exempted these families from being assessed a parent share of cost. With this rule change, the Commission also prohibits these families from having to pay the provider the difference between the reimbursement rate and the provider's published rate, as this creates an additional hardship on these families.

The Commission also understands the financial pressures of child care providers and the concern expressed by providers that this prohibition may create additional financial burdens on providers. However, the Commission points out that this prohibition does not apply to all families receiving the subsidy. Unless a Board adopts a more strict policy, a provider may charge non-Choices, non-FSE&T, and non-CPS families and families with no countable income, the difference between the reimbursement rate and the provider's published rate. The Commission points out that in Fiscal Year 2006 (FY'06) approximately 88% of children receiving subsidized child care services--104,400 average children per day in FY'06--were not exempt from the parent share of cost, and, therefore, providers may charge these families the difference between the reimbursement rate and the providers' published rates. Providers would be prohibited from charging the parents the difference between the reimbursement rate and the providers' published rate for only 12% of the subsidized children population--approximately 14,000 average children per day in FY'06.

Comment: One commenter requested that the rules prohibiting providers from charging parents the difference between the Board reimbursement rate and the provider's published rate be extended to include all categories of care, not just parents exempt from the parent share of cost.

Response: The Commission appreciates the comment. However, the Commission disagrees that the prohibition should extend to all parents receiving subsidized child care. As stated previously, the Commission has determined that extending this prohibition to all families may cause financial hardships for providers accepting subsidized children. However, §809.92(d) allows Boards to adopt a more strict policy if they so choose.

Comment: One commenter asked how the child care contractor would inform a provider about an individual parent's status as a Choices or FSE&T participant and whether a provider may charge the difference between the provider's published rates and the rate allowed by the Board.

Response: How this information is provided to the child care provider is determined by the Board or child care contractor. The Commission suggests providing the information to the child care provider through the same mechanism that the contractor currently uses to inform the provider that the parent is exempt from having a parent share of cost.

Comment: One Board commented that it is very difficult for parents to understand what they must pay the provider. Parents and providers must add amounts together to determine the total cost of their child care. Parents and providers get confused in figuring and determining what was paid as the parent share of cost and what was paid as the provider's difference.

Response: The Commission understands that it may be confusing for parents to have to pay the provider the assessed parent share of cost as well as the difference between the provider's rate and the reimbursement rate. The Commission hopes to minimize this confusion for parents who are exempt from the parent share of cost by prohibiting providers from charging those parents the difference between the reimbursement rate and the provider's rate. Additionally, for parents who are not exempt from the parent share of cost and may have to pay the provider the difference, the Board is allowed to prohibit providers from charging nonexempt parents the difference as well.

If the Board decides to allow providers to charge nonexempt parents the difference, the Board should minimize any confusion by

providing both the parent and the provider a clear statement of the amount of the parent share of cost.

Comment: One Board stated that the only way the Board would find out whether a provider is charging a parent the difference is if a parent reports it.

Response: The Commission agrees that parents informing the child care contractor is the most efficient method for finding out whether the provider is charging exempt parents the difference. For this reason, the Commission emphasizes that parents have the right to be informed of the prohibition as stipulated in §809.71(4).

Comment: The two Boards that currently allow providers to charge the difference also stated that many parents have been forced to move their children from their familiar child care setting to a center that is not charging the rate difference. The commenters stated that this effectively denies parents access to the center of their choice, in accordance with the federal regulations. The commenters also stated that if the providers choose not to accept subsidized children due to this rule change, then that also would effectively deny parents access to a child care provider of their choice.

Response: The Commission does not agree that this rule would effectively deny parent choice as defined by the CCDF regulations. Parental choice, as defined in 45 C.F.R. §98.30(e), states that parents must have a choice of a range of provider types that includes:

--center-based child care;

--group home child care;

--family home child care; and

--in-home child care (with limitations imposed by the Lead Agency).

Additionally, 45 C.F.R. §98.30(f) states that Lead Agencies may not promulgate rules that expressly or effectively exclude any of the above types of care or exclude a significant number of providers in any type of care.

Parent choice, as stipulated in the CCDF regulations, does not imply that parents must be allowed to enroll their children with specific child care providers. Parent choice is available if the parent has the full range of provider types listed above available to them. The rule prohibiting a provider from charging parents the difference between the reimbursement rate and the provider's published rate will not effectively exclude any type of care from being available to the parent. The rule is not aimed at any provider type and is applied equally to each provider type.

However, as mentioned previously, the Commission will monitor and evaluate the impact of this rule to determine if it causes an undue burden to be placed on child care providers or limits the choice of providers for parents.

Comment: One Board commented that it is a possibility that the TRS providers will begin to charge parents the difference once they are allowed.

Response: Section 809.92(d) allows Boards to develop a policy that prohibits providers from charging the difference to parents who are not exempt from the parent share of cost. The Commission intends that this provision allows Boards to have a policy that prohibits providers that receive graduated reimbursement rates under §809.20(b) (i.e., TRS and providers participating in school readiness models) from charging any parent the difference between the reimbursement rate and the parent share of cost.

The Commission also notes that the TRS guidelines still require TRS providers to have an agreement with the Board. The adopted rules, while removing the distinction between providers with agreements and those without agreements, do not remove this requirement from the TRS guidelines. Because TRS providers are required to meet certain standards that are above licensing standards, these providers must have an agreement with the contractor stipulating these requirements. Additionally, if a Board adopts a policy prohibiting TRS providers from charging any parent the difference, that stipulation may be included in the TRS provider agreement.

Comment: One Board stated that some Choices parents would pay the difference to be able to use a particular facility.

Response: The Commission recognizes that some Choices parents may wish to pay the provider the difference in order to have that particular provider care for their child. However, the Commission is concerned about the financial burden that this decision places on the parent. In FY'05, the average TANF cash benefit was approximately $220 a month for a single parent with two children. For families at very low incomes, any additional cash expenditure for child care would place even greater financial stress on the family. For this reason, the Commission always has--and will continue--to prohibit these families from being assessed a parent share of cost. The Commission believes that any additional costs placed on these families would possibly negate the benefit associated with not being assessed a parent share of cost.

Comment: One child care provider stated that, as of the time of the comment, the provider was not caring for any children whose parents are exempt from the parent share of cost. Therefore, the prohibition against charging parents the difference for these parents only would have a minimal, if any, effect on our program at this time. However, if the Board decides to develop a policy prohibiting providers from charging the difference between our rate and the Board's reimbursement rate for all families, then it could result in the center being unable to accept subsidized children. With a significant waiting list of private-pay parents, the provider is unsure if the center would be able to continue participating in the subsidized system.

Response: The Commission understands the concern. However, applying the prohibition against charging parents the difference between the Board's reimbursement rate and the provider's published rate to nonexempt parents is a Board decision. The Commission recommends contacting the Board with this concern.

Comment: The Commission received twelve comments from child care providers disagreeing with the prohibition against charging parents the difference between the Board's reimbursement rate and the provider's published rate. The commenters stated that they may decide to not accept subsidized children if this rule goes into effect.

Some of the providers stated that the parent has the choice and is informed of the additional cost when services are requested and before a placement is made. One provider has always charged the difference and had no problem in doing so with the parents. The provider stated that the parents completely understand the financial reasoning and know that the provider can give that spot away to a private-pay parent on the provider's waiting list, if this was a problem for them. One commenter, an

assistant director of a day care, is currently on subsidized child care. The commenter pays the difference and does not have a problem with doing so. The commenter stated that paying the difference is better than paying the full price.

Some of the providers previously had agreements with the Board that prohibited them from charging parents the difference and the providers stated that this prohibition would cost them from $2,100 to $3,000 per year in revenue.

One provider stated that because she is the only day care in the area, it would be unfortunate to stop accepting subsidized parents in the community, but the commenter indicated that the state would leave the provider no choice. The provider stated that the parents now are paying, on average, a difference of $15-$20 per month per child. Although this is not a lot for the parent, it equates to $2,100 per year, which is a major loss for a child care center.

Response: It is not apparent from the comments that the child care providers understand that the prohibition in §809.92(c) against a provider charging parents the difference between the provider's published rate and the Board's reimbursement rate applies only to parents who are exempt from the parent share of cost. The Commission again emphasizes that, unless a Board adopts a more strict policy, a provider may charge non-Choices, non-FSE&T, and non-CPS families, and families with no countable income, the difference. The Commission reiterates that in FY'06 approximately 88% of children receiving subsidized child care services were not exempt from the parent share of cost and, therefore, providers may charge these families the difference between the reimbursement rate and the provider's published rate.

Further, the Commission assumes that the assistant director of the day care center who is also currently receiving subsidized child care is not participating in Choices or FSE&T If that assumption is correct, then--as previously explained--this rule does not affect the commenter's situation.

The Commission understands the financial pressure that a child care business, or any business, faces. However, the Commission reiterates its concern about the financial pressure that families receiving TANF and Food Stamp benefits face. By participating in Choices and FSE&T, these parents are attempting to move off of public assistance and work toward self-sufficiency. As noted, with an average TANF cash benefit of approximately $220 per month, any additional cash expenditure for child care places an even greater financial stress on the family. In order to assist the family in working toward self-sufficiency, the Commission prohibits these families from being assessed a parent share of cost and the Commission believes that providers charging these parents a fee will negate the benefit of not being assessed a parent share of cost.

A provider may believe that $20 per month per child may not be a lot of money for the parent. However, for a single parent with two children who is participating in Choices and whose largest source of income may be the $220 TANF payment, the $40 dollars a month the provider charges represents 18% of the family income--higher than any Board's parent share of cost policy.

The Commission agrees that it would be unfortunate if a provider decides to stop accepting subsidized children because the provider cannot charge parents participating in Choices, FSE&T, or the parents of children in protective services the difference between the Board's reimbursement rate and the provider's published rate. However, the Commission believes that a significant number of providers will remain and will be available to provide needed child care services to parents on public assistance.

Comment: Two Boards expressed concerns that the current rates have a negative impact on economic development in the child care industry, which is the 11th largest industry in the state. Another Board stated that the financial needs of the providers cannot be overlooked and expect the industry to continue to be a viable system for providing support services for workforce parents in the years to come.

Response: The Commission understands the financial needs of providers. However, the Commission is also concerned about the financial needs of families at very low incomes. The Commission reiterates two points: 1) the rule applies to only 12% of the children receiving subsidized care; and 2) the parents who are prohibited from being charged the difference live at very low incomes. The Commission fails to see how the inability to charge this relatively small percentage of families, who live at such low incomes, would have a significant negative impact on the child care industry. Again, it would be unfortunate if a provider decides not to accept these children; however, the Commission believes that a significant number of providers will remain and will be available to provide needed child care services to parents on public assistance.

Comment: Five Boards commented that providers would not charge parents the difference if the Commission would allow Boards to set maximum rates at the market rate. One of the commenters stated that if the Board could set the maximum rate at the 75th percentile based on the market rate survey, then providers would not charge parents the difference in the reimbursement rate and the provider's published rate. This Board also requested that the Commission change the method of calculating each year's performance measure by calculating the number of children that can be served by dividing by the new average rate for the coming year instead of the previous year's rate. This method would allow Boards to raise their maximum reimbursement rates each year to the 75th percentile.

Response: The Commission disagrees that providers would not charge the difference if Boards had higher reimbursement rates. It may be true that fewer providers would charge the difference, but some may continue the practice. As a matter of public policy, the Commission believes that parents participating in Choices or FSE&T or parents with children in protective services should not be assessed a parent share of cost and should not be charged the difference between the Board's reimbursement rate and the provider's published rate. This would place an undue financial burden on families who are attempting to move off of public assistance.

The Commission disagrees that rates should be set at the 75th percentile. As pointed out in the discussion related to "equal access" in §809.20, the 75th percentile is a "suggested benchmark" that the federal CCDF preamble suggested that the states consider when determining equal access; it is not a requirement.

The Commission understands the pressures on Boards to increase rates. The Commission is also concerned with the relatively low maximum reimbursement rates and is studying the issue, including the possibility of incremental rate increases. However, the Commission is also concerned that legislative performance targets relating to the average cost per child per day, as well as the targets relating to the average number of children served per day continue to be met.

Finally, the Commission also points out that the current methodology of establishing performance targets was developed with significant Board input. However, the Commission is open to working with the Boards in further refining the methodology.

Comment: Four commenters located along the Arkansas and Oklahoma border expressed concerns that the reimbursement rates in these two states are higher than the Board's reimbursement rate. Some of the Texas providers, especially in Texarkana, also serve Arkansas children and the discrepancy in rates is particularly glaring for those providers. Additionally, one of the providers stated that Arkansas allows providers to charge parents the difference.

Response: The Commission understands the concerns expressed. However, the Commission points out that this phenomenon also may be seen in Texas between contiguous workforce areas. For example, urban workforce areas may have higher reimbursement rates than the bordering rural workforce areas. Boards establish maximum rates based on market conditions, income eligibility limits, allocations, and performance targets. Adjoining workforce areas may share child care providers, but have different reimbursement rates based on these factors. The same is true of Oklahoma and Arkansas. These states establish their own rate policies based on their own income eligibility limits, federal child care allotment, and other factors the states believe are important to meet the needs of their citizens.

§809.93. Provider Reimbursement.

Section 809.93 sets forth the requirements for reimbursing providers. The provisions in this section are retained largely from various sections of the repealed rules.

Section §809.93(a) states that a Board must ensure that reimbursement for child care is paid to the provider only, and must occur after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered. Provisions related to the Declaration of Services Statement are contained in the repealed rules in the provisions related to SACC providers. Under new Chapter 809, this provision applies to all providers.

Section 809.93(b) provides that the Declaration of Services Statement must contain:

--name, age, and identifying information of the child;

--amount of care;

--amount of care provided in terms of units of care;

--rate of payment;

--dates services were provided;

--name and identifying information of the provider, including the location where care is provided;

--verification by the provider that the information submitted is correct; and

--additional information as required by the Boards.

Section 809.93(c) provides that an unregulated relative child care provider must not be reimbursed for more children than permitted by the minimum regulatory standards of DFPS for registered child care homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board. This provision is retained from the repealed rules.

Section 809.93(d) states that a Board must not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed. This provision is retained largely from the repealed rules relating to noncompliance with other federal or state programs. The repealed rules do not specify that this provision applies to SACC providers. The Commission retains this provision in the requirements for child care providers and clarifies that it applies to all eligible providers, including those formerly referred to as SACC providers.

Section 809.93(e) retains the provisions from the repealed rules that unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursements for child care are based on the unit of service delivered, as follows:

--a full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

--a part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

Section 809.93(f) provides that a Board or its child care contractor must ensure that providers are not paid for holding spaces open except as consistent with attendance policies established by the Boards. This provision is retained from the repealed rules.

Section 809.93(g) states that a Board or the Board's child care contractor must not pay providers:

--less, when a child enrolled full time occasionally attends for a part day; or

--more, when a child enrolled part-time occasionally attends for a full day.

This provision and purpose is retained from the repealed rules.

Lastly, §809.93(h) stipulates that providers shall not be reimbursed retroactively for new maximum reimbursement rates established by the Board or new provider published rates. This provision is retained from the repealed rules, however, the language is modified to clarify that the "new rates" refer to either new maximum reimbursement rates established by the Board or new published rates of providers.

Comment: One commenter stated that a Declaration of Services Statement is already required for billing purposes before a provider can be reimbursed for child care services and this is a duplication of current requirements.

Response: The Commission disagrees that this is a duplication of current requirements. In fact, this requirement for a Declaration of Services Statement is establishing the existing practice in the rule language.

Repealed Provisions Related to the Requirements to Provide Child Care Not Retained in the New Rules

Along with the removal of references to provider agreements and SACC providers, also removed are the provisions related to noncompliance with other state or federal programs, with the exception of the provision related to debarment from other state or federal programs in §809.93(d).

The provisions related to noncompliance in the repealed rules have been interpreted by some Boards to mean that they may bar a provider whose license has not been revoked by DFPS--but has been found to be in noncompliance with a particular licensing requirement--from accepting subsidized children. This is not the intent of the Commission. As long as the provider is a

duly licensed and regulated facility that meets the definition of a regulated provider in §809.2, the provider is eligible to care for subsidized children.

The Commission believes that parent access to the compliance history of providers, as required in §809.15, allows parents to become aware of any noncompliance issues. The decision to enroll the child with a licensed or regulated provider who has been found to be in noncompliance with certain DFPS standards should be made by the parent and the parent should be encouraged to review the compliance history of the provider.

Comment: One commenter stated that the Board no longer does a DFPS report and requested additional clarification regarding this rule change.

Response: The Commission assumes the DFPS report mentioned is the DFPS Monitoring Report. This report is provided by DFPS and is posted on the Commission's Intranet site every month. The report lists the child care facilities that have had a change of licensing status during the previous month. Boards and Board child care contractors have access to this report in order to determine if a child care facility is currently licensed and eligible to be a provider.

Comment: Six Boards disagreed with removing the provisions related to noncompliance with federal or state programs. Four of the commenters agreed that the wording in the old rule "subject of corrective or adverse action" resulted in different interpretations by each Board and, therefore, a lack of consistency across the state. However, the commenters stated that a corrective remedy could be established with DFPS. Boards would follow the instructions from DFPS when a serious condition that involves children's safety is identified and would warrant action to be taken. Leaving children in care in a facility that is on probation for serious neglect issues about which the Board is aware puts unacceptable risk and liability on all parties if another incident should happen and action was not taken. Another commenter stated that a provider can have several noncompliance issues with DFPS or even be placed on corrective action and the parent not be aware of it. Two of the commenters stated that if a child care provider has violations in the areas of health and safety of children, the Board should maintain the right and has a responsibility to no longer do business with this provider whether or not this provider is regulated by DFPS.

Four of the commenters suggested adding language to §809.91(c) that would require each Board to develop a memorandum of understanding with the local DFPS-Child Care Licensing Division to receive regular and routine communication about any regulated provider on a corrective remedy. The commenters suggested that rule language allow Boards to stop new enrollments to the facility or remove the children based on the severity of the adverse or corrective remedy or as directed by DFPS.

Finally, the four commenters suggested adding language to §809.15 relating to consumer education, that would require all parents be informed when a regulated provider is placed on a corrective or adverse remedy by DFPS, the reason for the remedy, and be allowed to make a decision as to their child's continued placement in the regulated operation.

Response: The Commission understands the concerns, however, disagrees with the suggested changes to the rule language. Texas Human Resources Code, Chapter 42, Subchapter D, Remedies (§§42.0705 - 42.078) authorizes DFPS to take a wide range of remedies for violations of any child care licensing or regulatory requirement. The Commission believes that it is not a Board's role to augment the enforcement of remedies for violations to licensing standards. These remedies are under the purview of DFPS and DFPS has developed policies and procedures that are carefully designed to protect the health and safety of children as well as protect the due process of child care providers.

The Commission is concerned about the suggested language that a Board may remove children from a licensed child care facility if a provider is on a "corrective remedy." The Commission points out that according to Texas Human Resources Code §42.071, DFPS rules (40 TAC §745.8511), and the DFPS Child Care Licensing Handbook (Section 7100, Overview of Actions and Remedies), corrective action remedies involve placing a facility either on probation or on evaluation and are specifically for violations of licensing standards that "do not endanger the health and safety of children if the conditions imposed are followed."

Therefore, the Commission disagrees that the Board should have the option of removing children or stopping the enrollment of children with a provider that has been placed on corrective action, since the violation does not endanger the health and safety of the children. The Commission is concerned that this action would deprive the child care facility of due process.

DFPS has developed rules and guidelines related to "adverse actions" that are designed to protect all children and inform all parents--not just parents of subsidized children--if the health and safety of children are at risk due to serious violations of licensing standards. DFPS rules (40 TAC §745.8651) and the DFPS Child Care Licensing Handbook (Section 7600, Adverse Actions) clearly define adverse action as "action is taken when deficiencies pose a risk that endangers the health and safety of children, or there are indications of a continued failure to comply with the rules or law."

Depending on the severity of the violation, an adverse action could result in the suspension or revocation of the child care license. The DFPS Child Care Licensing Handbook states that DFPS must notify the parents as well as the Board's child care contractor when a provider's license is suspended or revoked. Additionally, the DFPS Child Care Licensing Handbook requires that licensing staff should consult with a licensing attorney prior to notifying the permit holder of an adverse action. Clearly, DFPS has rules and procedures in place to protect children, inform parents, and protect the rights of child care providers.

DFPS not only has the statutory authority to take actions to protect the health and safety of children, but also has the expertise to decide when a particular violation places children at risk.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission adopts new Subchapter F, Fraud Fact-Finding and Improper Payments, as follows:

Subchapter F contains the general fraud fact-finding provisions required for a Board to prevent fraud and to attempt to recover improper payments. The phrase "fact-finding" rather than "investigations" is used to emphasize that it is not the Commission's intent that Boards have investigative authority. The Boards' role is to research facts related to possible fraud and, if necessary, report the facts to the Commission for further investigation by the Commission. The provisions in this subchapter are retained largely from the repealed rules related to fraud investigations and corrective and adverse actions.

Additionally, Subchapter F contains the provisions related to corrective actions for parents or providers who fail to comply with Commission rules or Board policy. In general, the provisions for corrective actions are retained from the repealed rules. However, the Commission removes the language that applies these provisions to child care contractors as these provisions are included in Subchapter I, Subrecipient and Contract Service Provider Monitoring Activities. Additionally, corrective actions a Board may take against a child care contractor are included in the Agency-Board Agreement as well as the Agency's Financial Manual for Grants and Contracts.

Comment: Five commenters recommended that relative providers be specifically referenced in this rule.

Response: The Commission disagrees that the term "relative providers" needs to be specifically cited. The Commission emphasizes that the rules apply to all providers, including relatives. The Commission disagrees that language should be added to specify that relative providers are included in fraud fact-finding and improper payments. The definition of a provider in §809.2(16) includes regulated and relative providers.

§809.111. General Fraud Fact-Finding Procedures.

Section 809.111 contains the general fraud fact-finding procedures required for a Board to prevent fraud.

Section 809.111(a) establishes authority for the Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

Section 809.111(b) requires a Board to ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area. This provision and purpose is retained from the repealed rules with the change of removing the term "investigating" and replacing it with the term "researching and fact-finding." Additionally, the reference in the repealed rules related to the referral for prosecution is removed. As mentioned previously, the Boards' role is to research facts, not to investigate and refer for prosecution.

Section 809.111(c) requires Board procedures to include provisions that suspected fraud is reported in writing to the Commission in accordance with Commission policies and procedures. This provision is retained from the repealed rules but removes the requirement--based on public comment--that each case of suspected fraud be reported to the Commission. The adopted rules require that suspected fraud be reported to the Commission in accordance with Commission policies and procedures.

Section 809.111(d) states that upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to:

--further fact-finding; or

--other corrective action as provided in this chapter or as appropriate.

This provision is largely retained from the repealed rules. However, the repealed rules allow Boards to refer the case for prosecution under the Texas Penal Code or other state or federal laws. The adopted rule removes this provision. As stated previously, the role of the Board is to research and conduct fact-finding involving suspected fraud. It is not the role of the Boards to refer suspected fraud cases for prosecution. The Boards' role is to research potential fraud and report the results of the research to the Commission; the Commission's role is to determine if the case should be referred to the proper authorities for prosecution.

Section 809.111(e) requires a Board to ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted. This provision and purpose is retained from the repealed rules with the minor change of removing the term "investigation" and replacing it with the term "fact-finding."

Comment: Five commenters stated there was apparent conflict between the rule, which states the Commission determines fraud and refers cases for prosecution, and the recently issued WD Letter 59-06, which suggests that these are Board responsibilities rather than Commission responsibilities. One commenter noted the WD Letter requires that only those cases in excess of $500 be reported rather than "each case of suspected fraud" as the rule states.

Response: The Commission agrees that there is a conflict between the rules and WD Letter 59-06 related to reporting suspected fraud. The Commission modifies the rule language to remove the requirement that each case be reported to the Commission. The Commission includes language stating that suspected fraud cases should be reported in accordance with Commission policies and procedures, which include the procedures provided in WD Letter 59-06 or subsequent WD letters.

Comment: Eight commenters supported the rules and clarification that it is the Commission's responsibility, not the Boards' responsibility, to determine if a person has committed fraud, and it is the Boards' role to research facts, not to investigate or refer for prosecution.

Response: The Commission appreciates the support of the rules.

Comment: Three commenters asked for clarification of the term "further fact-finding" and whether it may result in Boards incurring costs for an attorney or investigator.

Response: The term "further fact-finding" relates to additional research needed to refer the case to the Commission for further investigation. This may require calls to individuals to verify addresses, calls to employers to further verify work hours, or research on other information. The need to hire an attorney or a licensed investigator to do this is not required or encouraged, as this would add to the Board's administrative costs. A staff member should be able to perform the necessary fact-finding to help establish whether the circumstances and facts of a case warrant being labeled "suspected fraud." The Agency's Office of Investigations offers training on fact-finding methods and Boards are encouraged to attend these training sessions.

Comment: One commenter stated that her Board has no funds to hire an investigator nor did they intend to put their caseworkers in danger by asking them to go to "bad areas of town" or by "doing door-to-door investigations." The commenter also believed it was more logical to wait until after an investigation is completed before reporting a case of suspected fraud to the Commission rather than to submit a report to the Commission, await a response or approval to investigate, and then investigate it, which may not get done within the required five days.

Response: The Commission disagrees that an investigation should be completed before a case of suspected fraud is re-

ported to the Commission, as this implies that the Board will be conducting the investigation. The rules clearly state that Boards are not to conduct fraud investigations. Furthermore, the five-day requirement is in the Agency-Board Agreement and concerns the length of time a Board or contractor has to report suspected fraud or program abuse to the Commission. As pointed out in the comment, investigations may sometimes take longer than five days so it is not prudent for the Board to delay notifying the Commission of a case of suspected fraud. The Commission is charged with the oversight of CCDF funds and requests to be informed as soon as possible of situations in which there is suspected fraud, even if the outcome of the investigation may reveal mitigating circumstances that obviate further action. Again, the Office of Investigations offers training on fact-finding methods, which includes a discussion on safety.

Comment: Four commenters asked that WD Letter 59-06 be rescinded in its entirety, including the "Customer Awareness Form" that was attached and to allow Boards to develop their own documents.

Response: The Commission disagrees that the WD Letter needs to be rescinded. However, as discussed in Board conference calls, staff will be modifying the form based on input from the Boards. Boards are given the flexibility to modify the "Customer Awareness Form" as long as it contains: 1) a place for the staff member to print his or her name and to date the form; 2) a paragraph that covers basic eligibility related to work, training, education, income, and family size; and 3) a statement of possible criminal prosecution. These elements help ensure that the Commission is in the strongest possible legal position for prosecution of a fraud case. Therefore, before using alternate forms, Boards must have them reviewed and approved by the Commission's Regulatory Enforcement Division.

§809.112. Suspected Fraud.

Section 809.112 states that a parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

--a request for reimbursement in excess of the amount charged by the provider for the child care; or

--a claim for child care services if evidence indicates that the person may have:

--known, or should have known, that child care services were not provided as claimed;

--known, or should have known, that information provided is false or fraudulent;

--received child care services during a period in which the parent or child was not eligible for child care services;

--known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

--otherwise indicated that the person knew, or should have known, that the actions were in violation of this chapter, or state or federal statute or regulations, relating to child care services.

These provisions are retained from the repealed rules with minor clarifications.

Comment: One commenter asked whether it could be considered fraud for parents who, after having their child care services terminated for failure to pay the parent fees, come back in the system through the Choices program but now with an exemption from paying this fee.

Response: Parents should not be suspected of having committed fraud because they did not pay parent fees as required and then became eligible for Choices.

§809.113. Action to Prevent or Correct Suspected Fraud.

Section 809.113 provides the Commission, Boards, or Boards' child care contractors the ability to take certain actions if the Commission finds that a person has committed fraud. The actions include:

--temporary withholding of payments to the provider for child care services delivered;

--nonpayment of child care services delivered;

--recoupment of funds from the parent or provider; or

--any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

This provision is largely retained from the repealed rules. However, the Commission clarifies that it is the Commission's responsibility, not the Board's, to determine if a person has committed fraud.

Comment: Seven commenters requested clarification regarding the circumstances under which services with a provider may be terminated, and asked if a client or provider who has committed fraud is entitled to services in the future. The commenters stated that the rules currently do not allow Boards to terminate services with a provider for any reason other than when they are debarred or have lost their license or registration. One of the five commenters stated that Boards should have greater flexibility to determine when to terminate a relationship with a provider. They also sought clarification on whether they would have to continue doing business with a provider who committed fraud but remained licensed. They asked if parents or providers who have committed fraud must repay the amount owed in full before receiving services and, if so, whether this would apply to those who were served under Choices and needed child care. One commenter believed that providers and parents should not be allowed to participate in child care services until any outstanding fees are repaid to the Board.

Response: The Commission appreciates the comments and modifies the rule language in §809.113 to further clarify the actions that may be taken if the Commission finds that a parent or provider has committed fraud. The Commission intends that the actions to correct fraud could include stopping enrollments with the provider as well as prohibiting future child care eligibility for the parent.

The Commission emphasizes, however, that parents who have been found to have committed child care fraud in the past, but who are currently participating in Choices or FSE&T, should not be prohibited from receiving child care. The Commission believes that the provision of child care for these parents is critical to supporting their ability to move off of public assistance. For these parents, the Commission includes in §809.113(b)(3) that the Board or child care contractor may limit the enrollment of the parent's child to a regulated child care provider if the parent has been found to have committed fraud. Limiting the choice to a regulated provider for a parent who has committed child care fraud in the past may minimize the risk of fraud.

§809.114. Failure to Comply with Commission Rules and Board Policies.

Section 809.114 establishes compliance with Commission rules and Board policies. The provisions in this section are retained from the repealed rules. However, as stated earlier, the Commission removes the language that applies these provisions to child care contractors as these provisions are included in Subchapter I, Subrecipient and Contract Service Provider Monitoring Activities. Additionally, corrective actions a Board may take against a child care contractor are included in the Agency-Board Agreement as well as the Agency's Financial Manual for Grants and Contracts.

Section 809.114(a) requires the Board to ensure that parents and providers comply with Commission rules. This provision is retained from the repealed rules; however, the reference to contracts has been removed as previously explained.

Section 809.114(b) provides that the Commission, Board, or Board's child care contractor may consider failure by a provider or parent to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 (relating to Corrective Adverse Action). This provision and purpose is retained from the repealed rules with no substantive changes.

Section 809.114(c) provides that failure by a provider or parent to comply with this chapter will also be considered a breach of contract, which also may result in corrective action. This provision and purpose is retained from the repealed rules without changes.

Comment: Four commenters stated that they consider a provider or parent to be in noncompliance rather than having "breached a contract" as the proposed rule indicates, because there are no contracts per se as many Boards no longer have Provider Agreements that clearly define these rules and policies.

Response: The Commission disagrees that the actions or failure to act by a parent or provider cannot be considered a "breach of contract," if warranted. Notwithstanding the fact that these same actions also can be categorized as "noncompliance," the legal implications are such that parents are made aware of the conditions and requirements for subsidized child care. By signing the documents and then placing their child into care, the parents attest to their understanding and consent to the terms. Thus, while none of the documents may contain the word "contract" in the title, the parents have nonetheless entered into a valid, binding contract. Once the parents fail to abide by the conditions (e.g., fail to pay the parent share of cost), they have breached the contract.

§809.115. Corrective Adverse Actions.

Section 809.115 identifies the corrective actions available if compliance with Commission rules and Board policies are not followed.

Section 809.115(a) provides that when determining appropriate corrective actions, the Board or child care contractor shall consider the following:

--The scope of the violation;

--The severity of the violations; and

--The compliance history of the person or entity.

This provision is retained from the repealed rules with minor editorial changes for clarity.

Section 809.115(b) identifies some allowable corrective actions a Board or child care contractor may take, including:

--closing intake;

--moving children to another provider selected by the parent;

--withholding provider payments or reimbursement of costs incurred;

--termination of child care services; and

--recoupment of funds.

This provision is retained from the repealed rules.

Section 809.115(c) states that when a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement (SIA) may be negotiated between the provider and the Board or the Board's child care contractor. The SIA must contain, at a minimum, the following specific items:

--The basis for the SIA;

--The steps required to reach compliance including, if applicable, technical assistance;

--The time limits for implementing the improvements; and

--The consequences of noncompliance with the SIA.

This provision is retained from the repealed rules without change.

The Commission does not include the requirement from the repealed rules that failure to comply with the terms in the SIA could result in one or more sanctions listed in Chapter 800, Subchapter E. The rules apply to SIAs between the child care contractor and a child care provider. This provision in the repealed rules applies to an SIA that a Board may have with a child care contractor. Thus, this repealed provision is duplicative of Chapter 800, Subchapter E.

Comment: One commenter requested clarification on who will do SIAs. The commenter stated that the Board currently has procedures for those who cannot follow financial guidelines.

Response: The Commission intends for the Board or its contractor to implement SIAs.

Comment: Five commenters stated that issuing SIAs only will increase operational costs and no longer be meaningful if the Boards cannot terminate provider services, especially with relative providers. One of the five commenters asked what the purpose of issuing SIAs would be.

Response: The Commission disagrees that Boards will have an increase in operational costs for implementing SIAs. The Commission emphasizes that the rule language makes the negotiation of SIAs an allowable, but not a required, activity. The Commission also disagrees that the Boards cannot terminate provider services, including relative providers. As mentioned above, §809.115(b) allows this activity as a corrective action. Additionally, if an SIA is negotiated with a provider, §809.115(c)(4) requires that the SIA include consequences for noncompliance with the SIA. These consequences may include moving children to another provider or withholding provider payments, or other corrective actions set forth in §809.115(b).

The Commission emphasizes that the intent of allowing--but not requiring--a Board to negotiate SIAs with a provider is to provide the Board a method for working with providers in order for them to come into compliance with Commission rules. Again, SIAs are

not required. If a Board or contractor determines that the severity of the violation warrants immediate corrective action, then it is within the Board or contractor's discretion to do so.

Comment: Four commenters requested clarification on whether this section applies only in the case of noncompliance, fraud, or both.

Response: Section 809.115 on corrective adverse actions applies in cases of noncompliance or fraud. The Commission notes that §809.114(c) states that noncompliance with Commission rules, including fraud, may warrant corrective and adverse action as stipulated in §809.115.

§809.116. Recovery of Improper Payments.

Section 809.116 states that efforts will be made to recover improper payments and that all improper payments recovered will be managed in accordance with Commission guidelines and policies.

Section 809.116(a) requires Boards to make attempts to recover all improper payments. In addition, this provision states that the Commission will not pay for improper payments. This provision and purpose is retained from the repealed rules without change.

Section 809.116(b) states that the recovery of improper payments will be managed in accordance with Commission policies, procedures, and guidelines. This provision and purpose is retained from the repealed rules without change.

Comment: Two commenters suggested the phrase "or their contractors" be added to reflect that both Boards and contractors can attempt to collect improper payments.

Response: The Commission disagrees that the phrase should be added. A Board may choose to use the contractor as its agent to attempt collection. However, the responsibility lies with the Board to accomplish this.

§809.117. Recovery of Improper Payments to a Provider or Parent.

Section 809.117 identifies circumstances when providers and parents must repay improper payments for child care and child care services received.

Section 809.117(a) states that a provider must repay improper payments for child care services received in the following circumstances:

--instances involving fraud;

--instances when the provider did not meet the provider eligibility requirements in this chapter;

--instances when the provider was paid for the child care services from another source;

--instances when the provider did not deliver the child care services;

--instances when referred children have been moved from one facility to another without authorization from the child care contractor; and

--other instances when repayment is deemed an appropriate action.

This provision and purpose is retained from the repealed rules without change.

Section 809.117(b) states that a parent must repay improper payments for child care in the following circumstances:

--instances involving fraud as defined in this chapter;

--instances when the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or

--other instances when repayment is deemed an appropriate corrective action.

SUBCHAPTER G. APPEAL PROCEDURES

The Commission adopts new Subchapter G, Appeal Procedures, as follows:

Subchapter G contains the general appeal procedures and requirements that a parent, provider, or a Board's child care contractor must follow to seek a review by a Board or the Commission of any adverse actions taken against them. The Commission retains the provisions in the repealed rules related to the Board review of an appeal as well as the provisions related to appeals to the Commission. As mentioned previously, the Commission has moved the provisions in the repealed rules related to the parent appeal rights to Subsection D (Parent Rights and Responsibilities).

The Commission is considering amendments to Chapter 823 related to General Hearings that may incorporate the appeal procedures for child care services as described in the adopted Subchapter G. Therefore, the appeal procedures outlined in Subchapter G may be subject to repeal and republishing in Chapter 823 at a later date.

§809.131. Board Review.

Section 809.131 retains the repealed provisions concerning the Board review of appeals.

Section 809.131(a) retains the repealed rule provisions that a parent, provider, or a Board's child care contractor against whom an adverse action is taken may request a review by the Board. Section 809.131(b) retains the repealed rule provision that the request for review shall be submitted in writing and delivered to the Board within 15 days of the date of written notification of the adverse action and shall contain:

--a concise statement of the disputed adverse action;

--a recommended resolution; and

--any supporting documentation the requester deems relevant to the dispute.

Section 809.131(c) retains the repealed rule provisions stating that upon receipt of a request for review, the Board shall coordinate a review by appropriate Board staff.

Section §809.131(d) retains the repealed rule provisions that additional information may be requested from the Board's child care contractor, provider, and parents and that such information shall be provided within 15 days of the request.

Section 809.131(e) retains the repealed rule provisions that within 30 days of the date the request for review is received or of the date that additional requested information is received by the Board, the Board shall send the Board's child care contractor, provider, or parent written notification of the results of the review.

Section 809.131(f) contains a new provision that a Board must conduct a review prior to an appeal being submitted to the Commission for a hearing. With this provision the Commission clarifies that if an individual requests a review from the Board, the Board must conduct a review of the facts of the appeal and pro-

vide notification of the results of the review to the parties involved. It is not the Commission's intent that individuals bypass the Board review and appeal directly to the Commission.

Comment: One commenter suggested the word "appellant" be used to refer to the party appealing an adverse action, which could be a parent, provider, or a Board's child care contractor and then substitute that word as appropriate.

Response: The Commission disagrees that the language should be changed. The phrase "parent, provider, or a Board's child care contractor" is used only one other time in the rules. Therefore, the Commission believes that it is unnecessary to replace that phrase with a term that would require the reader to reference the term used earlier in the section.

§809.132. Appeals to the Commission.

Section 809.132 contains the provisions related to an individual presenting an appeal to the Commission. The provisions in this adopted section are unchanged from the repealed rules.

Section 809.132(a) states that after the results of a Board review have been issued, the Board's child care contractor, provider, or parent who disagrees with the outcome of the review may request a Commission hearing to appeal the results.

Section 809.132(b) states that the request for an appeal to the Commission from a Board's review shall be filed in writing with the Commission's Appeals Department within 15 days after receiving written notification of the results of the Board review.

Section 809.132(c) states that the appeal to the Commission will include a hearing.

Section 809.132(d) states that the Commission hearing will be held in accordance with Commission policies and procedures applicable to the appeal as contained in Chapter 823 of this title, or as otherwise provided by the Commission.

Comment: One commenter stated the rule does not specify whether it is the parent's or Board's responsibility to file the appeal request with the Commission's Appeals Department. The commenter stated that it should be the sole responsibility of parents.

Response: The party seeking an appeal is responsible for requesting one in a timely manner. Although it is likely that the appeal will come from a parent, there may be occasions in which the Board or a contractor will appeal a decision. For that reason, the Commission believes the rule should not specify that it is only the parent who can file an appeal request.

Comment: Four commenters suggested that Boards be allowed to submit appeals via e-mail and facsimile rather than mailed to the address provided to reduce costs and ensure timely submittal.

Response: The Commission agrees that the appeal may be submitted via fax or electronic format as long as the request is received within 15 days after receiving written notification of the results of the Board review as required by §809.132(c).

COMMENTS WERE RECEIVED FROM:

Janie Bates, Executive Director, Texoma Workforce Development Board

Linda Davis, Executive Director, North Central Workforce Development Board

Mary Ann Rojas, Executive Director, Coastal Bend Workforce Development Board

Board Staff, Concho Valley Workforce Development Board

Child Care Services Contractor Staff, Concho Valley Workforce Development Board

Finance and Oversight Committee, Concho Valley Workforce Development Board

Susan Ashmore, Director of Child Care Services, Alamo Workforce Development Board

Lynne Bauereiss, Child Care Program Manager, Deep East Texas Workforce Development Board

Barbara Brown, Program Specialist, Permian Basin Workforce Development Board

Shawna Chambers, Brazos Valley Workforce Development Board

Nita Keck, Child Care Contract Specialist and EO Officer, North Texas Workforce Development Board

Clay Lewis, Client Service Specialist, West Central Texas Workforce Development Board

Ann L. McCain, Central Texas Workforce Development Board

Rachel Mitchell, Child Care Program Manager, Texoma Workforce Development Board

Randy Reed, Deputy Executive Director, North East Texas Workforce Development Board

Joyce Sneed, Child Care Contract Manager, Concho Valley Workforce Development Board

Julie Talbert, Heart of Texas Workforce Development Board

Sherry Trebus, Child Care Program Specialist, Capital Area Workforce Development Board

Beejay Williams, Director of Workforce Programs, Coastal Bend Workforce Development Board

Lisa Witkowski, Future Workforce Unit Director, Tarrant County Workforce Development Board

Pati Cates, Department Chair, Child Development and Education, Tarrant County College Northeast Campus

Kim M. Cullins, Child Care Services, Wadley Health System

Nina M. Jackson, Ft. Worth Independent School District

Natalie M. Johnson, Senior Workforce Development Planner, North Central Texas Council of Governments

Frankie McMurrey, M.Ed., Executive Director, Clayton Youth Enrichment Services, Ft. Worth, Texas

Samantha Morgan, Owner/Director, Little Rascals, Malta, Texas

Nancy Parker, Director, Little Pals Playschool, Texarkana, Texas

Shawn Reeves, ABC Learning Center, Paris, Texas

Anne Tarr, Child Care Services Coordinator, Alamo CCDS, City of San Antonio

Susan Thomas, Rural Alamo Child Care Coordinator, Alamo Area Development Corporation

Nancy J. Webb, Owner/Director, Red Lick Christian Preschool & Red Lick Christian & Preschool Too!

John A. Whitcamp, President and CEO, Child Care Associates, Ft. Worth, Texas

M. Berry

Janie Cockrehan, New Braunfels, Texas

Kelli Fannin, DeKalb, Texas

Mary Heard Gullatt, Texarkana, Texas

Eboni Gullatt-Carter, Texarkana, Texas

Darla May, Avery, Texas

May Beth Propsma

Susie Rainer, DeKalb, Texas

Patricia Roach

Christina Widemore, DeKalb, Texas

No Name Given

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§809.1, 809.2, 809.4, 809.5

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.11 - 809.20

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.41 - 809.44, 809.46 - 809.48

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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SUBCHAPTER D. SELF-ARRANGED CARE

40 TAC §§809.61 - 809.63

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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SUBCHAPTER E. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71 - 809.79

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 F. GENERAL ELIGIBILITY FOR CHILD CARE

40 TAC §§809.91 - 809.93

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

40 TAC §§809.101 - 809.105

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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SUBCHAPTER H. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

40 TAC §§809.121 - 809.124

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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. SCHOOL-LINKED CHILD CARE PROGRAM

40 TAC §§809.201 - 809.205

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. FUNDS MANAGEMENT

40 TAC §§809.221 - 809.226, 809.228, 809.229, 809.231 - 809.233, 809.235

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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SUBCHAPTER L. FRAUD INVESTIGATION

40 TAC §§809.251 - 809.253

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 M. APPEAL PROCEDURE

40 TAC §§809.271 - 809.273

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 N. CORRECTIVE AND ADVERSE ACTION

40 TAC §§809.281 - 809.288

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§809.1 - 809.3

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is considered to be attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

(4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(6) Child with disabilities--A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.

(7) Educational program--A program that leads to:

(A) a high school diploma;

(B) a General Educational Development (GED) credential; or

(C) a postsecondary degree from an institution of higher education.

(8) Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.

(9) Household dependent--An individual living in the household who is one of the following:

(A) An adult considered as a dependent of the parent for income tax purposes;

(B) A child of a teen parent; or

(C) A child or other minor living in the household who is the responsibility of the parent.

(10) Improper payments--Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.

(11) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(12) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(13) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military

parents of a child enrolled in child care services. This includes deployed parents in the regular military, military reserves, or National Guard.

(14) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(15) Protective services--Services provided when:

(A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;

(B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(16) Provider--A provider is defined as:

(A) a regulated child care provider as defined in §809.2(17);

(B) a relative child care provider as defined in §809.2(18); or

(C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).

(17) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by DFPS;

(B) registered with DFPS;

(C) licensed by the Texas Department of State Health Services as a youth day camp; or

(D) operated and monitored by the United States military services.

(18) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

(A) The child's grandparent;

(B) The child's great-grandparent;

(C) The child's aunt;

(D) The child's uncle; or

(E) The child's sibling (if the sibling does not reside in the same household as the eligible child).

(19) Residing with--A child is considered to be residing with the parent when the child's primary place of residence is the same as the parent's primary place of residence.

(20) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(21) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;

(B) job search activities (subject to the requirements in §809.41(d)); or

(C) participation in Choices or Food Stamp Employment and Training (FSE&T) activities.

§809.3. Waiver Request.

(a) The Commission may waive child care rules upon request from a person directly affected by the rules, if it determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations.

(b) Prior to submitting a waiver request to the Commission, the child must have been determined by the Board's child care contractor to meet the minimum qualifications set forth in §809.41(a).

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 B. GENERAL MANAGEMENT

40 TAC §§809.11 - 809.21

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.11. Board Responsibilities.

(a) A Board shall be responsible for the administration of child care in a manner consistent with Texas Government Code, Chapter 2308, as amended, and related provisions under Chapter 801 of this title (relating to Local Workforce Development Boards).

(b) A Board shall ensure that access to child care services shall be available through all Texas Workforce Centers within a workforce area.

(c) Child care services are support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.

(d) Upon request, a Board shall provide the Commission with access to child care administration records and submit related information for review and monitoring, pursuant to Commission rules and policies.

§809.12. Board Plan for Child Care Services.

(a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan), develop, amend, and modify the Board plan to

incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services identified in Texas Government Code §2308.251 et seq., as well as other workforce training and services included in the One-Stop Service Delivery Network.

(b) The goal of the Board plan is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.

(c) Boards shall design and manage the Board plan to maximize the delivery and availability of safe and stable child care services that assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending a job training or educational program.

§809.15. Promoting Consumer Education.

(a) A Board shall promote informed child care choices by providing consumer education information to:

(1) parents who are eligible for child care services;

(2) parents who are placed on a Board's waiting list;

(3) parents who are no longer eligible for child care services; and

(4) applicants who are not eligible for child care services.

(b) The consumer education information shall contain, at a minimum:

(1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;

(2) the Web site and telephone number of DFPS, so parents may obtain health and safety requirements including information on:

(A) the prevention and control of infectious diseases (including immunizations);

(B) building and physical premises safety;

(C) minimum health and safety training appropriate to the provider setting; and

(D) the regulatory compliance history of child care providers;

(3) a description of the full range of eligible child care providers set forth in §809.91; and

(4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:

(A) school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center (State Center); and

(B) Texas Rising Star Provider criteria.

(c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, shall be used only for the following:

(1) Collaborative reading initiatives;

(2) School readiness, early learning, and literacy; or

(3) Local-level support to promote child care consumer education provided by 2-1-1 Texas.

(b) Allowable activities to support the quality improvement activities described in subsection (a) of this section may include the following:

(1) Professional development and training for child care providers; or

(2) Purchase of curriculum and curriculum-related support resources for child care providers.

(c) Activities in subsection (a) of this section may be designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities.

(d) In funding quality improvement activities allowable under this section, a Board may give priority to child care facilities:

(1) participating in the integrated school readiness models developed by the State Center;

(2) implementing components of school readiness curricula as approved by the State Center; or

(3) participating in or voluntarily pursuing participation in Texas Rising Star Provider Certification, pursuant to Texas Government Code §2308.316.

(e) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

(1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the number of children in care; and

(C) not exceeding the cost of care.

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices;

(B) Parents who are participating in FSE&T services; or

(C) Parents who have children who are receiving protective services, unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share

of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

(d) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.

(e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

(b) A Board shall establish graduated reimbursement rates for:

(1) child care providers participating in integrated school readiness models developed by the State Center; and

(2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315.

(c) The minimum reimbursement rates established under subsection (b) of this section shall be at least five percent greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate.

(d) A Board or its child care contractor shall ensure that providers who are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in subsection (b) of this section.

(e) The Board shall determine whether to reimburse providers who offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

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. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.41 - 809.54

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.41. A Child's General Eligibility for Child Care Services.

(a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, the child shall:

(1) meet one of the following age requirements:

(A) be under 13 years of age; or

(B) at the option of the Board, be a child with disabilities under 19 years of age; and

(2) reside with:

(A) a family whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; and

(B) parents who require child care in order to work or attend a job training or educational program.

(b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.

(c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

(d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:

(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.

(2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection,

child care services during job search activities are limited to four weeks within a federal fiscal year.

§809.44. Calculating Family Income.

(a) Unless otherwise required by federal or state law, the family income for purposes of determining eligibility means the monthly total of the following items for each member of the family (as defined in §809.2(8)):

(1) Total gross earnings. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.

(2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.

(3) Pensions, annuities, life insurance, and retirement income. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.

(4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock holdings, and interest on savings or bonds.

(5) Rental income. This includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.

(6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).

(7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.

(8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.

(9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.

(10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.

(11) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support cash payments made by an absent parent for the maintenance of a minor.

(12) Court settlements or judgments. This includes awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits, if the court settlement or judgment clearly allocates damages among these categories.

(b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total family income. Specifically, family income does not include:

(1) Food stamps;

(2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

(3) Educational scholarships, grants, and loans;

(4) Earned Income Tax Credit (EITC) and the Advanced EITC;

(5) Individual Development Account (IDA) withdrawals;

(6) Tax refunds;

(7) VISTA and AmeriCorps living allowances and stipends;

(8) Noncash or in-kind benefits received in lieu of wages;

(9) Foster care payments; and

(10) Special military pay or allowances, which include subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger.

§809.50. Child Care for Children Living at Low Incomes.

(a) A parent is eligible for child care services under this section if:

(1) the family income does not exceed the income limit established by the Board provided that the income limit does not exceed 85% of the state median income for a family of the same size; and

(2) child care is required for the parent to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

(b) A Board may allow a reduction to the requirement in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.

§809.51. Child Care for Children with Disabilities.

(a) A child with disabilities is eligible for child care services if:

(1) the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and

(2) child care is required for the child's parents to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

(b) A Board may allow a reduction to the requirements in subsection (a)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per

week and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.

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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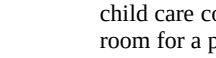

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71 - 809.77

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.71. Parent Rights.

A Board shall ensure that the Boards child care contractor informs the parent in writing that the parent has the right to:

(1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;

(2) visit available child care providers before making their choice of a child care option;

(3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;

(4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);

(5) be represented when applying for child care services;

(6) be notified of their eligibility to receive child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility for child care;

(7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;

(9) receive written notification, except as provided by paragraph (10) of this section, from the Board's child care contractor at least 15 days before the denial, delay, reduction, or termination of child care services unless the following exceptions apply:

(A) Notification of denial, delay, reduction, or termination of child care services is not required when the services are authorized to cease immediately because either the parent is no longer participating in the Choices program or services are authorized to end immediately for children in protective services child care; or

(B) The Choices program participants and children in protective services child care are notified of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices caseworker or DFPS;

(10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:

(A) Written notification of denial, delay, reduction or termination shall include information regarding other child care options for which the recipient may be eligible.

(B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;

(11) reject an offer of child care services or voluntarily withdraw their child from child care unless the child is in protective services;

(12) be informed of the possible consequences of rejecting or ending the child care that is offered;

(13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

(14) be informed of the parent appeal rights described in §809.74; and

(15) be informed of the Board's attendance policy as required in §809.13(d)(13).

§809.74. Parent Appeal Rights.

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Subchapter G of this chapter (relating to Appeal Procedure) if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor.

(b) A parent may have an individual represent them during this process.

(c) A parent of a child in protective services may not appeal pursuant to Subchapter G of this chapter, but shall follow the procedures established by DFPS.

(d) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title.

(e) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by an FSE&T caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title.

§809.76. Parent Responsibility Agreement.

(a) The parent of a child receiving child care services is required to sign a parent responsibility agreement (PRA) as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility redetermination.

(b) The PRA requires that:

(1) for cases in which the child has a noncustodial parent, the custodial parent shall:

(A) cooperate with the Office of the Attorney General (OAG) to establish paternity of the parent's children and to enforce child support on an ongoing basis by:

(i) providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or

(ii) opening a child support case with OAG and providing documentation to the Board's child care contractor that the parent is cooperating with OAG; or

(B) provide documentation to the Board's child care contractor that the parent has an arrangement with the noncustodial parent for child support and is receiving child support on a regular basis. Such documentation must include evidence of child support history, including in-kind child support;

(2) each parent shall not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code, Chapter 481, and abstain from alcohol abuse; and

(3) each parent shall ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a GED credential, or is specifically exempted from school attendance by Texas Education Code §25.086.

(c) Failure by the parent to comply with any of the provisions of the PRA shall result in sanctions as determined by the Board, up to and including terminating the family's child care services.

§809.77. Exemptions from the Parent Responsibility Agreement.

Notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:

(1) The paternity of the child cannot be established after a reasonable effort to do so;

(2) The child was conceived as a result of incest or rape;

(3) The parent of the child is a victim of domestic violence;

(4) Adoption proceedings for the child are pending;

(5) The parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;

(6) The child may be physically or emotionally harmed by cooperation; or

(7) The parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91 - 809.93

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2(17);

(2) relative child care providers as described in §809.2(18), subject to the requirements in subsections (e) and (f) of this section; or

(3) at the Board option, listed family homes as defined in §809.2(12), subject to the requirements in subsection (b) of this section.

(b) If a Board chooses to include listed family homes, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 C.F.R. §98.41, the requirements shall include:

(1) the prevention and control of infectious diseases (including immunizations);

(2) building and physical premises safety; and

(3) minimum health and safety training appropriate to the child care setting.

(c) Except as provided by the criteria for Texas Rising Star Provider Certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) Relative child care providers shall not reside in the same household as the eligible child unless:

(1) the eligible child is a child of a teen parent; or

(2) the Board's child care contractor determines and documents that other child care provider arrangements are not reasonably available. Factors used to determine the reasonable availability of child care may include, but are not limited to:

(A) the parent's work schedule;

(B) the availability of adequate transportation; or

(C) the age of the child.

(f) An individual appearing on the Texas Department of Public Safety's Sex Offender Registry, pursuant to Chapter 62 of the Texas Code of Criminal Procedure, shall not be eligible to be a relative child care provider.

§809.92. Provider Responsibilities and Reporting Requirements.

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21(2);

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's child care contractor. At a minimum, the provider shall:

(A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;

(B) inform the Board's child care contractor when an enrolled child is absent; and

(C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.

(c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:

(1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or

(2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).

(d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.

§809.93. Provider Reimbursement.

(a) A Board shall ensure that reimbursement for child care is paid:

(1) to the provider only; and

(2) after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered.

(b) The Declaration of Services Statement shall contain:

(1) name, age, and identifying information of the child;

(2) amount of care provided in terms of units of care;

(3) rate of payment;

(4) dates services were provided;

(5) name and identifying information of the provider, including the location where care is provided;

(6) verification by the provider that the information submitted in the Declaration of Services Statement is correct; and

(7) additional information as may be required by the Boards.

(c) A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(d) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(e) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(f) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open except as consistent with attendance policies as established by the Board.

(g) A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(h) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

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 F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

40 TAC §§809.111 - 809.117

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.111. General Fraud Fact-Finding Procedures.

(a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

(b) A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.

(c) These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.

(d) Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:

(1) further fact-finding; or

(2) other corrective action as provided in this chapter or as may be appropriate.

(e) The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

§809.112. Suspected Fraud.

A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) A request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) A claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

(D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

(E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

§809.113. Action to Prevent or Correct Suspected Fraud.

(a) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a provider has committed fraud:

(1) Temporary withholding of payments to the provider for child care services delivered;

(2) Nonpayment of child care services delivered;

(3) Recoupment of funds from the provider;

(4) Stop authorizing care at the provider's facility or location; or

(5) Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

(b) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a parent has committed fraud:

(1) recouping funds from the parent;

(2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or FSE&T participant becoming ineligible for child care;

(3) limiting the enrollment of the parent's child to a regulated child care provider; or

(4) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

§809.115. Corrective Adverse Actions.

(a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:

(1) the scope of the violation;

(2) the severity of the violation; and

(3) the compliance history of the person or entity.

(b) Corrective actions may include, but are not limited to, the following:

(1) Closing intake;

(2) Moving children to another provider selected by the parent;

(3) Withholding provider payments or reimbursement of costs incurred;.

(4) Termination of child care services; and

(5) Recoupment of funds.

(c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:

(1) The basis for the Service Improvement Agreement;

(2) The steps required to reach compliance including, if applicable, technical assistance;

(3) The time limits for implementing the improvements; and

(4) The consequences of noncompliance with the Service Improvement Agreement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2007.

TRD-200700065
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: January 29, 2007
Proposal publication date: October 20, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER G. APPEAL PROCEDURES

40 TAC §809.131, §809.132

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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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TABLES & 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.

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/07	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-1	Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells	4/06	Tex. Nat. Res. Code, §89.060
OW-2	Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells	4/06	Tex. Nat. Res. Code, §89.060
OW-3	Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well	4/06	Tex. Nat. Res. Code, §89.060
PR	Monthly Production Report	Effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling/Measurement Application Supplement	6/97	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	1/07	3.83, 3.101,3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99T-4A: 4/99T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	07/01/04	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-1X	Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit	10/03	3.14, 3.78
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 40 TAC Chapter 809--Preamble

Chapter 809
SUMMARY OF ADOPTED RULE CHANGES

Proposed Section	Description	Action	Adopted Section	Description
§809.1(a)	Short title and purpose	Redesignated and Revised	§809.1(a) - (b)	Short title and purpose
		Added	§809.1(c)	Rules apply to Commission, Boards, parents, providers
§809.1(b) - (c)	No certified Board; TOT	Removed		
§809.2(1)	Definition: Board	Removed		
§809.2(2)	Definition: Child Care	Redesignated and Revised	§809.2(4)	Definition: Child Care Services
§809.2(3)	Definition: Commission	Removed		
§809.2(4)	Definition: Grant Recipient	Removed		
§809.2(5)	Definition: LWDB	Removed		
§809.2(6)	Definition: Parent	Redesignated and Revised	§809.2(14)	Definition: Parent
§809.2(7)	Definition: Provider	Redesignated and Revised	§809.2(16)	Definition: Provider
§809.2(8)	Definition: SACC Provider	Removed		
§809.2(9)	Definition: TANF	Removed		
		Added	§809.2(1)	Definition: Attending job training/education
		Added	§809.2(3)	Definition: Child Care Contractor
		Added	§809.2(5)	Definition: Child Care Subsidies
		Added	§809.2(7)	Definition: Educational program
		Added	§809.2(10)	Definition: Improper payments
		Added	§809.2(11)	Definition: Job training
		Added	§809.2(12)	Definition: Listed family home
		Added	§809.2(15)	Definition: Protective services
		Added	§809.2(19)	Definition: Residing with
		Added	§809.2(21)	Definition: Working
§809.4	Waiver request	Redesignated and Revised	§809.3	Waiver request
§809.5(a)	Definition: combat deployment	Redesignated and Revised	§809.2(13)	Definition: Military deployment
§809.5(b)	Continued care for combat deployment	Redesignated and Revised	§809.54(d)	Continuity of care: military deployment
§809.5(c)	Combat deployment; Board actions to continue care	Removed		
§809.11(a) - (d)	Board responsibilities (general)	Revised	§809.11(a) - (d)	Board responsibilities (general)
§809.12(a)	Board plan	Redesignated and Revised	§809.12(a) - (c)	Board plan
§809.12(b)	Board policies	Redesignated	§809.13(a) - (c)	Board policies
		Added	§809.13(d)	Required Board policies
§809.12(c)	Board coordination of policies	Redesignated	§809.14(a)	Board coordination of policies
		Added	§809.14(b)	Board coordination of services

§809.13	Ensuring parent choice by training providers	Removed		
§809.14(a) - (c)	Consumer education	Redesignated and Revised	§809.15(a) - (c)	Consumer education
§809.15(a) - (e)	Quality improvement activities	Redesignated	§809.16(a) - (e)	Quality improvement activities
§809.16	Procurement	Removed		
§809.17	Management of finances	Removed		
§809.18	Information management and reporting	Removed		
§809.19	Performance standards	Removed		
§809.20(a)	Leveraging local funds	Redesignated	§809.17(a)(1)	Leveraging local funds
§809.20(b)	Local funds accepted	Redesignated and Revised	§809.17(b)	Local funds accepted
§809.20(c)(1)	Boards shall secure local funds	Removed		
§809.20(c)(2)	Securing additional excess funds	Redesignated	§809.17(a)(2)	Securing additional excess funds
§809.20(c)(3)	Local match eligible for incentive awards	Redesignated	§809.17(a)(3)	Local match eligible for incentive awards
§809.20(d)	Submitting local funds	Redesignated	§809.17(c)	Submitting local funds
§809.20(e)	Completing local funds	Redesignated and Revised	§809.17(d)	Completing local funds
§809.20(f)	Monitoring local funds	Redesignated	§809.17(e)	Monitoring local funds
§809.41(a)	General provider requirements	Redesignated and Revised	§809.91(a)	Minimum provider requirements
		Added	§809.91(c)	Boards shall not place requirements on providers above the licensing requirement or have the effect of monitoring for licensing compliance
		Added	§809.91(e)	Relative providers shall not reside in the same household as the eligible child
		Added	§809.91(f)	Sex offender registry check for relative providers
		Added	§809.92(a)	Provide written notice of and agree to provider requirements
		Added	§809.92(b)(3)	Provider notifies contractor when parent does not pay the parent share of cost
		Added	§809.92(c)	Providers shall not charge the difference to parents (for parents exempt from parent share of cost)
		Added	§809.92(d)	Boards may develop policies related to charging the difference to all parents
§809.41(b)	Boards ensure that providers comply with health and safety requirements	Removed		
§809.42(a)	Minimum provider requirements	Redesignated and Revised	§809.2(17)	Definition: Provider
§809.42(b)(1)	Provider compliance with agreement	Removed		
§809.42(b)(2)	Provider not on corrective action	Removed		
§809.42(c)	Reporting violations	Redesignated	§809.91(d)	Reporting violations
§809.43	Provider agreements	Removed		
§809.44	Provider general liability	Removed		
§809.46(a)	Assessing share of cost (CCDF)	Redesignated and Revised	§809.19(a)	Assessing share of cost (CCDF)

§809.46(b)	Assessing share of cost (non-CCDF)	Redesignated	§809.19(b)	Assessing share of cost (non-CCDF)
§809.46(c)	Provider collecting share of cost prior to services	Redesignated and Revised	§809.92(b)(1)	Provider collecting share of cost prior to services
§809.46(d)	Provider collecting share of cost	Redesignated and Revised	§809.92(b)(1)	Provider collecting share of cost
§809.46(e)	Remedies for non-payment of share of cost	Redesignated and Revised	§809.19(c)	Remedies for non-payment of share of cost
§809.47(a) - (b)	Reduction and waiving share of cost	Redesignated and Revised	§809.19(d) - (e)	Reduction and waiving share of cost
		Added	§809.19(f)	Parent share of cost assessed at $0
§809.48(a)	Board policy on attendance	Redesignated and Revised	§809.13(d)(13)	Board policy on attendance
§809.48(a)	Provider documenting attendance	Redesignated and Revised	§809.92(b)(4)(A)	Provider documenting attendance
§809.48(b)	Provider informing of absences	Redesignated and Revised	§809.92(b)(4)(B)	Provider informing of absences
§809.48(c)	Provider failure to keep attendance	Redesignated and Revised	§809.114 and §809.115	Compliance with Commission rules and Board policies
§809.61(a)	Qualifications for relative providers	Redesignated and Revised	§809.2(18)	Definition: Relative child care provider
§809.61(b)	Number of children in relative care	Redesignated and Revised	§809.93(c)	Number of children in relative care
§809.62(a)	Qualifications for regulated self-arranged child care (SACC)	Removed		
§809.62(b)	CPS request for regulated SACC	Redesignated and Revised	§809.49(b)	CPS request for specific provider
§809.62(c)	Requirements for listed homes	Redesignated and Revised	§809.91(b)	Requirements for listed homes
§809.63(a)	Reimbursements for SACC	Redesignated and Revised	§809.93(a)	Provider reimbursements
§809.63(b)	SACC Declaration of Services	Redesignated and Revised	§809.93(b)	Provider Declaration of Services
§809.71(a)	Parent choice of range of providers	Revised	§809.71(1)	Parent right: choice of providers
§809.71(b)(1) - (2)	Parent right to visit provider; assistance in choosing	Revised	§809.71(2) - (3)	Parent right: visit provider; assistance in choosing
		Added	§809.71(4)	Parent right: informed of policy regarding providers charging parents
§809.72(1) - (6)	General parent rights	Redesignated and Revised	§809.71(5) - (10)	Parent rights
		Added	§809.71(15)	Parent rights: informed of Board attendance policy
§809.73	Eligibility documentation	Redesignated and Revised	§809.72	Eligibility documentation
§809.74	Enrollment agreements	Removed		
§809.75(a)(1), (2),(4),(5)	Parent report income, family size, work/training, other	Redesignated and Revised	§809.73(a)(1), (2),(3),(5)	Parent report income, family size, work/training, other
§809.75(a)(3)	Parent report loss of TANF, SSI	Removed		
		Added	§809.73(a)(4)	Parent report other subsidies
§809.75(b)	Failure to report changes	Redesignated and Revised	§809.73(b)	Failure to report changes
§809.75(c)	Grounds for suspected fraud	Redesignated	§809.73(c)	Grounds for suspected fraud
§809.76(a) - (b)	Parent appeal rights	Redesignated and Revised	§809.74(a) - (b)	Parent appeal rights
§809.76(a)	Appeal for child in-home protective services	Redesignated and Revised	§809.74(c)	Appeals for child in-home protective services
§809.76(b)	Inform parents of hearing procedures	Redesignated and Revised	§809.71(14)	Parent right: hearing procedures
		Added	§809.74(d)	Appeals for Choices participants
		Added		Appeals for FSE&T participants

§809.77	Parent's right to withdraw	Redesignated and Revised	§809.71(11) - (12)	Parent right: to withdraw
		Added	§809.71(13)	Parent right: to be informed of reporting requirements
§809.78(a)	Parent responsibility agreement (PRA)	Redesignated and Revised	§809.76(a)	parent responsibility agreement (PRA)
§809.78(b)(1)	PRA: paternity, child support	Redesignated and Revised	§809.76(b)(1)(A)	PRA: child support/paternity, cooperating with the OAG
		Added	§809.76(b)(1)(B)	PRA: documenting non-OAG managed cases
§809.78(b)(2) - (3)	PRA: controlled substances/school attendance	Redesignated and Revised	§809.76(b)(2) - (3)	PRA: controlled substances/school attendance
§809.78(c)	PRA: failure to comply may result in sanctions	Removed		
§809.79(a)(1)	PRA: sanctions, exceptions: Definitions	Removed		
§809.79(a)(2)	PRA: failure to comply shall result in sanctions	Redesignated and Revised	§809.76(c)	PRA: failure to comply shall result in sanctions
§809.79(b)(1)	PRA: exceptions, Definitions	Removed		
§809.79(b)(2)(A) - (C)	PRA: exceptions (reasonable effort, incest, domestic violence)	Redesignated and Revised	§809.77(1) - (3)	PRA: exemptions (reasonable effort, incest/rape, domestic violence)
		Added	§809.77(4) - (5)	PRA: exemption, adoption
		Added	§809.77(6)	PRA: exemption, harm to the child
		Added	§809.77(7)	PRA: exemption, harm to the parent
§809.91(1)	Definition: Child Care	Redesignated and Revised	§809.2(2)	Definition: Child
§809.91(2)	Definition: Family	Redesignated and Revised	§809.2(8)	Definition: Family
§809.91(3)	Definition: Household dependent	Redesignated and Revised	§809.2(9)	Definition: Household dependent
§809.92(a)	General eligibility: funding limitations	Removed		
§809.92(b)(1)	General eligibility: income	Redesignated and Revised	§809.41(a)(2)(A)	General eligibility: income
§809.92(b)(2)	General eligibility: work, training, education	Redesignated and Revised	§809.41(a)(2)(B)	General eligibility: work, training, education
§809.92(b)(3)	General eligibility: child's age	Redesignated and Revised	§809.41(a)(1)(A) - (B)	General eligibility: child's age
§809.92(c)	Time limits for education	Redesignated and Revised	§809.41(b)	Time limits for education
		Added	§809.41(c)	Time limits for associate's degree (high-demand)
		Added	§809.41(d)	Time limits for job search
§809.93(a)(1)	Income include: gross earnings	Redesignated and Revised	§809.44(a)(1)	Income include: gross earnings
§809.93(a)(2) - (3)	Income include: net income from self-employment	Redesignated and Revised	§809.44(a)(2)	Income include: net income from self-employment
§809.93(a)(4), (9), (10)	Income include: Social security, retirement, pensions	Redesignated and Revised	§809.44(a)(3)	Income include: pensions, annuities, retirement
§809.93(a)(5), (19)	Income include: dividends, interest, sale of property	Redesignated and Revised	§809.44(a)(4), (9)	Income include: taxable gains, dividends, interest, sale of property
§809.93(a)(6)	Income include: rental income	Redesignated and Revised	§809.44(a)(5)	Income include: rental income
§809.93(a)(7)	Income include: interest in mortgages, contracts	Removed		
§809.93(a)(8)	Income include: public assistance payments	Redesignated and Revised	§809.44(a)(6)	Income include: public assistance payments
§809.93(a)(11)	Income include: educational loans	Removed		
§809.93(a)(12)	Income include: UI	Redesignated	§809.44(a)(8)	Income include: UI

§809.93(a)(13)	Income include: worker's compensation, disability	Redesignated and Revised	§809.44(a)(9)	Income include: worker's compensation, disability
§809.93(a)(14)	Income include: spousal maintenance/alimony	Redesignated and Revised	§809.44(a)(10)	Income include: spousal maintenance/alimony
§809.93(a)(15)	Income include: child support	Redesignated and Revised	§809.44(a)(11)	Income include: child support
§809.93(a)(16)	Income include: cash support payments	Removed		
§809.93(a)(17)	Income include: inheritances	Redesignated and Revised	§809.44(a)(7)	Income include: inheritances
§809.93(a)(18)	Income include: foster care payments	Redesignated and Revised	§809.44(b)(9)	Income exclude: foster care payments
		Added	§809.44(a)(12)	Income include: court settlements or judgments
§809.93(b)(1)	Income exclude: food stamps	Redesignated	§809.44(b)(1)	Income exclude: food stamps
§809.93(b)(2)	Income exclude: monthly allowance for certain children of veterans	Redesignated	§809.44(b)(2)	Income exclude: monthly allowance for certain children of veterans
§809.93(b)(3)	Income exclude: federal educational loans	Redesignated and Revised	§809.44(b)(3)	Income exclude: educational loans
		Added	§809.44(b)(4)	Income exclude: IDA
		Added	§809.44(b)(5)	Income exclude: EITC
		Added	§809.44(b)(6)	Income exclude: tax refunds
		Added	§809.44(b)(7)	Income exclude: VISTA, AmeriCorps
		Added	§809.44(b)(8)	Income exclude: noncash or in-kind benefits in lieu of wages
		Added	§809.44(b)(10)	Income exclude: special military pay
§809.101(a)(1) - (2)	Transitional: general eligibility	Redesignated and Revised	§809.48(a)(1) - (2)	Transitional: general eligibility
		Added	§809.48(a)(3)	Transitional: work/training/education requirements
§809.101(b)	Transitional: income limits	Redesignated and Revised	§809.48(b)	Transitional: income limits
§809.101(c)	Transitional: availability	Redesignated and Revised	§809.48(c)	Transitional: availability
§809.101(d)	Transitional: unemployed, 4 weeks	Redesignated	§809.48(d)	Transitional: unemployed, 4 weeks
§809.101(e)	Transitional: denied due to child support	Redesignated	§809.48(e)	Transitional: denied due to child support
§809.102(a)(1)	Choices: eligibility	Redesignated and Revised	§809.45(a)	Choices: eligibility
§809.102(a)(2)	Choices: eligibility for sanctioned/conditional	Removed		
§809.102(b)	Choices: to Choices participants	Removed		
§809.102(c)	Choices: waiting to enter approved component	Redesignated and Revised	§809.45(b)	Choices: waiting to enter approved component
§809.103	Workforce Orientation Applicant Child Care	Redesignated and Revised	§809.46	TANF Applicant Child Care
§809.104	FSE&T Child Care	Redesignated and Revised	§809.47	FSE&T Child Care
§809.105(a)	CPS Child Care: determinations by FPS	Redesignated and Revised	§809.49(a)(1)	CPS Child Care: determinations by FPS
		Added	§809.49(a)(2)	CPS Child Care: FPS may authorize up to age 19
§809.105(b)	CPS closed cases	Redesignated and Revised	§809.54(c)	Continuity of care: former CPS children
§809.121(a)(1) - (2)	Low Income: eligibility	Redesignated and Revised	§809.50(a)	Low Income: eligibility
§809.121(a)(3) - (4)	Low Income: eligibility, TANF, Choices	Removed		

§809.121(a)(5)	Low Income: reduction in work/training/education	Redesignated	§809.50(b)	Low Income: reduction in work/training/education
§809.121(b)	Low Income: education hours	Redesignated and Revised	§809.50(c)	Low Income: education hours
§809.122(a)	Children with disabilities: Definition	Redesignated and Revised	§809.2(6)	Definition: Child with Disabilities
§809.122(b)(1) - (2)	Children with disabilities: eligibility	Redesignated	§809.51(a)	Children with disabilities: eligibility
§809.122(b)(3)	Children with disabilities: reduction in hours	Redesignated and Revised	§809.51(b)	Children with disabilities: reduction in hours
§809.122(c)	Children with disabilities: education hours	Redesignated and Revised	§809.51(c)	Children with disabilities: education hours
§809.122(d)	Children with disabilities: age to 19	Redesignated and Revised	§809.41(a)(1)(B)	Children with disabilities: age to 19
§809.123(a)	Teen parent: Definitions	Redesignated and Revised	§809.2(20)	Definition: Teen parent
§809.123(b)(1)	Teen parent: general eligibility	Redesignated	§809.52(a)(1)	Teen parent: general eligibility
§809.123(b)(2)	Teen parent: income eligibility	Redesignated and Revised	§809.52(a)(2)	Teen parent: income eligibility
§809.123(c)	Teen parent: determining income eligibility	Redesignated and Revised	§809.52(b)	Teen parent: determining income eligibility
§809.124(a) - (b)	Special projects	Redesignated	§809.53(a) - (b)	Special projects
§809.124(c)	Special projects through match	Removed		
§809.124(d)	Special projects' time limits	Redesignated	§809.53(c)	Special projects' time limits
§§809.201 - 809.205	School-Linked Child Care Program	Removed		
§809.221(1)(A)	1st priority group: Choices	Redesignated	§809.43(a)(1)(A)	1st priority group: Choices
§809.221(1)(B)	1st priority group: Transitional	Redesignated	§809.43(a)(1)(D)	1st priority group: Transitional
§809.221(2)(A)	2nd priority group: WOA	Redesignated and Revised	§809.43(a)(1)(B)	1st priority group: TANF Applicant
		Added	§809.43(a)(1)(C)	1st priority group: FSE&T
§809.221(2)(B)	2nd priority group: CPS	Redesignated	§809.43(a)(2)(A)	2nd priority group: CPS
		Added	§809.43(a)(2)(B)	2nd priority group: qualified vet
		Added	§809.43(a)(2)(C)	2nd priority group: foster youth
§809.221(3)(A)	Board priorities, may include teen parents	Redesignated and Revised	§809.43(a)(2)(D)	2nd priority group: teen parents
§809.221(3)(B)	Board priorities, may include children with disabilities	Redesignated and Revised	§809.43(a)(2)(E)	2nd priority group: children with disabilities
§809.221(3)(C)	Board priorities, may include others	Redesignated and Revised	§809.43(b)	3rd priority group: Board priorities
§809.222	Effective utilization of funds (waiting list)	Redesignated and Revised	§809.18(a)	Maintenance of a waiting list
§809.222	Reason for being placed on waiting list	Removed		
		Added	§809.18(b)	Board policy for waiting list
§809.223(a)	Eligibility determination prior to authorizing care	Redesignated	§809.42(a)	Eligibility determination prior to authorizing care
§809.223(b)	Frequency of eligibility determination	Redesignated	§809.42(b)	Frequency of eligibility determination
		Added	§809.42(c)	Eligibility determination for public certified expenditures
§809.224(a) - (d)	Custody and visitation arrangements	Redesignated	§809.54(d) - (h)	Custody and visitation arrangements
§809.225(a)	Continuity of care: general principle	Redesignated	§809.54(a)	Continuity of care: general principle
§809.225(b)	Continuity of care: exceptions to make room for Choices, Transitional, WOA	Redesignated and Revised	§809.54(b)	Continuity of care: exceptions to make room for 1st priority group
§809.225(c)	Continuity of care: six months for former CPS	Redesignated and Revised	§809.54(c)(1)	Continuity of care: six months for former CPS

§809.225(d)	Continuity of care: for former CPS	Redesignated and Revised	§809.54(c)(2)	Continuity of care: for former CPS
§809.226	Provider payments in accordance with provider agreement, Agency-Board Agreement	Removed		
§809.228	Units of service (full-day /part-day)	Redesignated and Revised	§809.93(e)	Reimbursement based on full-day /part-day units
§809.229(a)	Enrollment begins on first scheduled day	Removed		
§809.229(b)	No payment for holding spaces	Redesignated	§809.93(f)	No payment for holding spaces
§809.229(c)	Provider attendance reporting: 1st three days of scheduled care	Redesignated and Revised	§809.92(b)(4)(C)	Provider attendance reporting: 1st three days of scheduled care
§809.229(d)	Payment for occasional part-day/full-day	Redesignated	§809.93(g)	Payment for occasional part-day/full-day
§809.231(a)	Board establishes reimbursement rates	Redesignated and Revised	§809.20(a)	Board establishes reimbursement rates
§809.231(b)	Reimburse at lower of max rate or published rate	Redesignated and Revised	§809.21	Reimburse at lower of max rate or published rate
§809.231(c)	Same maximum rate for providers without agreements	Removed		
§809.231(d) - (e)	Graduated rates for TRS/TEEM	Redesignated	§809.20(b) - (c)	Graduated rates for TRS/TEEM
§809.231(f)	No retroactive payments for new max. rates	Redesignated and Revised	§809.93(h)	No retroactive payments for new max. rates
§809.231(g)	Reimbursement for care for children with disabilities	Redesignated and Revised	§809.20(d)	Reimbursement for care for children with disabilities
§809.232	Provider reimbursement for transportation	Redesignated and Revised	§809.20(e)	Provider reimbursement for transportation
§809.233	Reduction of reimbursement based on parent share of cost and other subsidies	Redesignated and Revised	§809.21(1) - (2)	Reduction of reimbursement based on parent share of cost and other subsidies
§809.233(2)	Provider reporting amounts of other subsidies collected	Redesignated and Revised	§809.92(b)(2)	Provider responsible for collecting other child care funds
§809.235	Timely billings submitted to the Commission	Removed		
		Added	§809.111(a)	Authority for Boards to establish fraud-prevention procedures
§809.251(a) - (b)	Board procedures for fraud prevention	Redesignated and Revised	§809.111(b) - (c)	Board procedures for fraud prevention
§809.251(c)(1), (3)	Commission review of investigation report	Redesignated and Revised	§809.111(d)	Commission review of fact-finding report
§809.251(c)(2)	Board referral for prosecution	Removed		
§809.251(d)	Submitting final fraud investigation report	Redesignated and Revised	§809.111(e)	Submitting final fraud investigation report
§809.252	Suspected fraud	Redesignated and Revised	§809.112	Suspected fraud
§809.253(1)	Actions if fraud is found: termination of provider agreement	Removed		
§809.253(2) - (5)	Actions if fraud is found	Redesignated and Revised	§809.113	Actions if the Commission finds fraud
§809.271	Child care during appeal	Redesignated and Revised	§809.75	Child care during appeal
§809.272(a) - (e)	Board review of appeal	Redesignated	§809.131(a) - (e)	Board review of appeal
		Added	§809.131(f)	Board must conduct review prior to submission to Commission
§809.273	Appeals to the Commission	Redesignated and Revised	§809.132	Appeals to the Commission
§809.281(a)	Compliance with rules and policies	Redesignated and Revised	§809.114(a)	Compliance with rules and policies

§809.281(b)	Failure to comply may warrant corrective actions and breach of contract	Redesignated and Revised	§809.114(b) - (c)	Failure to comply may warrant corrective actions and breach of contract
§809.282	Provider agreement violations	Removed		
§809.283(a)	Corrective actions for a child care contractor	Removed		
§809.283(b)	Determining corrective actions	Redesignated and Revised	§809.115(a)	Determining corrective actions
§809.283(c)	Corrective actions may include	Redesignated and Revised	§809.115(b)	Corrective actions may include
§809.283(d)	Service Improvement Agreement (SIA)	Redesignated and Revised	§809.115(c)	Service Improvement Agreement (SIA)
§809.284(a)(1) - (2) and (b) - (d)	Contractors, providers in non-compliance with federal or state programs	Removed		
§809.284(a)(3)	Providers debarred from other federal or state programs	Redesignated and Revised	§809.93(d)	No reimbursements for providers debarred from other federal or state programs
§809.285	Reapplication of provider agreements	Removed		
§809.286	Recovery of overpayments	Redesignated and Revised	§809.116	Recovery of improper payments
§809.287(a)(1), (4) - (5)	Recovery of overpayments to a provider	Redesignated and Revised	§809.117(a)(1) - (6)	Recovery of overpayments to a provider
§809.287(a)(2)	Recovery of overpayments when provider did not have an agreement	Removed		
§809.287(a)(3)	Recovery of overpayments when provider exceeded licensed capacity	Removed		
§809.287(b)	Recovery of overpayments to a parent	Redesignated	§809.117(b)	Recovery of overpayments to a parent
§809.288	Failure to meet performance standards	Removed		

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.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 5, 2007, through January 11, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 17, 2007. The public comment period for these projects will close at 5:00 p.m. on February 16, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Brownsville Navigation District; Location: The project is located adjacent to the Keppel AmFELS, Inc. facility, 20000 State Highway 48, Cameron County, Texas, along the north shore of the Brownsville Ship Channel between Sta. No. 73+697 & 74+212 and Sta. No. 74+450 & 73+697. The project can be located on the U.S.G.S. quadrangle map entitled: PALMITO HILL, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 664319; Northing: 2872918. Project Description: The applicant proposes to increase the permitted dredging depth adjacent to the Keppel AmFELS, Inc. facility from -25 ft. MLT to -30 ft. MLT depth in an area approximately 800 feet long by 700 feet wide and from -25 ft. MLT to -65 ft. MLT depth in an area approximately 850 feet long by 250 feet wide. Additionally, two smaller areas (350 ft. x 11ft. and 250 ft. x 24 ft., respectively) adjacent to a portion of the Keppel AmFELS, Inc. facility dredged under Department of the Army Permit No. 19602 will be deepened to -65 feet MLT. Approximately 295,000 cubic yards of material is to be hydraulically dredged from these locations and placed in disposal areas Nos. 5b and/or 7. CCC Project No.: 07-0086-F1; Type of Application: U.S.A.C.E. permit application #08624(09) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200700125
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 18, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/22/07 - 01/28/07 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/22/07 - 01/28/07 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/07 - 02/28/07 is 8.25% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/07 - 02/28/07 is 8.25% for Commercial over $250,000.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200700131
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 18, 2007

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Texas Education Agency

Notice of the Grant Writer Designation Form for the 2007-2008 English Literacy and Civics Education Grant Program

As part of the Texas Education Agency (TEA) eGrants system, the Grant Writer Designation Form has been introduced as a mechanism for identifying users who will have access to view and complete the English Literacy and Civics Education grant applications. Due to the competitive nature of some grants, certain users will be designated to have access to a grant application by the superintendent or the organization's authorized official. Only the superintendent or the organization's authorized official may complete the form and must denote agreement with the authorization statement on the bottom of the form before the schedule is complete. The form must be submitted in order for designated individuals to gain access to the grant application. The information submitted on the form is considered to be binding. Only the users identified on the form will have access to the grant application.

Superintendents or organizations' authorized officials and eGrants TEA Security Environment (TEA SE) users can view the instructions

for the form at http://maverick.tea.state.tx.us:8080/Guidelines/Template%20Forms/TEMPAA05PP2220_I.pdf.

A TEA SE username and password are required for each user of eGrants, including authorized officials such as superintendents and executive directors who submit grant applications, employees or contractors who will assist in writing/completing applications in eGrants, and grant personnel who will be completing project progress reports in eGrants. For each user, a single TEA SE username and password is valid for all eGrants applications and is not limited to any one specific grant.

To request a TEA SE username and password go to http://www.tea.state.tx.us/forms/tease/egrants_ext.htm. Information on how to apply for eGrants access can be found at http://www.tea.state.tx.us/opge/egrant/.

Description. The purpose of the 2007-2008 English Literacy and Civics Education Grant Program is to assist immigrants and other limited English proficient persons to effectively participate in the education, work, and civic opportunities of this country by assisting adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; assisting adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; and assisting adults in the completion of a secondary school education.

Dates of Project. The English Literacy and Civics Education Program will be implemented during the 2007-2008 school year. Applicants should plan for a starting date of no earlier than July 1, 2007, and an ending date of no later than June 30, 2008.

Project Amount. Funding will be provided for approximately 43 projects. Each eligible organization can apply for only one project for a maximum of up to $102,000 for the 2007-2008 school year. An eligible organization can also participate as a sub-recipient of an eligible organization applying for this grant. This project is funded 100 percent from Adult Education federal funds.

Training Available on Texas Education Telecommunication Network (TETN). TEA is offering training via TETN (TETN Event #24561) on Thursday, March 1, 2007, from 1:00 p.m. to 4:00 p.m. This training will cover the English Literacy and Civics Education grant application and will provide the opportunity for questions and answers. As space is limited, individuals planning to attend the event must reserve seating with their regional education service center.

Further Information. For clarifying information about this notice or the RFA, contact Carlos Garza, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://www.tea.state.tx.us/opge/disc/index.html.

TRD-200700130
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 18, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (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 **February 26, 2007**. 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, Building 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 February 26, 2007**. 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: Aqua Development, Inc. dba Aqua Texas, Inc.; DOCKET NUMBER: 2006-1546-MWD-E; IDENTIFIER: Regulated Entity Reference Numbers (RN) RN102343720; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14032001, Interim I and II Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $6,080; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ben E. Keith Company dba Ben E. Keith Beers; DOCKET NUMBER: 2006-0830-PST-E; IDENTIFIER: RN101780070; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: wholesale distributing; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; and 30 TAC §334.50(a)(1)(A), (b)(2), and (d)(1)(B)(iii)(III), by failing to provide a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system, by failing to provide proper release detection, and by failing to assure that the dispensers were calibrated within an accuracy of six or less cubic inches for every five gallons of product withdrawn; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: BFI Waste Services of Texas, LP; DOCKET NUMBER: 2006-1029-IHW-E; IDENTIFIER: RN101859445; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: waste transportation company; RULE VIOLATED: 30 TAC §335.2(b) and §335.11(h)(1), by failing to transport a manifested Class I indus-

trial waste to a designated authorized facility; 30 TAC §335.11(a)(1), by failing to obtain a properly completed manifest for a Class I industrial waste; and 30 TAC §312.9 and the Code, §5.702, by failing to pay fees for waste management sludge haulers; PENALTY: $1,122; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Bon & Bin Inc dba KS Cleaners; DOCKET NUMBER: 2006-1108-DCL-E; IDENTIFIER: RN104968417; LOCATION: Hickory Creek, Denton County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form; PENALTY: $724; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Michael O. Keiffer and Kristen M. Keiffer dba Candy Cleaners; DOCKET NUMBER: 2006-1503-DCL-E; IDENTIFIER: RN104959622; LOCATION: Woodville, Tyler County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Chambers County; DOCKET NUMBER: 2006-1397-AIR-E; IDENTIFIER: RN100922392; LOCATION: Anahuac, Chambers County, Texas; TYPE OF FACILITY: municipal solid waste/medical waste transporter; RULE VIOLATED: 30 TAC §101.20(1) and §116.115(c), Air Permit Number 24247, Special Condition Numbers 1, 10.A, 14.A, and 29, 40 Code of Federal Regulations (CFR) §60.52c(a) and (d)(2), and THSC, §382.085(b), by failing to ensure that the incinerator is not operated in a substandard condition; and 30 TAC §116.115(c), Air Permit Number 24247, Special Condition Number 29, 40 CFR §60.56c(c)(1) and (2), and THSC, §382.085(b), by failing to conduct annual performance testing of the incinerator; PENALTY: $5,378; Supplemental Environmental Project (SEP) offset amount of $4,302 applied to Galveston Bay Foundation - "Marsh Mania"; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: David Romo dba Chevron USA 74340; DOCKET NUMBER: 2006-1968-AIR-E; IDENTIFIER: RN101633717; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline product; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight; PENALTY: $800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Ann Van Nguyen dba Comet Cleaners; DOCKET NUMBER: 2006-1584-DCL-E; IDENTIFIER: RN104317573; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: D & K Development Corp.; DOCKET NUMBER: 2006-0143-MWD-E; IDENTIFIER: RN102287109; LOCATION: Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (4), TPDES Permit Number 0013518001, Permit Conditions Nos. 2.b., 2.d., and 2.g., and the Code, §26.121, by failing to discharge to the permitted outfall and by failing to prevent an unauthorized discharge; 30 TAC §317.4(a)(5) and TPDES Permit Number 0013518001, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes; 30 TAC §317.4(b)(1), by failing to equip the wastewater treatment plant with a bar screen; 30 TAC §305.125(5) and TPDES Permit Number 0013518001, by failing to properly maintain the wastewater treatment system; 30 TAC §305.125(7) and §305.126(b) and TPDES Permit Number 0013518001, Permit Conditions Number 4.a., by failing to give notice to the executive director as soon as possible of any planned physical alteration or addition to the permitted facility; 30 TAC §305.125(1) and TPDES Permit Number 0013518001, Final Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, Other Requirements Numbers 7, 8, 13, and 14, by failing to comply with the four milligrams per liter (mg/L) minimum dissolved oxygen permit limit, by failing to comply with final permitted limits, by failing to notify the TCEQ 45 days prior to completion of the new 0.0963 million gallons a day facility, by failing to submit a summary submittal letter prior to construction, by failing to conduct inspections seven days per week, and by failing to develop a standard operating plan; PENALTY: $60,300; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Danish Business, Inc. dba Power Fuel Express; DOCKET NUMBER: 2006-1684-PST-E; IDENTIFIER: RN101844603; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and (9) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) and by failing to post operating instructions conspicuously on the front of each dispenser; 30 TAC §334.50(b)(1)(A), (b)(2), and (b)(2)(A)(i)(III), and the Code, §26.3475(a) and (c)(1), by failing to provide proper release detection for all UST systems, by failing to conduct a piping tightness test, and by failing to have line leak detectors tested; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II VRS; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: City of Edinburg; DOCKET NUMBER: 2006-1413-MLM-E; IDENTIFIER: RN102080603 and RN101203560; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10503002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §290.45(b)(2)(B) and THSC, §341.0315(c), by failing to meet the minimum treatment plant capacity requirement of 0.6 gallons per minute (gpm) per connection for the public water supply facility; PENALTY: $10,213; Supplemental Environmental Project (SEP) offset amount of $8,170 applied to The Rensselaerville Institute - "Self-Help Rio Grande"; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: Gaylord Willett dba Essman Warehouse Complex; DOCKET NUMBER: 2006-1429-PWS-E; IDENTIFIER: RN101202240; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED:

30 TAC §290.41(c)(1)(B) and Agreed Order Docket Number 2004-0732-PWS-E, Ordering Provision Number 2.a.vii, by failing to locate ground water sources; 30 TAC §290.46(n)(1) and Agreed Order Docket Number 2004-0732-PWS-E, Ordering Provision No. 2.c.i, by failing to provide adequate and up-to-date detailed "as-built" plans or record drawings and specifications for each treatment plant, pump station and storage tank; 30 TAC §290.41(c)(1)(F) and (3)(A) and Agreed Order Docket Number 2004-0732-PWS-E, Ordering Provision Number 2.c.ii, by failing to secure a sanitary control easement and by failing to provide well completion data; PENALTY: $1,188; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Food Mart Inc. dba Neighborhood Chevron; DOCKET NUMBER: 2006-1415-PST-E; IDENTIFIER: RN102322989; LOCATION: Coppell, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $1,925; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Gas Mart U.S.A., Inc.; DOCKET NUMBER: 2006-0450-PST-E; IDENTIFIER: RN100812510; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B)(ii), and the Code, §26.3475(a) and (c)(1), by failing to provide a release detection method capable of detecting a release, by failing to provide proper release detection for the piping associated with the UST system, by failing to test the line leak detectors, and by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.10(b), by failing to have required UST records maintained, readily accessible and available for inspection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point; PENALTY: $5,715; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: Hartley County; DOCKET NUMBER: 2006-0999-MLM-E; IDENTIFIER: RN102215324; LOCATION: near Channing, Oldham County, Texas; TYPE OF FACILITY: type IV Arid Exempt municipal solid waste (MSW) landfill; RULE VIOLATED: 30 TAC §§330.125(a) and (e), 330.133(f), 330.135, and 335.586(d) and (e), by failing to maintain a copy of the MSW permit, personnel training records, written procedures for the removal of any putrescible waste, and any other prohibited waste to an authorized disposal facility; 30 TAC §330.129, by failing to maintain a source of earthen material; 30 TAC §330.133(a), (b), and (e), by failing to have a trained staff member at the facility during hours of operation to monitor all incoming loads of waste and by failing to control the unloading of waste in unauthorized areas; 30 TAC §330.137, by failing to provide the required information on the facility's signage; 30 TAC §330.15(d), by failing to prevent open burning of solid waste at a MSW facility; 30 TAC §330.165(d) and (h), by failing to apply weekly cover to the active portion of the landfill and maintain a cover log; 30 TAC §30.201(b), by failing to have at least one individual licensed to operate a MSW facility; 30 TAC §330.63(d)(4), by failing to include all of the required landfill unit specifications in the facility's site development plan; and 30 TAC §330.127, by failing to develop an adequate site operating plan; PENALTY: $14,280; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: City of Hidalgo; DOCKET NUMBER: 2006-1073-MWD-E; IDENTIFIER: RN101919975; LOCATION: Hidalgo, Hidalgo County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11080001, Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $30,300; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Kelly House dba House Water System; DOCKET NUMBER: 2006-0611-PWS-E; IDENTIFIER: RN102318557; LOCATION: Tarrant County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure sanitary control easements; 30 TAC §290.42(1), by failing to provide a plant operation manual; 30 TAC §290.43(c)(4), by failing to equip the ground storage tank with a liquid level indicator; 30 TAC §290.46(i), (m)(1), and (n)(3), by failing to adopt an adequate plumbing ordinance, regulation or service agreement, by failing to inspect the ground storage tank at least annually, by failing to inspect the pressure tank at least annually, and by failing to maintain copies of well completion data, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well on file; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $788; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: City of Hubbard; DOCKET NUMBER: 2004-1696-MWD-E; IDENTIFIER: RN101918480 and TPDES Permit Number 10534001; LOCATION: Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (9), TPDES Permit Number 10534001, Permit Condition 2(g), Monitoring and Reporting Requirements 7(b)(i), and the Code, §26.121, by failing to prevent an unauthorized discharge of wastewater from the collection system and by failing to orally notify the TCEQ of an unauthorized discharge; and 30 TAC §305.124(1) and §317.7(e) and the Code, §7.101, by failing to erect an intruder-resistant fence; PENALTY: $8,400; Supplemental Environmental Project (SEP) offset amount of $8,400 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Jetta Operating Company, Inc.; DOCKET NUMBER: 2006-1811-AIR-E; IDENTIFIER: RN100227560; LOCATION: Thompsons, Fort Bend County, Texas; TYPE OF FACILITY: petroleum production plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2), and 122.146(5), Federal Operating Permit (FOP) Number O-0592, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to report deviations in semiannual deviation reports and by failing to include information about those deviations in an annual compliance certification; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 48901 SC 10.A., and FOP Number O-0592, SC Number 1, and THSC, §382.085(b), by failing to keep records of quarterly engine performance tests; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Paul H. Krebs dba K Estates Water System; DOCKET NUMBER: 2006-1015-MLM-E; IDENTIFIER: RN101257806; LOCATION: Harris County, Texas; TYPE OF FACILITY: public water supply and equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water; RULE VIOLATED: 30 TAC §290.41(c)(3)(J), (K), (N), and (O), by failing to maintain the concrete sealing block, by failing to seal the wellheads, by failing to provide an operable flow meter on the pump discharge line, by failing to cover the casing vent with 16-mesh or finer corrosion-resistant screening material, and by failing to maintain intruder-resistant fences; 30 TAC §290.46(e)(4)(A), (m)(1) and (4) and (t), and THSC, §341.033(a), by failing to have all production, treatment, and distribution facilities at the public water system operated at all times under the direct supervision of a water works operator holding a valid Class D or higher license, by failing to conduct annual inspections of the two pressure tanks, by failing to maintain the pressure tank in a watertight condition, and by failing to post a legible sign in plain view of the public and provide the name of the water supply and an emergency telephone; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.110(e)(4), by failing to submit a disinfectant level quarterly operating report; and 30 TAC §291.93(3), by failing to submit a planning report; PENALTY: $2,206; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Kempwood Enterprises, LLC dba Chevron Mini Mart 3; DOCKET NUMBER: 2006-1628-PST-E; IDENTIFIER: RN102441094; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (b)(2), and (b)(2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases, by failing to conduct proper release detection, and by failing to test the line leak detectors; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Kyu Enterprise, Inc. dba K's Cleaners; DOCKET NUMBER: 2006-1350-DCL-E; IDENTIFIER: RN103955639; LOCATION: Lewisville, Denton County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: City of La Ward; DOCKET NUMBER: 2006-1492-MWD-E; IDENTIFIER: RN102287562; LOCATION: La Ward, Jackson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013479001, Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $8,680; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Lone Star Industries, Inc.; DOCKET NUMBER: 2006-1549-AIR-E; IDENTIFIER: RN100220847; LOCATION: Maryneal, Nolan County, Texas; TYPE OF FACILITY: cement plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit initial notification within 24 hours from the discovery date for a reportable emissions event; 30 TAC §111.111(a)(1)(C) and THSC, §382.085(b), by failing to maintain visible emissions below the 15-permit opacity limit; and 30 TAC §116.115(c), Permit Number 49046, Special Condition 3, 40 CFR §63.1344(a)(3) and THSC, §382.085(b), by failing to maintain the fabric filter inlet temperature to 440 degrees Fahrenheit or less; PENALTY: $14,544; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(25) COMPANY: Rick Lumbley dba Lum's Country Store; DOCKET NUMBER: 2006-0462-PST-E; IDENTIFIER: RN101782605; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: barbeque restaurant with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2006-1494-PWS-E; IDENTIFIER: RN101450286 and RN104359526; LOCATION: Pottsboro and Trinidad, Grayson and Henderson Counties, Texas; TYPE OF FACILITY: public drinking water systems; RULE VIOLATED: 30 TAC §290.45(f)(5) and (6), by failing to meet the commission's capacity requirements; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement; 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 mg/L for trihalomethanes (TTHM); PENALTY: $4,300; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800; 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(27) COMPANY: Nova Chemicals Inc.; DOCKET NUMBER: 2006-1299-IHW-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: ethyl benzene and a styrene monomer manufacturing plant ; RULE VIOLATED: 30 TAC §335.62, by failing to properly classify waste; 30 TAC §335.6(c), by failing to update the notice of registration (NOR); 30 TAC §335.10(a), by failing to properly manifest waste; and 30 TAC §335.2(b), by failing to prevent the disposal of waste at an unauthorized facility; PENALTY: $5,814; Supplemental Environmental Project (SEP) offset amount of $2,325 applied to Armand Bayou Nature Center Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Nuraj Enterprises, Inc. dba West End Grocery; DOCKET NUMBER: 2004-1578-PST-E; IDENTIFIER: RN101676096, Petroleum Storage Tank Registration Number 20385; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: Fuad Azar dba Pik Kwick 1; DOCKET NUMBER: 2006-1516-PST-E; IDENTIFIER: RN100859156; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a), (c)(2)(C), and (c)(4) and the Code, §26.3475(d), by failing to maintain and operate the corrosion protection system, by failing to inspect the

impressed current cathodic protection system, and by failing to inspect and test the cathodic protection system for operability and adequacy of protection; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Praxair, Inc.; DOCKET NUMBER: 2006-1062-PWS-E; IDENTIFIER: RN102146446; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: industrial agricultural facility with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F), (3)(A)(ii), and (f)(1)(A) and (3), and THSC, §341.031(a), by failing to collect and submit additional repeat water samples for bacteriological analysis, by failing to collect and submit repeat water samples for bacteriological analysis, by exceeding the acute maximum contaminant level for total coliform bacteria, and by exceeding the MCL for total coliform bacteria; PENALTY: $2,050; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Questech Services Corporation; DOCKET NUMBER: 2006-0941-IHW-E; IDENTIFIER: RN100684034; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: ceramic substrate scribing and drilling, laser silicon machining, resistor trimming, ceramic substrate dicing and sawing, and laser making services; RULE VIOLATED: 30 TAC §335.69(a)(3) and 40 CFR §262.34(a)(3), by failing to properly label each container and tank with the words "Hazardous Waste"; 30 TAC §335.62 and 40 CFR §262.11(c), by failing to conduct a hazardous waste determination; 30 TAC §335.6(c), by failing to update the NOR; and 30 TAC §335.13(k), by failing to submit an exception report; PENALTY: $18,189; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Sherali Haiderali dba Regency Cleaners; DOCKET NUMBER: 2006-1245-DCL-E; IDENTIFIER: RN100708304; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Dolores M. Valdez and Ingilberto Rivera dba Rivas Super Store; DOCKET NUMBER: 2006-1310-AIR-E; IDENTIFIER: RN100813682; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085, by failing to comply with the maximum seven pounds per square inch absolute Reid Vapor Pressure requirement; PENALTY: $1,240; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(34) COMPANY: Sabah Corporation, Inc. dba VIP Cleaners and dba Liberty Cleaners; DOCKET NUMBER: 2006-1557-DCL-E; IDENTIFIER: RN104103031, RN104103023, and RN104103007; LOCATION: Cleveland and Liberty, Liberty County, Texas; TYPE OF FACILITY: dry cleaning and/or drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form for the facilities; PENALTY: $3,555; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Sequa Corporation; DOCKET NUMBER: 2006-1438-AIR-E; IDENTIFIER: RN100217926; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: metal coating plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), TCEQ Air Permit Number 56588, Special Condition 1, and THSC, §382.085(b), by failing to comply with a permitted emission rate of 3.74 pounds per hour for carbon monoxide and by failing to comply with permitted emission rate of 0.06 pounds per hour for volatile organic compounds; 30 TAC §101.351(a)(1) and THSC, §382.085(b), by failing to submit a level of activity certification emission cap and trade form; 30 TAC §101.359(a) and THSC, §382.085(b), by failing to submit emission cap and trade ECT-1 form; and 30 TAC §101.352(b) and THSC, §382.085(b), by failing to ensure that a quantity of nitrogen oxide allowances were maintained; PENALTY: $58,225; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Southwest Convenience Stores, LLC dba 7 Eleven 57409; DOCKET NUMBER: 2006-1749-PST-E; IDENTIFIER: RN102410727; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and (b)(2) and the Code, §26.3475(d), by failing to provide proper corrosion protection and by failing to electrically isolate UST system components from the corrosive elements of the surrounding soil, backfill, groundwater, and other metallic components; 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of each UL-listed emergency shutoff valve; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to assure that all installed spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with manufacturer's specifications; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(37) COMPANY: Bobbie S. Dodd, Bonnie Mitchell, and Bobbie M. Cherry dba Splendora Dry Cleaners; DOCKET NUMBER: 2006-1248-DCL-E; IDENTIFIER: RN104963616; LOCATION: Splendora, Montgomery County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: Stowaway Bay Property Owners Association; DOCKET NUMBER: 2006-1709-MWD-E; IDENTIFIER: RN102077179; LOCATION: Polk County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11779001, Final Effluent Limitation and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits and by failing to provide monitoring results at the intervals specified in the permit; PENALTY: $6,600; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(39) COMPANY: Sultan, Inc. dba Superior Cleaners; DOCKET NUMBER: 2006-1381-DCL-E; IDENTIFIER: RN104084926; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by

failing to pay outstanding dry cleaner fees; PENALTY: $889; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Texas Conference Association of Seventh-Day Adventists dba The Oaks Adventist Christian School; DOCKET NUMBER: 2006-1063-PWS-E; IDENTIFIER: RN104387543; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: school with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring and by failing to provide public notification of the failure to conduct monthly bacteriological sampling; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: $1,220; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2006-0663-WQ-E; IDENTIFIER: RN104900493; LOCATION: Somervell County, Texas; TYPE OF FACILITY: highway construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR150000, Part III, Section D.2, F.1(b), (f), and (i), F.2.(a)(i) and (v), F.2(b)(ii) and (iii), F.5(b), and F.8(a) and (d), and 40 CFR Part 122, by failing to include the permit number on the construction site notice posted on site, by failing to identify, on the detailed site map, draining patterns and approximate slopes anticipated, by failing to include a copy of the TPDES General Permit in the storm water pollution prevention plan, by failing to design erosion and sediment controls to retain sediment on site, by failing to maintain or reference required records of major grading activities and temporarily or permanently ceasing of construction activities, by failing to implement controls for waste oil and other fluids expected to be stored on site and to limit off-site transport of litter, construction debris, and construction materials, by failing to ensure that stabilization measures initiated on portions of the site where construction had temporarily and/or permanently ceased was established, by failing to identify waste oil and other fluids expected to be stored on site or to describe controls or best management practices, by failing to include an adequate description of the intended schedule or sequence of major activities, by failing to conduct inspections at least every 14 calendar days and within 24 hours of the end of a storm event, and by failing to identify instances of noncompliance on inspection reports; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of sediments; PENALTY: $11,800; Supplemental Environmental Project (SEP) offset amount of $9,440 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(42) COMPANY: Texas H2O, Inc.; DOCKET NUMBER: 2006-1711-PWS-E; IDENTIFIER: RN101244291; LOCATION: Johnson County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.43(c)(6), by failing to maintain all water storage facilities in a watertight condition; 30 TAC §290.42(1), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.46(i) and (n)(3), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement and by failing to maintain on file at the public water system and be available to the executive director upon request a copy of the well completion data; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(43) COMPANY: The Methodist Hospital; DOCKET NUMBER: 2006-1372-AIR-E; IDENTIFIER: RN102962446; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: medical; RULE VIOLATED: 30 TAC §101.360(a) and THSC, §382.085(b), by failing to submit an emission cap and trade ECT-3 form; 30 TAC §117.534(1)(A) and (C)(i) and THSC, §382.085(b), by failing to install fuel flow meters on the boilers and by failing to submit the results of stack testing; 30 TAC §101.359(a) and THSC, §382.085(b), by failing to submit an ECT-1 form; and 30 TAC §101.352(b) and THSC, §382.085(b), by failing to ensure that a quantity of allowances are maintained in its compliance account; PENALTY: $32,000; Supplemental Environmental Project (SEP) offset amount of $25,600 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2006-1656-AIR-E; IDENTIFIER: RN100212109; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 21538, Special Condition Number 6, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to make initial notification within 24 hours after discovering the emissions event; PENALTY: $12,699; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(45) COMPANY: Town of Marshall Creek; DOCKET NUMBER: 2006-0748-PWS-E; IDENTIFIER: RN101201952; LOCATION: Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.121(b) and Agreed Order Number 2001-1346-PWS-E, by failing to keep on file and make available for commission review a monitoring plan; 30 TAC §290.46(f)(3)(D)(ii), (i), (n)(2) and (3), (m), and (u), and Agreed Order Number 2001-1346-PWS-E, by failing to keep on file and make available for commission review the results of pressure tank and ground storage tank inspections, by failing to adopt an adequate plumbing ordinance, regulations, or service agreement, by failing to keep on file and make available for commission review an up-to-date map of the distribution system, by failing to keep on file and make available for commission review well completion data, by failing to ensure that maintenance and housekeeping practices are implemented, and by failing to keep on file and make available for commission review a well plugging report; 30 TAC §290.41(c)(1)(F) and (3)(B), (J), and (K), and Agreed Order Number 2001-1346-PWS-E, by failing to keep on file and make available for commission review a sanitary control easement, by failing to extend the well casing to a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface, by failing to provide a concrete sealing block, and by failing to provide the well with a casing vent; and 30 TAC §290.45(b)(1)(C)(i), Agreed Order Number 2001-1346-PWS-E, and THSC, §341.0315(c), by failing to provide a well production capacity of 0.6 gpm per connection; PENALTY: $13,313; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(46) COMPANY: Travis County Water Control and Improvement District 20; DOCKET NUMBER: 2006-1687-PWS-E; IDENTIFIER: RN102677705; LOCATION: Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC

§290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and haloacetic acids; PENALTY: $1,208; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336 (512) 339-2929.

(47) COMPANY: Triad Hospitals, Inc.; DOCKET NUMBER: 2006-1758-EAQ-E; IDENTIFIER: RN104993456; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: medical center construction site; RULE VIOLATED: 30 TAC §213.23(a)(1)(A) and (B), by failing to obtain approval of an Edwards Aquifer contributing zone plan; PENALTY: $54,000; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336 (512) 339-2929.

(48) COMPANY: Vopak Logistics Services USA Inc.; DOCKET NUMBER: 2006-1347-AIR-E; IDENTIFIER: RN100223007; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: rail car cleaning and waste management; RULE VIOLATED: 30 TAC §115.132(a)(1) and THSC, §382.085(b), by failing to ensure that all openings on the water separator associated with the centrifuge separation are totally sealed; 30 TAC §115.136(a)(1) and THSC, §382.085(b), by failing to demonstrate continuous compliance with the applicable criteria exempting the water separator from emissions controls; 30 TAC §116.115(c) and §122.143(4), Air Permit Number O-01637, Special Condition Numbers 1.A. and 16, Air Permit Number 6400, Special Condition Number 4.B., 40 CFR §61.247(b), and THSC, §382.085(b), by failing to submit semiannual reports; 30 TAC §121.121 and §122.132(e)(2) and THSC, §382.085(b), by failing to represent all applicable emission sources in the Title V permit application; 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), Air Permit Number O-01637, Special Condition Number 1.A., and THSC, §382.085(b), by failing to record flare observations; and 30 TAC §116.115(c) and §122.143(4), Air Permit Number 6400, Special Condition Numbers 16 and 28, Air Permit Number O-01637, Special Condition Number 16, and THSC, §382.085(b), by failing to record the pH of the scrubbing liquid and by failing to record the vacuum system level; PENALTY: $55,328; Supplemental Environmental Project (SEP) offset amount of $22,131 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(49) COMPANY: WFC Company Inc. dba Warminster Fiberglass; DOCKET NUMBER: 2006-1552-AIR-E; IDENTIFIER: RN102191491; LOCATION: Jacksonville, Cherokee County, Texas; TYPE OF FACILITY: fiberglass product manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and §116.315(a) and THSC, §382.085(b) and §382.0518(a), by failing to submit a renewal application for New Source Review Permit Number 26330 prior to expiration; PENALTY: $14,400; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(50) COMPANY: City of White Oak; DOCKET NUMBER: 2006-1879-MWD-E; IDENTIFIER: RN102079696; LOCATION: Gregg County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10940001, Interim Effluent Limitations and Monitoring Requirements Number 1, Outfall 001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200700133
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 18, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 26, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Anh Ma dba 1.25 One Price Cleaners; DOCKET NUMBER: 2006-0851-DCL-E; TCEQ ID NUMBER: RN104968128; LOCATION: 302 Grapevine Highway, Number 306, Hurst, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a), and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for the facility; PENALTY: $1,185; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Derek Wasson dba Corner Mart Grocery & Station; DOCKET NUMBER: 2006-0419-PST-E; TCEQ ID NUMBER: RN101447092; LOCATION: 1001 Highway 59 North, Queen City, Cass County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4),

and Texas Water Code (TWC), §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of a least once every three years; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate; 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the facility; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; and 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit; PENALTY: $35,700; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Houston Precast, Inc.; DOCKET NUMBER: 2006-0836-AIR-E; TCEQ ID NUMBER: RN104960497; LOCATION: 11393 Sleepy Hollow Road, Conroe, Montgomery County, Texas; TYPE OF FACILITY: specialty concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a)(2)(A), and THSC, §382.085(b), and §382.0518(a), by failing to obtain authorization prior to constructing and operating a specialty concrete batch plant; PENALTY: $30,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Jose Cisneros and Edgar Cisneros; DOCKET NUMBER: 2006-0508-MLM-E; TCEQ ID NUMBER: RN104549118; LOCATION: seven miles west of Alice, Texas, on County Road 147, 1 1/2 miles south of Highway 44, Jim Wells County, Texas; TYPE OF FACILITY: non-permitted municipal solid waste site; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized site; PENALTY: $2,100; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200700129
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 18, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. 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 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 **February 26, 2007**. 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, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: AGA Enterprises, Inc. dba Chevron Food Mart 2; DOCKET NUMBER: 2006-0299-PST-E; TCEQ ID NUMBER: RN102043023; LOCATION: 6892 Farm-to-Market Road 1130, Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(C), and Texas Water Code (TWC), §26.3475(c)(2), by failing to install overfill prevention equipment on the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once a month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: $2,625; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Alishan, Inc. dba Super Stop 16; DOCKET NUMBER: 2005-1477-PST-E; TCEQ ID NUMBER: RN101923399; LOCATION: 1165 South 11th Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A); and TWC, §26.3475(c)(1), by failing to provide a method of release detection which was capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping and other underground ancillary equipment; 30 TAC §334.50(b)(2)(A)(i)(III); and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii); and TWC, §26.3475(c)(1), by failing to reconcile inventory control records at least once each month, sufficiently accurate to detect a release as

small as 1.0% of the total substance flow through for the month plus 130 gallons; 30 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 at least once every 12 months; 30 TAC §115.242(3), (3)(A), and (3)(J); and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by California Air Resources Board (CARB) Executive Order(s), and free of defects that would impair the effectiveness of the system; 30 TAC §334.50(d)(9)(A)(iii), and §334.72, by failing to notify the commission within 24 hours of a suspected release when statistical inventory report analysis results were Fail or Inconclusive; 30 TAC §334.74, by failing to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release; 30 TAC §115.246(1); and THSC, §382.085(b), by failing to maintain for review a copy of the facility's CARB Executive Order; 30 TAC §334.51(b)(2)(C); and TWC, §26.3475(c)(2), by failing to equip the diesel tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reached a preset level; and 30 TAC §334.45(c)(3)(A), by failing to have a functioning UL-listed emergency shutoff valve; PENALTY: $17,550; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: AT Systems Southwest, Inc.; DOCKET NUMBER: 2005-1402-PST-E; TCEQ ID NUMBER: RN101544641; LOCATION: 2311 Motor Street, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $2,100; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Anson; DOCKET NUMBER: 2005-1586-MWD-E; TCEQ ID NUMBER: RN103137998; LOCATION: 1202 Commercial Avenue, Anson, Jones County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.126(a); and Water Quality Permit No. 10500-002, Section III, Part VII, Standard Provision Number 7, by failing to obtain the necessary authorization to commence construction of additional wastewater treatment and/or collection facilities when the daily average flow reached 90% of the daily average flow limit; 30 TAC §305.125(1), and Water Quality Permit No. 10500-002, Section III, Requirements Applying to All Sewage Sludge Disposed in a Municipal Solid Waste Landfill, Provision D, by failing to test sludge at least once during the term of the permit in accordance with the method specified in 40 Code of Federal Regulations (CFR) §261, Appendix II; 30 TAC §305.125(1), and Water Quality Permit No. 10500-002, Effluent Limitations and Monitoring Requirements, by failing to limit the 30-day average effluent flow to 0.275 million gallons per day from the treatment system; 30 TAC §305.125(1) and Water Quality Permit No. 10500-002, Section III, Part VI, Special Provision Number 7, by failing to maintain holding ponds that conform to the TCEQ Design Criteria for Sewerage Systems, and by failing to maintain a minimum of two feet of free board around the stabilization ponds; 30 TAC §305.125(1), and Water Quality Permit No. 10500-002, Section III, Part VI, Special Provision Number 8, by failing to obtain and analyze representative soil samples from the root zones of the disposal site; 30 TAC §305.125(1), and Water Quality Permit No. 10500-002, Section III, Part VI, Special Provision Number 4, by failing to utilize irrigation practices that prevent ponding of effluent or contamination of ground and surface waters; and 30 TAC §305.125(1), and Water Quality Permit No. 10500-002, Section III, Requirements Applying to All Sewage Sludge Disposed in a Municipal Solid Waste Landfill, Provision G, by failing to submit an annual sludge report by September 1, 2003 to the TCEQ; PENALTY: $7,875; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Five Star Legacy, Inc. dba Bell Cleaners; DOCKET NUMBER: 2006-0995-DCL-E; TCEQ ID NUMBER: RN104984927; LOCATION: Northlake Shopping Center on Highway 274, Kemp, Kaufman County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay outstanding dry cleaner registration fees for TCEQ Financial Account No. 24001353 for Fiscal Year 2006; PENALTY: $1,185; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Jaspal Singh dba RK Mart; DOCKET NUMBER: 2004-0535-PST-E; TCEQ ID NUMBERS: RN102957636; LOCATION: 3805 Lee Street, Greenville, Hunt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A), §334.50(b)(1)(A), and (b)(2)(A)(i)(III); and TWC, §26.3475(a) and (c)(1), by failing to provide a proper release detection method capable of detecting a release from any portion of the UST system; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; and 30 TAC §334.10(b), by failing to develop and maintain all the required records for review; PENALTY: $5,600; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Lakeport Development, Inc.; DOCKET NUMBER: 2003-0971-PST-E; TCEQ ID NUMBER: RN102024577; LOCATION: Highway 322 and Highway 149, Longview, Gregg County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(3), by failing to report to the commission a suspected release from a UST within 24 hours of discovery of the suspected release; and 30 TAC §334.74, by failing to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release; PENALTY: $9,900; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Michael Conlin; DOCKET NUMBER: 2005-0919-MSW-E; TCEQ ID NUMBER: RN104523063; LOCATION: 6820 Kiwanis Club Road, Silsbee, Hardin County, Texas; TYPE OF FACILITY: residential property; RULES VIOLATED: 30 TAC §324.4(2)(B), THSC, §371.041, and 40 CFR §279.12, by failing to prevent the unauthorized discharge of used oil to soil at the site; PENALTY: $1,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: MZEE, Inc. dba Key Truck Stop; DOCKET NUMBER: 2004-0285-PST-E; TCEQ ID NUMBER: RN101249498;

LOCATION: 17124 I-10 East Channelview, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3) and (3)(H), and §115.245(2), and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper condition; 30 TAC §334.48(c), and §334.50(d)(1)(B)(ii), and TWC, §26.3475(a), by failing to properly record inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank each operational day, and failing to conduct proper reconciliation of detailed inventory control records on a monthly basis; and 30 TAC §334.50(b)(1)(A) and (b)(2)(A)(i), and TWC, §26.3475(a), by failing to equip the product lines with an automatic line leak detector and monitor the USTs for releases at a frequency of at least once every month; PENALTY: $5,775; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: R. Master & Sons, Inc. dba Get & Go; DOCKET NUMBER: 2004-1809-PST-E; TCEQ ID NUMBER: RN101733533; LOCATION: 717 Half League Street, Port Lavaca, Calhoun County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $1,600; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200700128
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 18, 2007

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality will conduct public hearings to receive testimony concerning revisions to §114.318 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs).

The proposed amendment to §114.318 would extend the December 31, 2006, expiration date of all alternative emission reduction plans approved by the executive director prior to December 16, 2005, by one year to December 31, 2007, and would apply the new expiration date to all alternative emission reduction plans approved by the executive director prior to May 17, 2006.

The commission will hold public hearings on this proposal at the following times and locations: February 15, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 20, 2007, 2:30 p.m., Council Chambers, City Hall Annex, First Floor, 900 Bagby Street, Houston; and February 22, 2007, 10:00 a.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573.

Comments may be submitted to Patricia Durón, 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://www.5.tceq.state.tx.us.rules/ecomments*. All comments should reference Rule Project Number 2007-007-114-EN. The comment period closes March 2, 2007. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown, Air Quality Division, at (512) 239-1438.

TRD-200700102
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 11, 2007

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality will conduct public hearings to receive testimony concerning revisions to §115.247 of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs).

The proposed amendment to §115.247 would exempt facilities used exclusively for the initial fueling and/or re-fueling of vehicles equipped with onboard refueling vapor recover equipment from Stage II requirements in Chapter 115.

The commission will hold public hearings on this proposal in Austin on February 27, 2007, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210; and in Arlington on February 28, 2007, at 2:00 p.m. at the City of Arlington Council Chambers located at 101 West Abrams Street. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573.

Comments may be submitted to Patricia Durón, 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://www.5.tceq.state.tx.us.rules/ecomments. All comments should reference Rule Project Number 2006-049-115-EN. The comment period closes March 15, 2007. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Koy Howard, Air Quality Division, at (512) 239-2306.

TRD-200700104
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 11, 2007

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Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rates for Large, State-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following interim per diem reimbursement rates for large, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), including state schools operated by the Texas Department of Aging and Disability Services (DADS): $345.87 for Medicaid-only clients; and $338.59 for clients who are dually eligible for assistance through the Medicaid and Medicare programs. The adopted rates are effective September 1, 2006.

HHSC conducted a hearing on November 6, 2006, to receive public comment on the proposed reimbursement rates. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. Notice of the hearing was published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8764).

Methodology and justification. The adopted rates were determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter D, §355.456(f), relating to Reimbursement Rates.

TRD-200700122
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: January 18, 2007

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Notice of Hearing on Proposed Provider Reimbursement Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on February 14, 2007, at 2:00 p.m. to receive comments from interested persons on a proposed interim Medicaid reimbursement rate applicable to small, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), including bond homes, group homes and community centers operated by the Texas Department of Aging and Disability Services (DADS). The public hearing will be held in the Lone Star Conference Room at HHSC's Braker Center office located at 11209 Metric Boulevard, Building H, Austin, Texas. The public hearing will be held in compliance with Title 1 of the Texas Administrative Code §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. Persons with disabilities who wish to attend the public hearing and who require auxiliary aids or services should contact Irene Cantu by telephone at (512) 491-1358 by February 7, 2007, so that accommodations can be arranged.

Written and oral comments. Written comments about the proposed interim reimbursement rate may be submitted to HHSC until 5:00 p.m. on February 14, 2007, in lieu of or in addition to oral comments presented at the public hearing. Written comments may be hand-delivered or sent by U.S. mail, special delivery mail or overnight express to the attention of Irene Cantu, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas, 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu's attention at (512) 491-1998.

Briefing package. Copies of the briefing package about the proposed interim reimbursement rate will be available at the hearing. Persons interested in receiving a briefing package before the hearing may contact Irene Cantu by telephone at (512) 491-1358, by facsimile at (512) 491-1998, by email at irene.cantu@hhsc.state.tx.us, or by mailing a request to HHSC Rate Analysis, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following interim reimbursement rate for small, state-operated ICF/MR:

Small, State-Operated ICF/MR - Medicaid clients Proposed interim daily rate - $188.30

HHSC is proposing this interim rate so that adequate funds will be available to serve clients in these facilities. The proposed interim rate accounts for the actual cost to operate these facilities. The proposed interim rate will be effective September 1, 2006, if approved.

Methodology and justification. The proposed rate was determined in accordance with the rate setting methodology codified at 1 Texas Administrative Code Chapter 355, Subchapter D, §355.456(f), relating to Reimbursement Rates.

TRD-200700121
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: January 18, 2007

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Notice of Hearing on Proposed Provider Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on February 12, 2007, at 9:00 a.m. to receive comments from interested persons on proposed Medicaid reimbursement rates applicable to providers of Home and Community-based Services (HCS) and to the Texas Home Living (TxHmL) Program. The public hearing will be held in the Lone Star Conference Room at HHSC's Braker Center office located at 11209 Metric Boulevard, Building H, Austin, Texas. The public hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before HHSC approves such rates. Persons with disabilities who wish to attend the public hearing and who require auxiliary aids or services should contact Ms. Irene Cantu by telephone at (512) 491-1358 by February 5, 2007, so that appropriate arrangements can be made.

Written and oral comments. Written comments about the proposed reimbursement rates may be submitted until 5:00 p.m. on February 12, 2007, in lieu of or in addition to oral comments presented at the public hearing. Written comments may be hand-delivered or sent by U.S. mail or overnight express to the attention of Irene Cantu, HHSC Rate Analy-

sis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu's attention at (512) 491-1998.

Briefing package. A reimbursement rate briefing package describing the proposed reimbursement rates will be available, upon request, no later than January 29, 2007. Interested persons may request a copy of the briefing package by contacting Irene Cantu by telephone at (512) 491-1358. Briefing packages also will be available at the hearing.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified at 1 Texas Administrative Code Chapter 355, Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services (HCS), and §355.791, Reporting Costs and Reimbursement Methodology for the Texas Home Living (TxHmL) Program. The proposed rates will be effective on March 1, 2007, if approved, and will result in rates to support the implementation of the consumer-directed services option in those programs.

TRD-200700123
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: January 18, 2007

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Texas Department of Housing and Community Affairs

Notice of Public Hearing Multifamily Housing Revenue Bonds (Summit Point Apartments) Series 2007

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Green Valley Elementary, 13350 Woodforest Boulevard, Houston, Harris County, Texas 77015, at 6:00 p.m. on February 15, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $12,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Summit Point Apartments, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 291-unit multifamily residential rental development to be located at 333 Uvalde Road, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing.

Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200700101
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 11, 2007

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Texas Lottery Commission

Instant Game Number 758 "Ultimate Vegas Getaway"

1.0 Name and Style of Game.

A. The name of Instant Game No. 758 is "ULTIMATE VEGAS GETAWAY". The play style is for GAME 1 is "key number match with auto win". The play style for GAME 2 is "match 3".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 758 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 758.

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: $2.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $20,000, TRIP, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, AIRPLANE SYMBOL, CHERRY SYMBOL, LEMON SYMBOL, STACK OF BILLS SYMBOL, HORSE SHOE SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL and BELL SYMBOL.

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. 758 - 1.2D

PLAY SYMBOL	CAPTION
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$20,000	20 THOU
TRIP SYMBOL	PACKAGE
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FRN
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
AIRPLANE SYMBOL	TRIP
CHERRY SYMBOL	CHERRY
LEMON SYMBOL	LEMON
STACK OF BILLS	BILLS
CROWN SYMBOL	CROWN
HORSE SHOE SYMBOL	HRSHOE
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 758 - 1.2E

CODE	PRIZE
TWO	$2.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100 or $500.

I. High-Tier Prize - A prize of TRIP or $20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (758), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 758-0000001-001.

L. Pack - A pack of "ULTIMATE VEGAS GETAWAY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Tickets 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ULTIMATE VEGAS GETAWAY" Instant Game No. 758 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 "ULTIMATE VEGAS GETAWAY" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. For GAME 1, if a player matches any of YOUR NUMBERS play symbols to either of the VEGAS NUMBERS play symbols, the player wins the prize shown for that number. If a player reveals an "AIRPLANE" symbol, the player wins a dream trip to LAS VEGAS. For GAME 2, if a player reveals three (3) matching play symbols in any one PULL, the player wins prize shown for that PULL. 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 54 (fifty-four) 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 54 (fifty-four) 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 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) 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 book will not have identical patterns.

B. Players can win up to eighteen (18) times in this game.

C. GAME 1: No duplicate non-winning YOUR NUMBERS on a ticket.

D. GAME 1: Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. GAME 1: No duplicate VEGAS NUMBERS will appear on a ticket.

F. GAME 1: The "plane" symbol will never appear as a VEGAS NUMBER.

G. GAME 1: The "plane" symbol will never appear on non-winning tickets.

H. GAME 1: The "plane" symbol will win a trip to Las Vegas, and will win as per the prize structure.

I. GAME 1: When it appears, the "plane" symbol will always be accompanied by the prize symbol "TRIP".

J. GAME 1: The "plane" symbol and "TRIP" prize will only appear in GAME 1.

K. GAME 1: The prize "TRIP" will only appear with the "plane" symbol.

L. GAME 1: A YOUR NUMBER play symbol will never equal the corresponding Prize symbol (i.e. 5 and $5).

M. GAME 1: A non-winning prize symbol will not appear more than 2 (two) times on a ticket.

N. GAME 2: The Play area consists of twenty-four (24) play symbols and eight (8) PRIZE symbols.

O. GAME 2: There will never be three (3) identical symbols in a vertical or diagonal line.

P. GAME 2: No prize amount will appear more than two (2) times in this play area except as required on multiple win tickets.

Q. GAME 2: Non-winning tickets will never contain more than three (3) of the same play symbols over the entire play area.

R. GAME 2: Consecutive non-winning tickets within a book 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.

S. GAME 2: Non-winning tickets will not have identical games. For example if PULL 1 is CHERRIES, CROWN, and POT OF GOLD then PULL 2 through PULL 8 will not contain CHERRIES, CROWN, and POT OF GOLD in any order.

T. GAME 2: Winning tickets will contain three (3) like Play Symbols in a horizontal row.

U. GAME 2: Wins will be distributed approximately evenly over PULLs 1-8.

V. GAME 2: Players can win up to eight (8) times in this play area.

W. GAME 2: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "ULTIMATE VEGAS GETAWAY" Instant Game prize of $2.00, $5.00, $10.00, $20.00, $30.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ULTIMATE VEGAS GETAWAY" Instant Game prize of TRIP or $20,000, 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 "ULTIMATE VEGAS GETAWAY" 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;

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 "ULTIMATE VEGAS GETAWAY" 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 "ULTIMATE VEGAS GETAWAY" 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 Section 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 10,080,000 tickets in the Instant Game No. 758. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 758 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,411,200	7.14
$5	645,120	15.63
$10	241,920	41.67
$20	80,640	125.00
$30	27,300	369.23
$50	14,280	705.88
$100	8,064	1,250.00
$500	80	126,000.00
TRIP	60	168,000.00
$20,000	8	1,260,000.00

*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 4.15. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery 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. 758 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. 758, 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-200700132
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: January 18, 2007

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 8, 2007, Matrix Telecom, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60108. Applicant intends to reflect a change in type of provider.

The Application: Application of Matrix Telecom, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33715.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 31, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33715.

TRD-200700117
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 12, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 9, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Telecom Management, Inc. d/b/a Pioneer Telephone for a Service Provider Certificate of Operating Authority, Docket Number 33717 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas, Verizon Southwest, and Sprint - United Telephone.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 31, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33717.

TRD-200700118
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 12, 2007

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Texas Department of Transportation

Request for Proposals for Aviation Engineering Services - Hutchinson County Airport

Hutchinson County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Hutchinson County, Hutchinson County Airport, TxDOT CSJ No.:0604BORGE. Scope: Provide engineering/design services to install 21,000 linear feet of deer proof fencing.

The HUB goal is race neutral. TxDOT Project Manager is Russell Deason.

To assist in your proposal preparation the most recent Airport Layout Plan and 5010 drawing are available online by selecting "Hutchinson County Airport" at:

http://www.txdot.gov/avn/avninfo/notice/consult/index.htm

http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.txdot.gov/forms/aviation/550.doc

http://www.dot.state.tx.us/forms/aviation/550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **February 21, 2007,** 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

http://www.txdot.gov/services/aviation/consultant.htm

http://www.dot.state.tx.us/services/aviation/consultant.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Russell Deason, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200700116
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: January 12, 2007

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University of North Texas

Notice of Invitation for Consulting Services

Invitation for Consultants to Provide Offers of Consulting Services related to assisting the University of North Texas Office of Equal Opportunity in investigating and processing Equal Opportunity claims to remain in compliance with state and federal laws and provide for the processing the claims in a proper and timely manner.

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas.

Scope of Work:

The selected consulting firm will be responsible for assisting UNT in providing consulting for equal opportunity investigations to enable the University to remain in compliance with state and federal laws and provide timely processing of Equal Opportunity claims. The consulting services will include, but not necessarily be limited to, the following: conduct investigations as assigned; gather relevant statistical information; provided written reports; and Equal Opportunity training.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to

providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer; (8) information to assist UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist UNT in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and (12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT. UNT reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline and will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by University of North Texas and member institution personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation; and (2) the consultant's recognition that some subjective judgments must be made by UNT during this Invitation process.

Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because the University of North Texas does not have the specialized experience or the staff resources available to investigate and process Equal Opportunity claims to remain in compliance with state and federal law. The University of North Texas believes that such expert consulting services will enable the University to remain in compliance with state and federal laws and will provide for the processing of Equal Opportunity claims in a proper and timely manner.

Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specification section of this Invitation and any other relevant information in a clear and concise written format to: Don Lynch, Purchasing Services Manager, University of North Texas, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76201. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 2:00 p.m., CDT, Monday, February 26, 2007 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to: Don Lynch, Purchasing Services Manager, University of North Texas, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76201. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200700120
Sandy Shelton
Director of Purchasing and Payment Services/HUB Coordinator
University of North Texas
Filed: January 18, 2007

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The University of Texas System

Award of Consultant Contract Notification

The University of Texas Health Science Center at San Antonio ("University"), in accordance with the provisions of the *Texas Government Code*, Chapter 2254, entered into a contract for consulting services (the "Contract") with The Atkins Group ("Consultant") as more particularly described in the Invitation for Offer No. 745-6-01: Selection of a Consultant to Provide Consulting Services related to Marketing Strategies for the University of Texas Health Science Center at San Antonio (the "Invitation"), published in the *Texas Register* on September 15, 2006 (31 TexReg 8045).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide the assistance the University requires to develop a comprehensive branding strategy, including a communication and marketing plan to support the University's missions. The consultant would perform the following services: research and assessment; and planning and development.

Name and Address of Consultant:

The Atkins Group

119 Patterson

San Antonio, Texas 78209

Total Value of the Contract:

$193,500.00

Contract Dates:

The Contract was executed by the Consultant and University with an effective date of January 2, 2007.

Due Dates for Contract Products:

Marketing strategies related to branding the University shall be completed and delivered to University no later than April 30, 2007.

The term of the Contract shall terminate on April 30, 2007.

TRD-200700124
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: January 18, 2007

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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 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 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 (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). 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).