

Texas Administrative Code

TITLE 43	TRANSPORTATION
PART 1	TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 21	RIGHT OF WAY
SUBCHAPTER M	QUARRY AND PIT SAFETY
RULE §21.701	Purpose and Scope

(a) This subchapter implements the Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, Chapter 133.

(b) This subchapter applies to all active, inactive, or abandoned quarries and pits located in whole or part within the boundaries of Texas.

Source Note: The provisions of this §21.701 adopted to be effective July 15, 2004, 29 TexReg 6734; amended to be effective January 7, 2009, 34 TexReg 69

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TITLE 43	TRANSPORTATION
PART 1	TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 21	RIGHT OF WAY
SUBCHAPTER M	QUARRY AND PIT SAFETY
RULE §21.702	Definitions

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

(1) Abandoned--Having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

(2) Act--The Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, Chapter 133, and this subchapter.

(3) Active quarry or pit--A quarry or pit that has ongoing aggregate extraction activity or that shows evidence of aggregate extraction activity within the preceding 180-day period whether or not equipment or a plant is at the site.

(4) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other similar substance.

(5) Barrier--An object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic.

(6) Berm--A ridge of refuse, overburden, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

(7) Commission--Texas Transportation Commission.

(8) Department--Texas Department of Transportation.

(9) Director--The director of the Maintenance Division of the department, or the director's designee.

(10) Division--The Maintenance Division of the department.

(11) In hazardous proximity to a public road--That distance beginning 200 feet from the outer edge of a roadway to the pit perimeter.

(12) Inactive quarry or pit--A site that includes an industrial aggregate extraction plant or any portion of a site that includes an industrial aggregate extraction plant, that although previously in aggregate production, is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(13) Operator--Any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

(14) Overburden--All materials displaced in an aggregate extraction operation that are not or reasonably would not be expected to be removed from the affected area. The term includes the material that must be removed to access the aggregate that is to be extracted.

(15) Owner--Any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

(16) Pit--An open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

(17) Public road or right of way--Every way publicly maintained or any part thereof as defined by Transportation Code, §541.302, and the decisions thereunder.

(18) Quarry--A site where aggregates are being or have been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which a plant if required for processing the raw materials is located, exclusive of any land owned or leased by the responsible party that is not being currently used in the production of aggregates.

(19) Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

(20) Refuse--All waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(21) Responsible party--The current operator of the quarry or pit, or if no operator exists, the owner of the land in which the pit exists.

(22) Ridge--A lengthened elevation of overburden created in the aggregate production process.

(23) Roadway--The part of the public road intended for normal vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

(24) Site--The tract of land on which a pit is located, including the immediate area on which the plant used in the extraction of aggregates is located.

(25) Unacceptable unsafe location--A condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner that the department determines:

(A) presents a significant risk of harm to motorists by reason of the proximity of the pit to the roadway intersection and has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from entering the pit as the result of a motor vehicle collision at or near the intersection; or

(B) is at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as required by this subchapter.

Source Note: The provisions of this §21.702 adopted to be effective July 15, 2004, 29 TexReg 6734; amended to be effective January 7, 2009, 34 TexReg 69

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RULE §21.703	Form Availability

(a) Forms for the application for a safety certificate, transfer of a safety certificate, safety certificate waiver, and for the notice of cessation of operations are available at the offices of the department or by accessing the Texas Department of Transportation web site at www.txdot.gov and searching on the word "pit".

(b) Forms are also available by writing to the Director, Maintenance Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

Source Note: The provisions of this §21.703 adopted to be effective July 15, 2004, 29 TexReg 6734; amended to be effective January 7, 2009, 34 TexReg 69

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RULE §21.704	Fees

Each application for a safety certificate or transfer of a safety certificate and each notice of cessation of operations shall be accompanied by check or money order made payable to the State of Texas for the application fee. The fee schedule is as follows:

- (1) safety certificate application for a non-governmental entity--\$500;
 - (2) safety certificate transfer--\$250;
 - (3) notice of cessation of operations--\$500;
 - (4) governmental entity application for inactive or abandoned pit safety certificate--\$350.
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Source Note: The provisions of this §21.704 adopted to be effective July 15, 2004, 29 TexReg 6734; amended to be effective January 7, 2009, 34 TexReg 69

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RULE §21.705	Form and Content of Initial Inventory Report

- (a) Each report must be on the forms furnished by the department and must show the location, age, operational status, and current use of the quarry or pit to which the report applies.
 - (b) Only a single report under this subchapter is required when joint owners or operators or a combination of either exists.
 - (c) Only a single report is required for each owner or operator having multiple pit locations within the state.
 - (d) Only one accurate report relating to each quarry or pit is required.
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Source Note: The provisions of this §21.705 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.706	Barriers Required

(a) A responsible party for an active pit in hazardous proximity to a public road must construct a barrier or other device between the public road adjoining the site and the pit.

(b) A responsible party for an abandoned or inactive pit which is both in hazardous proximity to a public road and in an unacceptable unsafe location must construct a barrier or other device between the public road adjoining the site and the pit.

(c) The responsible party may choose to slope the sidewalls of a pit in place of constructing a berm or barrier, provided that in the opinion of the responsible party such corrective measure better serves the public safety and provided that the slope shall not exceed 30 degrees from the horizontal.

(d) The barrier or other device must be completed not later than the 90th day after the day on which the responsible party receives a notice of approval from the department. An additional time of not more than 60 days may be granted by the department for good cause shown. If the responsible party must obtain an easement or right-of-entry before constructing the barrier or other device, the department may grant additional reasonable time to complete the barrier or other device.

(e) The department may grant a waiver from the barrier requirement if the responsible party submits an application to the department showing that:

- (1) a governmental entity obtained a right-of-way and constructed a public road within 200 feet of the abandoned or inactive pit before August 26, 1991; and
 - (2) the pit has remained abandoned or inactive since the road was constructed.
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RULE §21.707	Barrier Construction Standards

(a) A barrier required under §21.706 of this subchapter must be determined by the department to be sufficient to prevent the normal passage of vehicular traffic from entering the site of the pit.

(b) The design of the barrier must be approved by the department to insure proper performance.

(c) The barrier may be a guardrail, concrete barrier, or berm barrier. A guardrail must meet the current department specification and standard detail for metal beam guard fence. A concrete barrier must meet the current department specifications and standards for a rigid barrier and the appropriate standards for end treatments, attenuators, and crash cushion. A berm barrier must meet the current department specifications and standards for berm barriers.

(d) A barrier that was determined to conform to construction standards for the issuance of a safety certificate and that has deteriorated so that it no longer meets the construction standards applicable at the time the safety certificate was issued will be required to be improved to conform to those standards.

Source Note: The provisions of this §21.707 adopted to be effective January 7, 2009, 34 TexReg 69

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RULE §21.708	Prohibition Against Opening Pits

(a) No responsible party may open a new pit on a site for the extraction of aggregates if the pit perimeter will be less than 25 feet from the outer right of way line of any public road or highway ("the setback distance").

(b) No responsible party may open a new pit on a site for the extraction of aggregates in this state if the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan and receiving a safety certificate.

(c) No operator may open a new pit on a site for the extraction of aggregates if the operator is in violation of the rules under this subchapter at another site.

(d) An operator who is not the owner of the site may not open a new pit on the site without the written permission of the owner.

Source Note: The provisions of this §21.708 adopted to be effective July 15, 2004, 29 TexReg 6734; amended to be effective January 7, 2009, 34 TexReg 69

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RULE §21.709	Quarry Safety Plan

The quarry safety plan required to be filed for new pits in hazardous proximity to a public road opened from and after November 1, 1991, must:

- (1) detail how the applicant intends to comply with the safety provisions of this subchapter in opening and closing the pit;
 - (2) contain the information required by the safety certificate application;
 - (3) be filed on Form-2114;
 - (4) be in writing, certified and sworn to by the applicant; and
 - (5) be filed with the Maintenance Division at least 60 days prior to the opening of the pit.
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Source Note: The provisions of this §21.709 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.710	Sloping of Pit Sidewalls

The department will determine if potential holding or impounding of water in a pit will create a hazard to the motoring public requiring a barrier to be constructed. The department may allow a slope of not more than 30 degrees to be built on the side wall or walls adjacent to the public road in lieu of the barrier if the water does not pose a hazard to the motoring public.

Source Note: The provisions of this §21.710 adopted to be effective January 7, 2009, 34 TexReg 69

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RULE §21.711	Safety Certificate Required

(a) A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written barrier waiver from the department.

(b) Except as provided in subsection (c) of this section, a responsible party must obtain a safety certificate prior to:

(1) opening a new pit in hazardous proximity to a public road and in an unacceptable unsafe location; or

(2) reopening, operating, or abandoning a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location.

(c) The department will notify the responsible party in writing if after inspection the department finds that a safety certificate is required for the pit or quarry. A responsible party is not required to obtain a safety certificate to operate or maintain an existing quarry or pit unless the department has notified the responsible party in writing that it must do so.

(d) Any responsible party who is utilizing a portion of a site for quarrying operations, including the stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(e) Any responsible party may operate the pit during a period that is described in §21.717 of this subchapter (relating to Recertification After Transfer of Title).

Source Note: The provisions of this §21.711 adopted to be effective July 15, 2004, 29 TexReg 6734; amended to be effective January 7, 2009, 34 TexReg 69

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RULE §21.712	Construction, Expansion, or Relocation of Roads

(a) An entity that constructs, expands, or relocates a public road so that it causes an existing quarry or pit to be located in an unacceptable, unsafe location or in hazardous proximity to the public road, shall construct berms or barriers.

(b) The berms or barriers shall be constructed prior to the opening of the new, expanded, or relocated public road to travel by the public.

(c) The entity responsible for construction, expansion, or relocation of the public road shall report the same to the director within 90 days of the date the construction, expansion, or relocation is finally accomplished, including construction of the berms or barriers.

(d) The report shall be in writing, certified and sworn to by an authorized representative of the entity, and shall contain:

(1) the name, address, and telephone number of the entity responsible for the construction, expansion, or relocation of the public road;

(2) the distance of each adjoining pit perimeter from the nearest right-of-way line of the new, expanded, or relocated public road and the nearest intersection of any public or private road or driveway;

(3) a description of and a construction plan for any berm or barrier, specifying the material used;

(4) the name, address, and telephone number of the responsible party; and

(5) the name, address, and telephone number of the owner or owners if different from the responsible party.

Source Note: The provisions of this §21.712 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.713 Form and Content of Safety Certificate Applications

- (a) Each pit for which a safety certificate is requested shall be addressed in a separate application.
- (b) An application for a safety certificate must be on the form furnished by the department and contain:
- (1) the name, address, and telephone number of the responsible party;
 - (2) the name, address, and telephone number of the owner or owners if different from the responsible party;
 - (3) the type of quarrying activities, if any, occurring on the site, or proposed to occur on the site;
 - (4) a brief description of the site, including the acreage outside and inside the pit;
 - (5) the distance of each pit perimeter from the nearest edge of each roadway that the site adjoins and the nearest intersection of any public road that the site adjoins and the nearest intersection of any public or private road or driveway;
 - (6) the depth in feet of the deepest excavation in the pit within 200 feet of a roadway edge as measured from the top of the pit highwall located between the pit and the roadway;
 - (7) a description of and a construction plan for any barrier or other device allowed by these regulations to be constructed, specifying the material to be used and the expected date of completion;
 - (8) for new pits in hazardous proximity to a public road, a statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to the public road, if any; and
 - (9) any other information or condition that meets the definition of an unacceptable unsafe location.
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Source Note: The provisions of this §21.713 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.714	Review of Applications

(a) The department will notify an applicant by certified mail within ten days of receipt of an application for a safety certificate that the application:

- (1) complies with the Act and is approved; or
- (2) does not comply with the Act and is disapproved.

(b) A notice required under subsection (a)(2) of this section must specify the defects in the application. An applicant who receives this notice may submit, within 30 days of receipt of the notice, a modified application or plan.

(c) Within five days of receipt of a modified application under subsection (b) of this section, the department will approve or disapprove the application and will notify an applicant of its decision by certified mail.

(d) The department will give first priority to applications for sites that are abandoned or that are within the setback distance.

Source Note: The provisions of this §21.714 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.715	Inspection of Barriers and Certificate Decision

- (a) Within 15 days of the time in which construction of barriers described in an approved application is required to be completed, the department may inspect those barriers to determine whether they meet the requirements.
- (b) If, after inspection, the department determines that the barriers described in an approved application conform with the plan and comply with the Act, the department will issue a safety certificate to the responsible party.
- (c) If, after inspection, the department determines that a barrier does not comply with the Act, the department will give the applicant written notice of any defects in that barrier and shall specify a reasonable time, not to exceed 60 days from the day notice is received, for the applicant to cure the defects.
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Source Note: The provisions of this §21.715 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.716	Transfer of Certificate after Transfer of Title

- (a) A responsible party holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files with the director a written affidavit that:
- (1) all barriers between a pit and the nearest edge of any roadway comply with the Act; and
 - (2) there will be no change, on or after the day of the transfer of title or operation, in the:
 - (A) condition or location of a barrier; and
 - (B) distance of a pit perimeter from the nearest intersection of a public road and a private road or driveway.

- (b) The transfer affidavit must be filed not later than the 30th day after the day on which the transfer of title to or operation of the quarry or pit occurs.
- (c) The department will process and approve a transfer of a safety certificate not later than the 10th day after the day on which the department receives a completed transfer affidavit, including the application fee.
- (d) At its option, the department may refuse to issue or approve the transfer of a certificate to a person who has violated the Act.
- (e) The hypothecating, mortgaging, or other transfer of equitable title or a pledge of any assets to credits of the operator or owner shall not require the filing of a transfer affidavit.
- (f) The department may revoke or disapprove the transfer of a safety certificate only if, after notice and hearing, the department determines that the holder of the certificate has violated the Act.

Source Note: The provisions of this §21.716 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.717	Recertification after Transfer of Title

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- (a) Unless a proper transfer affidavit is filed under this chapter, or an application for an amended certificate as required by subsection (b) of this section is pending, an existing safety certificate expires on the 90th day after the day on which a sale, lease, or other transfer of title to or operation of the quarry or pit for which the certificate was issued occurs.
- (b) To obtain an amended or new safety certificate, a new owner, operator, lessor, or lessee must submit a safety certificate application as required by §21.713 of this subchapter (relating to Form and Content of Safety Certificate Applications), not later than the 30th day after the day on which the transfer of title to the quarry or pit occurs or a change in the activities of the quarry or pit necessitates.
- (c) If an application for a new certificate has been submitted as required by subsection (b) of this section, the existing safety certificate continues in effect until the department's decision either approving or disapproving the new or amended certificate is issued and becomes final.
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Source Note: The provisions of this §21.717 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.718	Cessation of Operations

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- (a) At least 60 days prior to cessation of operations, the responsible party who plans or intends to cease active operations in a quarry or pit shall notify the department of its intent, submit any additional plans the operator determines necessary to protect the public good and welfare after the cessation of operations, and include the applicable fee.
- (b) Within 10 days after receipt of the notice, the department shall inspect the quarry or pit to ensure compliance with the provisions of this chapter and any additional plans submitted by the operator.
- (c) Within 10 days after the inspection, the department shall notify the operator of compliance, or lack of compliance, and in the event of compliance shall issue a safety certificate.
- (d) In the event of noncompliance, the department shall follow the procedures of §21.714 of this subchapter (relating to Review of Applications) and §21.715 of this subchapter (relating to Inspection of Barriers and Certificate Decision).
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Source Note: The provisions of this §21.718 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.719	Enforcement

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- (a) Within its jurisdiction, the department shall have a right of entry to, upon, and through any aggregate quarry or pit without advance notice or search warrant, upon presentation of appropriate credentials.
- (b) The operator shall maintain a copy of the safety certificate for each active quarry or pit at or near the location of the quarry or pit and shall make the safety certificate

available for inspection by any authorized representative of the department, upon presentation of appropriate credentials.

(c) On receipt of a complaint of a violation of the Act or on its own motion, the department will give the responsible party written notice of each alleged violation, including the applicable statutory reference or rule violated, and the date, time, and place for a hearing.

(d) If, after notice and a hearing, the department determines that a violation has occurred, the director will make written findings of the actual or threatened violation and the required corrective work and shall prescribe a specific deadline, commensurate with the work to be done but not to exceed 90 days from the date of the order, for completion of the corrective work, unless an extension of time for good cause shown by the responsible party is granted by the director.

(e) If the responsible party fails to perform corrective work required by the department under subsection (d) of this section within 120 days after notice is given to the responsible party, the department may contract for the corrective work to be done at reasonable, customary, and ordinary costs applicable in the industry. Costs shall be submitted within 30 days of the date the work is finished, and the responsible party shall have 60 days to pay the costs or appeal the decision. In the event the responsible party fails to pay the costs as presented or fails timely to contest or appeal the costs as presented by the department, the department shall have the right to impose a fine or injunction as is warranted, consistent with the provisions of the Act and this subchapter.

Source Note: The provisions of this §21.719 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.720	Civil Penalties

(a) A responsible party who violates the Act after due notice is liable to the state for a civil penalty of not less than \$500 or more than \$5,000 for each act of violation on a first offense.

(b) A responsible party who violates the Act after due notice is liable to the state for a civil penalty of not less than \$1,000 or more than \$10,000 for each act of violation on a second and subsequent offense.

Source Note: The provisions of this §21.720 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.721	Injunctive Relief

(a) The department may enforce the Act by seeking an injunction or other appropriate remedy.

(b) On application for injunctive or other relief and a finding that a person is violating or has violated the Act, a court may grant the injunctive or other relief warranted by the facts.

Source Note: The provisions of this §21.721 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.722	Recovery of Costs

A responsible party is liable to the department for its costs incurred in undertaking corrective or enforcement action, including staff expenses, and for court costs and attorney's fees.

Source Note: The provisions of this §21.722 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.723 Forms

(a) The forms of Appendix A have been adopted by the commission for use pursuant to the Act and this subchapter. Reproduction of these forms is authorized for use by applicants to complete the filings required.

(b) The forms have been designated as follows:

- (1) application for cessation of operations--Form-2113;
 - (2) application for quarry and pit safety certificate--Form-2114;
 - (3) application for transfer of quarry and pit safety certificate--Form-2115; and
 - (4) application for waiver of quarry and pit safety certificate--Form-2116.
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Source Note: The provisions of this §21.723 adopted to be effective July 15, 2004, 29 TexReg 6734

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RULE §21.724 Distance Between Pit and Property Line

(a) Quarrying is considered completed when a quarry or pit is no longer an active quarry or pit under this subchapter. At the time quarrying is completed, the distance from the edge of the consolidated material of a pit that does not have lateral support to the property line of the nearest property that is not owned or leased by the operator may not be less than 50 feet.

(b) This section does not apply:

- (1) to a pit if the operator and the adjacent property owner agree that the pit may be located closer to the property line;
 - (2) to an excavation constructed by political subdivision to provide drainage or storm water retention; or
 - (3) to a county with a population of 3.3 million or more.
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Source Note: The provisions of this §21.724 adopted to be effective January 7, 2009, 34 TexReg 69