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12th Grade

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ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinions

LO 97–113(ID# 39622). Request from Mr. Morris Sandefer, Commissioner Fire Fighters' Pension Commission, P.O. Box 12577, Austin, Texas 78711, concerning proposed changes to Corpus Christi Fire Fighters' Retirement System benefits plan.

Summary. A post-retirement increase in benefits made pursuant to the Texas Local Fire Fighters Retirement Act, Texas Civil Statutes, Article 6243, §7, for a retiree covered by the act is not "extra compensation" prohibited by article III, §53 of the Texas Constitution.

LO 97–114(ID# 39244). Request from the Honorable Steve Holzheauser, Chair, Committee on Energy Resources, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether Texas Civil Statutes, Article 6687-2(k) authorizes the Texas Department of Public Safety to seize motor vehicles from persons other than salvage vehicle dealers.

Summary. Texas Civil Statutes, Article 6687-2, subsection (k), does not authorize the seizure of motor vehicles from persons other than salvage vehicle dealers. This construction of Article 6687-2(k) does not affect the authority of law enforcement agencies and officers to take custody of stolen motor vehicles under other law.

TRD-9717033

Opinions

DM-460(RQ-939). Request from the Honorable Jose R. Rodraguez, El Paso County Attorney, County Courthouse, 500 East, San Antonio, Room 203 El Paso, Texas 79901, concerning authority of the El Paso County Juvenile Probation Board to enter into contracts or authorize expenditures without the commissioners court's approval.

Summary. The El Paso County Juvenile Department is an entity separate and distinct from the County of El Paso. Thus, any contract entered into by the El Paso County Juvenile Probation Board on behalf of the department would not, as a general matter, impose any liability on the county. As a general rule and in the absence of a statute to the contrary, the board may enter into authorized contracts without the approval of the county commissioners court. The board may enter into contracts with school districts for provision of juvenile justice alternative education programs as permitted by section 37.011(e) of the Education Code without the county commissioners court's approval. The board may authorize expenditure of state aid and county funds independent of the commissioners court's review and approval.

DM-461(RQ-990). Request from the Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio, Box 1 Pearsall, Texas 78061-3100, concerning whether a community supervision and corrections department may refuse to supervise a sixteen-year-old defendant who has been con- victed of perjury in a criminal proceeding and placed on community supervision by the criminal court.

Summary. A community supervision and corrections department must supervise a sixteen-year-old defendant who has been convicted of perjury in a criminal proceeding and placed on community supervision by a criminal court, regardless of the defendant's age.

TRD-9717034

Request for Opinions

RQ-1045. Request from the Honorable Tod Mixson, Orange County Auditor, P.O. Box 399, Orange, Texas 77631-0399, concerning whether a county auditor may process a claim against the county for the settlement of litigation, and related questions.

RQ-1046. Request William R. Archer III, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78759-3199, concerning authority of the Texas Department of Health to garnish medicaid provider payments to satisfy delinquent child support obligations.

RQ-1047. Requested from the Honorable Juan J. Hinojosa, State Representative, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether an economic development corporation created pursuant to Texas Civil Statutes, §4B, Texas Civil Statutes, Article 5190.6, , may spend sales tax revenues for promotional purposes, and related questions.

TRD-9717005

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full texas of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-383. Whether a limited liability company may make a political contribution to a candidate. (AOR-419, AOR-420)

SUMMARY. A Texas limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D.

A Delaware limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D.

EAO-384. Whether a private research group that was "started with the knowledge and approval" of a legislative caucus is itself a "legislative caucus" as that term is defined in Election Code, §253.0341. (AOR-423)

SUMMARY. An entity established by or for a legislative caucus to conduct research or education is itself a legislative caucus if the research or education is a "caucus activity." A "caucus activity" is an activity that supports the policy development and interests that the members of the establishing caucus hold in common.

EAO-385. Whether a particular campaign brochure violates Election Code §255.006. (AOR-424)

SUMMARY. The distribution of the brochure that is the subject of this opinion request would not violate Election Code section 255.006(b).

EAO-386. Whether an officeholder may use a state-owned computer to electronically file campaign finance reports with the Texas Ethics Commission. (AOR-425)

SUMMARY. The use of state computers or personnel to prepare campaign reports for officeholders would be a misuse of government property.

EAO-387. Whether §255.001 of the Election Code requires that a political advertising disclosure statement be placed on wooden nickels printed with a candidate's political logo. (AOR-426)

SUMMARY. Section 255.001 of the Election Code does not require that wooden nickels printed with a candidate's political logo include a political advertising disclosure statement.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716884
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: December 18, 1997

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 20. Cotton Pest Control

Subchapter C. Stalk Destruction Program

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction date for Pest Management Zone 3, Area 2. The department is amending a prior emergency amendment to 20.22 which was filed on December 8, 1997 and will be published in the December 26, 1997 issue of the *Texas Register.*

The department is acting on behalf of cotton farmers in Zone 3 Area 2 which includes Austin, Brazoria, and Fort Bend counties and that portion of Wharton County east of the Colorado River.

The current cotton destruction deadline is December 20. The cotton destruction deadline will be extended through January 5. The department believes that changing the cotton destruction date is both necessary and appropriate. In a previous emergency filing, the department extended the destruction deadline for Zone 3, Area 2 from December 5 to December 20. That amendment and this filing are effective only for the 1997 crop year.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction dates for all counties in Pest Management Zone 3, Area 2. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the December 20 deadline. A failure to act to extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the date for cotton destruction through January 5, 1998 for Zone 3, Area 2 which consists of Austin, Brazoria, and Fort Bend and that portion of Wharton County east of the Colorado River.

The amendment is adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:
Figure: 4 TAC §20.22(a)

(b)-(c) (No Change.)

Issued in Austin, Texas, on December 22, 1997.

TRD-9717096
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 22, 1997
Expiration date: January 5, 1998
For further information, please call: (512) 463–7541

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 181. Contact Lens Prescriptions

22 TAC §§181.1–181.7

The Texas State Board of Medical Examiners adopts on an emergency basis new §§181.1-181.7, concerning contact lens prescriptions. New chapter 181 is mandated by the 75th Legislature through the Texas Contact Lens Prescription Act, Chapter 1345. The new chapter is adopted in order to set forth the criteria under which a patient may request and receive a contact lens prescription and under which a physician shall provide such prescription.

These sections are being adopted on an emergency basis due to deadlines mandated by statute.

The new sections are adopted on an emergency basis under the Medical Practice Act, Texas Civil Statutes, Article 4495b §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its

duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§181.1. Purpose.

These rules are promulgated under the authority of the Medical Practice Act, Article 4495b, and the Texas Contact Lens Prescription Act, Chapter 1345, 75th Legislature Regular Session, to set forth the criteria under which a patient may request and receive a contact lens prescription and under which a physician shall provide such prescription.

§181.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Contact lens prescription - a written prescription that contains the following information:

(A) The patient's name;

(B) The date the prescription was issued;

(C) The contact lens manufacturer, if needed;

(D) The expiration date of the prescription, which shall be one year or more unless the health of the patient requires an earlier expiration date;

(E) The original signature of the physician;

(F) The total number of disposal lenses authorized and recommended replacement intervals if the prescription is for disposable contact lenses;

(G) The brand name or model type of the lens prescribed;

(H) The lens power;

(I) The base curve measurements; and

(J) The diameter.

(2) Disposable contact lenses - soft contact lenses that:

(A) Are dispensed in sealed packages;

(B) Are sterilized and sealed by the manufacturer; and

(C) According to the wearing instructions suggest the lenses be replaced at an interval of less than three months.

§181.3. Release of Contact Lens Prescription.

(a) Except as provided in subsection (d) of this section, each physician who performs an eye examination and fits a patient for contact lenses shall, on request, prepare and give a contact lens prescription to the patient. The physician may exclude categories of contact lenses if the exclusion is clinically indicated. The physician may not charge the patient a fee for providing the contact lens prescription but may charge a fee for examination and a fee for fitting of contact lenses as a condition for giving a contact lens prescription to the patient.

(b) If a patient requests a contact lens prescription during an initial or annual examination, the physician must prepare and give the contact lens prescription to the patient at the time the physician determines all of the parameters of the contact lens prescription, as that term is defined in §181.2 of this title (relating to definitions). If the physician has delegated the fitting of the contact lens as authorized by the Texas Contact Lens Prescription Act, Texas Revised Civil Statutes, Article 4552-A, the physician is not required to provide the prescription for the patient.

(c) If the patient does not request or receive an original contact lens prescription during the patient's initial or annual examination, the patient may request the patient's contact lens prescription at any time during which the prescription is valid. On receipt of a request, the physician shall provide the patient with a contact lens prescription if the physician has fit the patient. If the patient requests the physician to deliver the prescription to the patient or to another person, the physician may charge the cost of delivery to the patient.

(d) A physician may refuse to give a contact lens prescription to a patient if:

(1) The patient's ocular health presents a contraindication for contact lenses;

(2) Refusal is warranted due to potential harm to the patient's ocular health;

(3) The patient has not paid for the examination and for the fitting or has not paid for other financial obligations to the physician if the patient would have been required to make an immediate or similar payment if the examination revealed that ophthalmic goods were not required;

(4) The patient has an existing medical condition that indicates that the patient's ocular health would be damaged if the prescription were released to the patient, or if further monitoring of the patient is needed; or

(5) The request is made after the first anniversary date of the patient's last eye examination.

(e) Subsection (d) of this section does not prohibit a physician from giving a patient the patient's contact lens prescription.

(f) A physician may not condition the availability to a patient of an eye examination, a fitting for contact lenses, the issuance of a contact lens prescription, or any combination of these services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from the physician.

(g) Unless a shorter prescription period is warranted by the patient's ocular health or by a potential harm to the patient's ocular health, a physician may not issue a contact lens prescription that expires before the first anniversary of the date the person's prescription parameters are determined. The physician may extend the expiration date of the prescription without completing another eye examination or may require the patient to undergo another eye examination.

(h) If a physician refuses to give a patient the patient's contact lens prescription for a reason permitted under subsection (d) of this section or writes the prescription for a period of less than one year, the physician must:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) maintain in the patient's records a written explanation of the reason.

§181.4. Delegation of Fitting of Contact Lenses.

If a physician notes on a spectacle prescription "fit for contacts" or similar language and has specifically delegated to a specific optician the authority to make the additional measurements and evaluations necessary to derive the information required for a fully written contact lens prescription, the optician may dispense contact lenses to the patient even though the prescription is less than a fully written contact lens prescription.

§181.5. Contact Lens Dispensing Permit Not Required of Physician or Physician's Employees.

Neither a physician nor an employee of a physician is required to obtain a permit under this act if the employee performs contact lens dispensing services under the direct supervision and control of the physician.

§181.6. Physician's Prescriptions: Delegation.

(a) These rules shall not be interpreted to prevent, limit, or restrict a physician from treating or prescribing for the physician's patients or from directing or instructing others under the physician's control, supervision or instruction who assists those patients according to specific directions, orders, instructions, or prescriptions.

(b) If a physician's directions, instructions, orders, or prescriptions are to be performed or filled by an optician who is independent of the physician's office, the directions, instructions, orders or prescriptions must be:

(1) In writing;

(2) Of a scope and content and communicated to the optician in a form and manner that in the professional judgment of the physician best serves the health, safety, and welfare of the physician's patients; and

(3) In form in detail consistent with the particular optician's skill and knowledge.

(c) A person holding a contact lens dispensing permit under this act may take measurements of the eye or cornea and may evaluate the physical fit of the lenses for a particular patient of the physician and may instruct the patient in the use and care of the contact lenses if the physician has delegated in writing those responsibilities with regard to that specific patient to the contact lens dispenser.

§181.7. Liability.

(a) A contact lens prescription may not contain, and a physician may not require a patient to sign a form or notice that waives or disclaims the liability of the physician for the accuracy of:

(1) The eye examination on which the contact lens prescription furnished to the patient is based; or

(2) The contact lens prescription provided to the patient.

(b) A physician is not liable for any subsequent use of a contact lens prescription by a patient if the physician does not reexamine the patient and the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in patient no longer being a proper candidate for the contact lens or lenses prescribed.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717073
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 22, 1997
Expiration date: April 21, 1998
For further information, please call: (512) 305–7016

Chapter 183. Acupuncture

The Texas State Board of Medical Examiners adopts on an emergency basis, the repeal of §183.17 and new §183.17 and §183.23, concerning acupuncture. The repeal and new sections are as a result of Senate Bill 1765, 75th Legislature, which requires the Board of Medical Examiners to certify acudetox specialists, annually renew certification, and monitor continuing education for these registrants.

22 TAC §183.17

These sections are being adopted on an emergency basis due to deadlines mandated by statute.

The repeal is adopted on an emergency basis under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§183.17. Auricular Acupuncture for Treatment of Chemical Dependency.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717077
Bruce A. Levy. M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 22, 1997
Expiration date: April 21, 1998
For further information, please call: (512) 305–7016

22 TAC §§183.17, 183.23

The new sections are adopted on an emergency basis under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§183.17. Acudetox Specialist.

(a) For purposes of this chapter, an "acudetox specialist" shall be defined as a person who is certified to practice auricular acupuncture for the limited purpose of treating alcoholism, substance abuse, and chemical dependency.

(b) Any person who does not possess a Texas acupuncture license or is not otherwise authorized to practice acupuncture under the Medical Practice Act (Act), Texas Civil Statutes, Article 4495b, may practice as an acudetox specialist for the sole purpose of the treatment of alcoholism, substance abuse, or chemical dependency upon obtaining certification as an acudetox specialist only under the following conditions listed in paragraphs (1)-(4) of this subsection:

(1) after issuance of certification by the Medical Board, payment of any required fee and receipt of written confirmation of certification from the Medical Board;

(2) after successful completion of a training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency, which has been approved by the Medical Board. Such program in auricular acupuncture shall be 70 hours in length, and shall include a clean needle technique course or equivalent universal infection control precaution procedures course approved by the Medical Board;

(3) if the individual holds an unrestricted and current license, registration, or certification issued by the appropriate Texas

regulatory agency authorizing practice as a social worker, a licensed professional counselor, a licensed psychologist, a licensed chemical dependency counselor, or a licensed registered nurse; provided, however, that such practice of acudetox is not prohibited by the regulatory agency authorizing such practice as a social worker, professional counselor, psychologist, chemical dependency counselor, or registered nurse; and,

(4) if the individual works under protocol and has access to a licensed Texas physician or a licensed Texas acupuncturist readily available by telephonic means or other methods of communication.

(c) For purposes of this chapter, auricular acupuncture shall be defined as acupuncture treatment limited to the insertion of needles into five acupuncture points in the ear. These points being the liver, kidney, lung, sympathetic and shen men.

(d) Certification as an acudetox specialist shall be subject to suspension, revocation, or cancellation on any grounds substantially similar to those set forth in the Act, §6.11 or for practicing acupuncture in violation of this chapter.

(e) Practitioners certified as acudetox specialists shall keep records of patient care which at a minimum shall include the dates of treatment, the purpose for the treatment, the name of the patient, the points used, and the name, signature, and title of the certificate-holder.

(f) The fee for certification as an acudetox specialist for the treatment of alcoholism, substance abuse, or chemical dependency shall be set in such an amount as to cover the reasonable cost of administering and enforcing this chapter without recourse to any other funds generated by the Medical or the Acupuncture Board. Such fee shall be $50 for the initial application for certification and $25 per renewal.

(g) Certificate-holders under this chapter shall keep a current mailing and practice address on file with the Medical Board and shall notify the Medical Board in writing of any address change within ten days of the change of address.

(h) Individuals practicing as an acudetox specialist under the provisions of this chapter shall ensure that any patient receiving such treatment is notified in writing of the qualifications of the individual providing the acudetox treatment and the process for filing complaints with the Medical Board, and shall ensure that a copy of the notification is retained in the patient's record.

(i) Applications for certification as an acudetox specialist shall be submitted in writing on a form approved by the Medical Board which contains the information set forth in subsection (b) of this section and any supporting documentation necessary to confirm such information.

(j) Each individual who is certified as an acudetox specialist may annually renew certification by completing and submitting to the Medical Board an approved renewal form together with the following as listed in paragraphs (1)-(3) of this subsection:

(1) documentation that the certification or license as required by subsection (b)(4) of this section is still valid;

(2) proof of any Continuing Auricular Acupuncture Education (CAAE) obtained as provided for in §183.23 of this title (relating to Continuing Auricular Acupuncture Education for Acudetox Specialists); and,

(3) payment of a certification renewal fee in the amount of $25.

(k) Each individual who obtains certification as an acudetox specialist under this section may only use the titles "Certified Acudetox Specialist" or "C.A.S." to denote his or her specialized training.

(l) An acudetox specialist shall be eligible for certification by grandfathering upon proof of formal training in acudetox or proof of actively practicing acudetox in Texas for 12 of the last 36 months immediately preceding September 1, 1997. Active practice shall be defined as the administering of at least 200 documented acudetox treatments per year. Formal training shall at a minimum consist of documented period of education by a NACSCAOM accredited school or other nationally recognized institution, organization, or training program approved by the Medical Board. Proof of active practice shall be made by submitting, under oath, a written application for certification by grandfathering on a form approved by the Medical Board along with the required fee and all of the information shown in paragraph (1) of this subsection. Proof of formal training in acudetox shall be made by submitting, under oath, a written application for certification by grandfathering on a form approved by the Medical Board along with the required fee and the information contained in paragraph (2) of this subsection:

(1) a typed affidavit in English by the applicant indicating the period of time actively engaged in the practice of acudetox and the number of treatments administered per year for the 12-month period out of the 36 months immediately preceding September 1, 1997; or

(2) proof of formal training, including copies of transcripts, certificates, or other documents sufficient to the Medical Board to verify receipt of formal acudetox training.

(m) The last day for filing an application for certification for grandfathering under this section shall be 12 months from the date this rule becomes effective. An application shall be considered timely filed if postmarked within 12 months from the effective date of this rule, or received at the offices of the Medical Board on or before the last day for filing.

§183.23. Continuing Auricular Acupuncture Education for Acudetox Specialists.

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing auricular acupuncture education (CAAE) for certified acudetox specialists so as to further enhance their professional skills and knowledge.

(b) Minimum continuing auricular acupuncture education. As a prerequisite to the re-certification of an acudetox specialist, the acudetox specialist shall provide documentation to the Medical Board that the individual has successfully met the continuing education requirements established by the board which includes the following listed in paragraphs (1)-(2) of this subsection:

(1) At least six hours of CAAE each year shall be in the practice of auricular acupuncture;

(2) The required hours shall be from courses that are designated or otherwise approved for credit by the Medical Board at the time the course was taken.

(c) Reporting continuing auricular acupuncture education. An acudetox specialist must report on the certificate-holder's re-certification form the number of hours and type of continuing auricular acupuncture education completed during the previous year.

(d) Grounds for exemption from continuing auricular acupuncture education. An acudetox specialist may request in writing and may be exempt from the annual minimum continuing

auricular acupuncture education requirements for one or more of the following reasons listed in paragraphs (1)-(2) of this subsection:

(1) catastrophic illness; and/or

(2) military service of longer than one year in duration;

(e) Exemption requests. Exemption requests shall be subject to the approval of the executive director of the Medical Board, and shall be submitted in writing at least 30 days prior to the expiration of the certificate.

(f) Exemption duration and renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed annually upon written request submitted at least 30 days prior to the expiration of the current exemption.

(g) Verification of credits. The board may require written verification of continuing auricular acupuncture education hours from any certified acudetox specialist and the certificate-holder shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board.

(h) Approval of continuing auricular acupuncture education. Continuing Auricular Acupuncture Education (CAAE) credit hours shall be approved by the Medical Board and shall include education by a NACSCAOM accredited school or other nationally recognized institution, organization, or training program approved by the Medical Board. Approval of courses shall be by January 1, 1999. The first reporting of CAE shall be required for certification renewal in 2000. Approval shall be based on a showing by the education provider that:

(1) the content of the course, program, or activity is related to the practice of acudetox, and is not a course on practice enhancement, business, or office administration;

(2) the method of instruction is adequate to teach the content of the course, program, or activity;

(3) the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;

(4) the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity; and,

(5) each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training.

(i) False reports/statements. An intentionally false or misleading report or statement to the board by a certificate-holder regarding continuing auricular acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (Act), §6.11(a)(2), (4), and (5).

(j) Monetary penalty. Failure to obtain and timely report the continuing auricular acupuncture education hours for renewal of a certificate shall subject the certificate-holder to a monetary penalty for late registration in the amount set forth in §183.5 of this title (relating to Annual Renewal of License).

(k) Disciplinary action, conditional licensure, and construction. This section shall be construed to allow the board to impose requirements for completion of additional continuing auricular acupuncture education hours for purposes of disciplinary action and conditional licensure.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717078

Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 22, 1997
Expiration date: April 21, 1998
For further information, please call: (512) 305–7016

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 51. General Administration

34 TAC §51.1

The Teacher Retirement System adopts on an emergency basis an amendment to § 51.1 concerning the term and make-up of some Advisory and Auxiliary Committees of TRS. The new language sets an expiration of the committees at the same time that TRS completes the next sunset review. The section is adopted on an emergency basis to comply with the Tex. Gov't Code, §§ 2110.001-2110.008. That law could sunset the committees in January of 1998 when four years will have passed since the original passage of the rule. This emergency action will preclude even an argument that the committees are sunset. The justification for the emergency rule is to remove any argument that the committees are sunset.

The emergency action is proposed under the Government Code, Chapter 825, § 825.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for the administration of the funds of the retirement system. In addition § 825.114 of the Government Code allows TRS to create any advisory committee considered necessary. The TRS Medical Board is created under § 825.204 of the Government Code. The Retirees Advisory Committee is created under § 3.50-4, §6 of the Insurance Code. A credentialing committee is authorized under § 18 of the same law.

§ 51.1. Advisory and Auxiliary Committees

(a) The following committees are created for a period which will expire at the end of sunset review for TRS which is September 1, 2007, unless continued by the outcome of the sunset process, [~~an indefinite period~~]to advise or otherwise serve the retirement system and are deemed necessary to assist the Board of Trustees in performing its duties:

(1) a Medical Board, composed of three board physicians as provided by Government Code, § 825.204;

[~~2) an Investment Advisory Committee composed of private sector investment professionals in accordance with the retirement system's investment policies;~~]

[~~(3)~~ a Real Estate Finance Committee composed of investment professionals as provided by the retirement system's investment policies;]

(2) [~~(4)~~] a retirees Advisory Committee for the Texas Public School [~~Retired~~]Employees Group Insurance Program, composed as provided by the Insurance Code, Art. 3.50-4, § 6;

(3) [~~(5)~~] regional credentialing committees composed of health care practitioners as provided by the retirement system's health care network policies; and

(4) [~~(6)~~] a Medical Advisory Committee composed of health care practitioners and administrators as provided by the retirement system's health care network policies.

(b) (No change.)

(c) [~~Except for such retirement system personnel as may serve ex officio on such committees, the~~] the members of the Medical Board[~~, Investment Advisory Committee, and Real Estate Finance Committee~~] shall be paid, as independent contractors', fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. The members of the credentialing committees and the Medical Advisory Committee may be paid fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. To the extent advisory committees are composed of independent contractors they are to be considered consultants employed by the retirement system under the authority recognized by the Government Code, §2254.024.

(d) Members of the Retirees Advisory Committee for the Texas Public School [~~Retired~~] Employees Group Insurance Program are entitled only to reimbursement for actual and reasonable expenses incurred in performing functions as members of the committee.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716847
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: January 1, 1998
Expiration date: June 30, 1998
For further information, please call: (512) 370–0592

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 18. Motor Carriers

Subchapter A. General Provisions

43 TAC §18.1, §18.2

The Texas Department of Transportation is renewing the effectiveness of the emergency adoption of the amended sections, for a 60-day period. The text of the amended sections was originally published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9386).

Issued in Austin, Texas, on December 19, 1997.

TRD–9716969
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: December 19, 1997
Expiration date: February 17, 1998
For further information, please call: (512) 463–8630

Subchapter B. Motor Carrier Registration

43 TAC §§18.10, 18.13, 18.14, 18.16, 18.19

The Texas Department of Transportation is renewing the effectiveness of the emergency adoption of the new and amended sections, for a 60-day period. The text of the new and amended sections was originally published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9386).

Issued in Austin, Texas, on December 19, 1997.

TRD–9716970
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: December 19, 1997
Expiration date: February 17, 1998
For further information, please call: (512) 463–8630

Subchapter C. Records and Inspections

43 TAC §18.31, §18.32

The Texas Department of Transportation is renewing the effectiveness of the emergency adoption of the amended sections, for a 60-day period. The text of the amended sections was originally published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9386).

Issued in Austin, Texas, on December 19, 1997.

TRD–9716971
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: December 19, 1997
Expiration date: February 17, 1998
For further information, please call: (512) 463–8630

Subchapter E. Consumer Protection

43 TAC §§18.51–18.54, 18.56

The Texas Department of Transportation is renewing the effectiveness of the emergency adoption of the amended sections, for a 60-day period. The text of the amended sections was originally published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9386).

Issued in Austin, Texas, on December 19, 1997.

TRD–9716972
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: December 19, 1997
Expiration date: February 17, 1998
For further information, please call: (512) 463–8630

Subchapter F. Enforcement

43 TAC §§18.70–18.72

The Texas Department of Transportation is renewing the effectiveness of the emergency adoption of the amended sections, for a 60-day period. The text of the amended sections was originally published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9386).

Issued in Austin, Texas, on December 19, 1997.

TRD–9716973
Bob Jackson
Deputy General Counsel
Texas Department of Transportation

Effective date: December 19, 1997
Expiration date: February 17, 1998
For further information, please call: (512) 463–8630

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part III. Office of the Attorney General

Chapter 55. Child Support Enforcement

Subchapter H. License Suspension

1 TAC §55.203

The Office of the Attorney General proposes amendments to §55.203(b) and §55.203(f)(2) concerning actions to suspend licenses for failure to pay child support. The amended forms for the Petition to Suspend License correspond with legislative amendments to Chapter 232 of the Family Code, Suspension of License for Failure to Pay Child Support or Comply with Subpoena. The forms clarify the pleading and track the new statutory language of Family Code §232.005 including a statement of the total amount of arrearages allegedly owed under a child support order.

David Vela, IV-D Director, Child Support Division, has determined that for the first five-year period these forms are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the forms.

Mr. Vela also has determined that for each year of the first five years these forms are in effect the public benefit anticipated as a result of enforcing the form is clarification and compliance with the statutory language in Family Code, Chapter 232, license suspension actions for failure to pay child support. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the forms as proposed.

Comments may be submitted to Tod L. Adamson, Child Support Division, Administrative Law Section, Office of the Attorney General, 5500 East Oltorf, Room 347, Austin, Texas 78741, or P.O. Box 12017, mailcode 073, Austin, Texas, 78711-2017, (512) 460-6121.

The amended forms are proposed under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support or Comply with Subpoena, §232.016, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 232.

The Family Code, Chapter 232, is affected by the new forms.

§55.203. Forms.

(a) (No change.)

(b) Petition to Suspend License. The petition shall take the form as follows:
Figure 1: 1 TAC §55.203(b)

(c) - (e) (No change.)

(f) The Office of the Attorney General promulgates the following two forms as suggested model forms for use by the courts.

(1) (No change.)

(2) Petition to Suspend License. The suggested model petition form takes the form as follows:
Figure 2: 1 TAC §55.203(f)(2)

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.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716866
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 475–4499

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

Subchapter E. Rulemaking

7 TAC §9.81, §9.84

The Finance Commission of Texas, the Texas Department of Banking, the Savings and Loan Commissioner, and the Consumer Credit Commissioner (the agencies) propose an amendment to §9.81 and §9.84, relating to rulemaking.

In connection with the enactment of the Texas Finance Code by Acts 1997, 75th Legislature, Chapter 1008, §1, certain provisions regarding special procedures for rulemaking in the consumer credit and pawnshop statutes were eliminated. Repealed Texas Civil Statutes, Article 5069-3.12(1) and Article 5069-51.09(b), codified in Finance Code, §342.501 and §371.006, respectively, formerly provided for procedures that were viewed by the legislature as superfluous or inconsistent with and implicitly repealed by the original enactment of the Texas Administrative Procedure and Texas Register Act (former Texas Civil Statutes, Article 6252-13a, §22). Existing §9.81 and §9.84 cross-reference to these now repealed provisions and the proposed amendment eliminates those references.

Larry J. Craddock, the administrative law judge for the finance commission, has determined that for the first five-year period the sections as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Craddock also has determined that for each year of the first five-year period the sections as proposed will be in effect, the public benefit anticipated as a result of the adoption will be the simplification in procedural process before the agencies, to the advantage of the public and attorneys who practice before the agencies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments regarding the proposed sections may be submitted to Larry J. Craddock, Administrative Law Judge, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to larry.craddock@banking.state.tx.us. Mr. Craddock will ensure that each agency receives copies of all comments received.

The amendments are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The new sections are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies.

Finance Code, §31.003(a)(5), authorizes the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

Finance Code, §153.002, authorizes the finance commission to adopt rules necessary to implement that chapter (governing regulation of currency exchange and transmission licensees).

Finance Code, §152.102, authorizes the finance commission to adopt rules necessary for the enforcement and orderly administration of that chapter.

Finance Code, §154.051(b), authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of that chapter.

Finance Code, §11.302, authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Finance Code, §96.002(a)(2), and Finance Code, §66.002, also authorize the savings and loan commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and loan commissioner or the savings and loan department.

Finance Code, §11.304, authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Finance Code, Chapter 14 and Title 4, plus amendments to the source law made by Acts 1997, 75th Legislature, Chapter 1396). Texas Civil Statutes, Article 5069-3A.901, also authorizes the finance commission to adopt rules necessary for the enforcement of Article 5069-3A.001. Finance Code, §371.006, further authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Finance Code, Chapter 371.

The statutory provisions affected by the proposed sections are Finance Code, Title 3 and Title 4, Texas Civil Statutes, Articles 342a-1.001 et seq, 5069-1B.001 et seq, and Health and Safety Code, Chapter 712.

§9.81. Rulemaking.

Rulemaking proceedings must comply with Government Code, Chapter 2001, Subchapter B (§§2001.021 et seq) [~~, and with Texas Civil Statutes, Article 5069-3.12(1) and Article 5069-51.09(b), if applicable~~].

§9.84. Hearings on Proposed Rules.

(a) The agency shall grant an opportunity for a public hearing before adoption of any proposed rule as required by Government Code, §2001.029(b), [~~; Texas Civil Statutes, Article 5069-51.09(b);~~] or other applicable statute.

(b) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9716981
Everette D. Jobe
Certifying Official
State Finance Commission
Proposed date of adoption: February 20, 1998
For further information, please call: (512) 475-1300

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Part II. Texas Department of Banking

Chapter 10. Trust Companies

7 TAC §§10.1-10.5, 10.10, 10.11

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

The Finance Commission of Texas (the commission) proposes the repeal of §§10.1-10.5, and 10.10-10.11, concerning the regulation of trust companies.

The repeal of these sections is necessary because recently enacted Texas Civil Statutes, Articles 342a-1.001, et seq, now governs trust companies and replaces prior law applicable to trust companies. The substantive provisions of these sections that have continuing vitality are proposed for adoption as new

sections in Title 7, Chapters 17, 19, and 21, in this issue of the *Texas Register*.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Jobe also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of obsolete and potentially confusing regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted in writing to Jerry Sanchez, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to jerry.sanchez@banking.state.tx.us.

The repeal is proposed pursuant to rulemaking authority under Texas Civil Statutes, Article 342a-1.003(a)(1), which authorize the commission to adopt rules necessary or reasonable to implement and clarify Texas Civil Statutes, Article 342a-1.001 et seq.

Texas Civil Statutes, Articles 342a-1.001 et seq, are affected by the proposed repeal.

§10.1. Ratable Increases in Required Capital.

§10.2. Physical Location of Books and Records.

§10.3. Examination Fees.

§10.4. Advertising.

§10.5. Authorized Investments.

§10.10. Requirements to Apply for and Maintain Status as Exempt Trust Company.

§10.11. Revocation of Exempt Trust Company Status.

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

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Everette D. Jobe
General Counsel
Texas Department of Banking
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Chapter 12. Loans and Investments

The Finance Commission of Texas (the commission) proposes amendments to §12.11 and §12.61, concerning loan and investment limits.

Section 12.11 provides that a state bank does not violate the limitations on loans or extensions of credit with regard to a loan transaction that was legal when made but became nonconforming as a result of the enactment of the Texas Banking Act effective September 1, 1995. The section refers to this type of loan as a "conforming" loan when in fact it does not conform to currently effective limits, and the amendment changes this erroneous terminology.

Section 12.61 similarly provides that a state bank investment made prior to September 1, 1995, within the bank's investment limit when made but exceeding the new limits of the Texas Banking Act, remains a legal investment. The section refers to this type of investment as a "conforming" investment although it does not conform to currently effective limits, and the amendment changes this erroneous terminology.

Everette Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these sections are the clarification of complex statutory standards to aid the industry in compliance. No net economic cost will result to persons required to comply with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposal may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to everette.jobe@banking.state.tx.us.

Subchapter A. Lending Limits

7 TAC §12.11

The amendment is proposed under Finance Code, §31.003(a)(1) and §34.201(b), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify Finance Code, Title 3, Subtitle A, and further to adopt rules to administer the provisions of Finance Code, §34.201.

Finance Code, §34.201, is affected by the proposal.

§12.11. Transition Rules.

(a) This subchapter applies to loans or extensions of credit made on or after September 1, 1995. A loan or extension of credit existing prior to September 1, 1995, that was within a bank's legal lending limit when made but is currently in excess of the limitations of Finance Code, §34.201 , is not a violation of the Finance Code, §34.201, and this subchapter, but [~~and~~] is considered a nonconforming [~~conforming~~] loan.

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

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

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Everette D. Jobe
General Counsel
Texas Department of Banking
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Subchapter C. Investment Limits

7 TAC §12.61

The amendment is proposed under Finance Code, §31.003(a)(1) and §34.101(j), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify Finance Code, Title 3, Subtitle A, and further to adopt rules to administer the provisions of Finance Code, §34.101.

Finance Code, §34.101 and §34.104, is affected by the proposal.

§12.61. Transition Provisions.

(a) An investment in securities made prior to September 1, 1995, that was within a state bank's investment limit when made but is currently in excess of the limitations of Finance Code, §34.101 or §34.104, is not a violation of Finance Code, §34.101 or §34.104, but is considered a nonconforming [~~conforming~~] investment.

(b) (No change.)

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

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Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: February 20, 1998

For further information, please call: (512) 475-1300

Chapter 17. Trust Company Regulation

The Finance Commission of Texas (the commission) proposes new §§17.1, 17.2, 17.21, and 17.22, regarding ratable increases in required capital, advertising, the physical location of books and records, and examination fees applicable to trust companies.

Effective September 1, 1997, Texas Civil Statutes, Articles 342a-1.001 et seq, became the governing law for trust companies under the jurisdiction of the Texas Department of Banking (the department). New regulations implementing this law require proposal and adoption. As part of this process, 7 TAC Chapter 17 will contain generally applicable rules pertaining to trust companies. Proposed §17.1 and §17.2 will initially comprise all of Subchapter A, entitled "General," and proposed §17.21 and §17.22 will initially comprise all of Subchapter B, entitled "Examination and Call Reports."

Proposed §17.1 concerns ratable increases in capital and provides a timetable for a trust company to comply with minimum restricted capital requirements under Texas Civil Statutes, Article 342a-3.007. Proposed §17.1 is comparable to and drawn from 7 TAC §10.1, proposed for repeal in this issue of the *Texas Register*.

Proposed §17.2 prohibits certain misleading advertising by trust companies, and is comparable to and drawn from 7 TAC §10.4, proposed for repeal in this issue of the *Texas Register*.

Proposed §17.21 provides for the preservation and location of corporate and fiduciary records of a trust company to enhance the examination process by the department and to provide flexibility to trust companies in conducting their affairs. Proposed §17.21 is comparable to and drawn from 7 TAC §10.2, proposed for repeal in this issue of the *Texas Register*.

Proposed §17.22 specifies examination fees to be charged to trust companies by the department, and is comparable to and drawn from 7 TAC §10.3, proposed for repeal in this issue of the *Texas Register* , and 7 TAC §3.36(h).

Everette Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these sections are the clarification of complex statutory standard to aid the industry in compliance. No net economic cost will result to persons required to comply with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed sections may be submitted in writing to Jerry Sanchez, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to jerry.sanchez@banking.state.tx.us.

Subchapter A. General

7 TAC §17.1, §17.2

The new sections are proposed under Texas Civil Statutes, Articles 342a-1.003(a)(1), 342a-1.003(a)(2), and 342a-3.103(a), which authorize the commission to adopt rules to implement and clarify Texas Civil Statutes, Articles 342a-1.001 et seq, preserve or protect the safety and soundness of trust companies, and establish the basis for reductions and increases in restricted capital.

Texas Civil Statutes, Articles 342a-1.001 et seq, are affected by the proposal.

§17.1. Ratable Increases in Required Capital.

(a) Beginning restricted capital. As used in this section, the term "beginning restricted capital" means, at any time, the level of restricted capital of a trust company as determined by the immediately preceding September 30th statement of condition and income filed by the trust company pursuant to Texas Civil Statutes, Article 342a-2.003, subject to correction or restatement as a result of examination.

(b) Purpose. Pursuant to Texas Civil Statutes, Article 342a-3.007, a trust company is required to possess minimum restricted capital of not less than $1 million, or a higher or lower amount set by the banking commissioner. Under prior law, the minimum restricted capital was $500,000. An existing trust company must achieve the new required level of restricted capital by September 1, 2000. This section provides for ratable increases in minimum restricted capital and for deferrals and extensions of time for a trust company acting in good faith to achieve minimum required restricted capital.

(c) Transition for under-capitalized trust company.

(1) A trust company with restricted capital as of September 1, 1995, that was less than the minimum restricted capital required under Texas Civil

restricted capital required at that time and such trust company's restricted capital as of the preceding September 30th;

(B) September 30, 1997–by a sufficient amount to cause restricted capital to equal such trust company's beginning restricted capital plus at least 25% of the difference between the minimum restricted capital required at that time and such trust company's restricted capital as of the preceding September 30th;

(C) September 30, 1998–by a sufficient amount to cause restricted capital to equal such trust company's beginning restricted capital plus at least 33% of the difference between the minimum restricted capital required at that time and such trust company's restricted capital as of the preceding September 30th;

(D) September 30, 1999–by a sufficient amount to cause restricted capital to equal such trust company's beginning restricted capital plus at least 50% of the difference between the minimum restricted capital required at that time and such trust company's restricted capital as of the preceding September 30th; and

(E) September 30, 2000–by a sufficient amount to cause restricted capital to equal at least the minimum restricted capital required at that time. Thereafter, the trust company shall have and maintain at least the minimum restricted capital required by Texas Civil Statutes, Article 342a-3.007.

(2) The implementation schedule set forth in paragraph (1) of this subsection is a minimum requirement, and does not authorize a reduction of restricted capital for a trust company that has more restricted capital than is required under the implementation schedule but less than is required under Texas Civil Statutes, Article 342a-3.007. Any trust company that possesses restricted capital in excess of minimal requirements or that achieves the minimum transition level of restricted capital prior to the required deadlines in the transition schedule may not reduce its restricted capital without the express written consent of the banking commissioner.

(d) Extensions of time. Upon application by a trust company subject to subsection (c) of this section, the banking commissioner, in the exercise of discretion, may grant one or more extensions to a trust company to permit additional time to achieve the required restricted capital levels if, in the banking commissioner's opinion, the trust company has made a good faith effort to achieve such restricted capital levels.

(e) Inapplicability to new trust company. This section does not create a presumption regarding the adequacy of the capital structure proposed for a new trust company in a charter application to the banking commissioner.

§17.2. Advertising.

(a) An advertisement published by or on behalf of a trust company may not include the following:

(1) a guaranteed rate of return or interest rate on funds deposited in trust;

(2) a statement that tends to deceive or mislead the public; or

(3) a term that may deceive the public into belief that the trust company is engaged in the banking business.

(b) Advertisements published by or on behalf of a trust company must be retained in the trust company's records for examination by department personnel.

(c) A trust company that violates this section is subject to an enforcement action initiated by the banking commissioner under Texas Civil Statutes, Articles 342a-6.001 et seq.

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

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Everette D. Jobe
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

Subchapter B. Examination and Call Reports

7 TAC §17.21, §17.22

The new sections are proposed under Texas Civil Statutes, Articles 342a-1.003(a)(1), 342a-1.003(a)(4), and 342a-4.109, which authorize the commission to adopt rules to implement and clarify Texas Civil Statutes, Articles 342a-1.001 et seq, to provide for the recovery of the cost and maintenance and operation of the department and the cost of enforcing Texas Civil Statutes, Articles 342a-1.001 et seq, through the imposition and collection of ratable and equitable fees for notices, applications and examinations, and to require maintenance of fiduciary records.

Texas Civil Statutes, Articles 342a-1.001 et seq, are affected by the proposal.

§17.21. Physical Location of Books and Records.

(a) Purpose. The purpose of this section is to provide for the preservation and location of trust company records to enhance the examination process by the department and to provide flexibility to trust companies in conducting their affairs. A trust company that maintains fiduciary records at one or more locations other than its principal place of business should be aware that a separate examination may be required at each such location, the cost of which will be borne by the trust company. This section may not be construed to prevent the maintenance of a duplicate set of records if the trust company considers such to be advisable.

(b) Corporate records. Those books and records of a trust company that are related to corporate governance and operations must be kept and maintained at the trust company's principal place of business in this state. Such books and records include but are not necessarily limited to:

(1) general and subsidiary ledgers;

(2) income and expense ledgers;

(3) supporting documentation for assets and liabilities;

(4) contracts with suppliers and service providers;

(5) corporate state and federal tax information and documentation;

(6) correspondence with the department;

(7) directors minutes;

(8) shareholders minutes;

(9) corporate governance documents such as bylaws, articles of association, and stock register; and

(10) reports of condition and income.

(c) Fiduciary records. Those books and records of a trust company that are related to fiduciary accounts and operations may be kept and maintained either at the trust company's principal place of business in this state or at the place where the trust company's fiduciary accounts are administered; provided that such books and records may not be divided and kept partially at different locations without the prior consent of the department. Such books and records include but are not necessarily limited to:

(1) governing documents for each trust, custodial account, agency or other type of account administered;

(2) documentation supporting the purchase or sale of any investments from or to the accounts administered, including broker confirmations and safekeeping receipts;

(3) documentation on any assets accepted in-kind with supporting documentation justifying the amount booked;

(4) account reviews, including administrative and asset reviews;

(5) copies of all correspondence on each account administered, including documents relating to litigation, bankruptcy proceedings or other court action;

(6) copies of income tax returns on any accounts which are required to submit income tax returns;

(7) copies of customer account statements;

(8) trial balance of all accounts administered reflecting all investments, including principal cash and income cash, at market value and cost;

(9) overdraft listing of any overdrawn account administered and reflecting date of overdraft;

(10) large cash balance listing of accounts administered;

(11) safekeeping report from each institution holding items for safekeeping, with reconcilement to the trust company account trial balance;

(12) master asset listing of all investments by type, reflecting account holder, number of units held with cost and market values;

(13) assets by account holder reflecting investments with number of units, cost and market values;

(14) broker commission report reflecting all brokers utilized for purchase or sale of investments, dollar volume, commissions paid and number of transactions;

(15) reconcilement of fiduciary cash accounts including copies of bank account statements;

(16) reconcilement of suspense accounts with listing of items outstanding and origination dates;

(17) complaint file; and

(18) copies of quarterly report of trust assets.

§17.22. Examination and Investigation Fees.

(a) Calculation of fees. A trust company shall pay to the department a fee for examination, whether a regular or special examination, or for an investigation in connection with an application, calculated at a uniform rate of $500 per examiner per day, to recoup the salary expense of examiners plus a proportionate share of the department's overhead allocable to the examination or investigation function. The commissioner may lower the uniform rate without the prior approval of the finance commission.

(b) Travel expenses. In connection with an examination or investigation, a trust company shall reimburse the department for actual travel expenses incurred, including mileage, public transportation, food, and lodging, in addition to paying the fees set forth in subsection (a) of this section.

(c) Payment due. Fees and expenses charged under this section are due no later than the 30th day after a bill for fees and expenses is submitted to the trust company. Failure to pay such fees and expenses or file a request for hearing within the time period may subject the trust company to enforcement proceedings.

(d) Dispute of fees and expenses.

(1) A trust company may dispute the amount of a bill for fees and expenses assessed under this section by paying the amount of fees and expenses that are undisputed and filing a written request for hearing with the banking commissioner on or before the 30th day after a bill for fees and expenses is submitted to the trust company. If the trust company does not request a hearing in writing within the time period allowed, the assessed fees and expenses are final and nonappealable.

(2) A requested hearing must be held not later than the 30th day after the date the request was received by the banking commissioner unless the parties agree to a later hearing date. Each party shall be given written notice by personal delivery or by registered or certified mail, return receipt requested, of the date set by the banking commissioner for the hearing not later than the 11th day before that date. The hearing shall be conducted as provided by Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(3) After the hearing, the banking commissioner shall affirm or modify the bill for fees and expenses by written order.

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

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Everette D. Jobe
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

Chapter 19. Trust Company Loans and Investments

The Finance Commission of Texas (the commission) proposes new §§19.1, 19.21, and 19.22, concerning loans or extensions of credit and investments by trust companies.

Effective September 1, 1997, Texas Civil Statutes, Articles 342a-1.001 et seq, became the governing law for trust companies. New regulations implementing this new law require proposal and adoption. As part of this process, Chapter 19 will contain rules applicable to loans and investments of trust com-

panies. Proposed §19.1 will initially comprise all of Subchapter A, entitled "Loans," and proposed §19.21 and §19.22 will initially comprise all of Subchapter B, entitled "Investments."

Proposed §19.1 clarifies that a state trust company does not violate the limitations on loans or extensions of credit, including lease financing transactions, if such transactions were legal when made but become nonconforming as a result of exceeding the new legal lending limit created by Texas Civil Statutes, Article 342a-5.201. Proposed §19.1 also authorizes the banking commissioner, under certain limited circumstances, to allow renewal, extension, or restructuring of loans which are not in compliance with a trust company's legal lending limit.

Proposed §19.21 clarifies that a state trust company does not violate the limitations on investments if such investments were legal when made but become nonconforming as a result of exceeding the new investment limit created by Texas Civil Statutes, Article 342a-5.101. A trust company may not make an investment on or after September 1, 1997, that is not in compliance with law, or that would cause an existing investment to become further out of compliance with law.

Pursuant to Texas Civil Statutes, Article 342a-5.104(c), a trust company's total investment in mutual funds for its own account may not exceed an amount equal to 15 percent of the trust company's restricted capital. Proposed §19.22 will substantially reduce this restriction by permitting investment of an amount up to 15 percent of the trust company's restricted capital in each qualified mutual fund, subject to the exercise of prudent investment judgment. A trust company must periodically review the investments in the portfolios of mutual funds in which it invests to determine that investment limits are not exceeded by reason of the combined holdings of the securities of a single issuer held directly by the trust company and held indirectly by multiple mutual funds in which the trust company is invested. Documentation of periodic reviews must be maintained by the trust company for examination purposes.

Further, proposed §19.22 will permit a trust company to invest without limitation in a mutual fund with stated objectives of investing solely in securities that the trust company could invest in directly for its own account without limit, provided the mutual fund's portfolio in fact consists entirely of such securities.

Finally, proposed §19.22 clarifies that a mutual fund investment is subject to the provisions of proposed §19.21. Thus, a mutual fund investment made prior to September 1, 1997, that was within a trust company's investment limit when made but became nonconforming as a result of the new limitations of Texas Civil Statutes, Article 342a-5.101, remains a legal but nonconforming investment. A trust company may not make a mutual fund investment on or after September 1, 1997, that is not in compliance with Texas Civil Statutes, Article 342a-5.101, or that would cause an existing mutual fund investment to become further out of compliance with Texas Civil Statutes, Article 342a-5.101, such as by electing to reinvest dividends.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these sections are the clarification of complex statutory standards to aid the industry in compliance. No net economic cost will result to persons required to comply with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed sections may be submitted in writing to Jerry Sanchez, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to jerry.sanchez@banking.state.tx.us.

Subchapter A. Loans

7 TAC §19.1

The new section are proposed under Texas Civil Statutes, Articles 342a-1.003(a)(1), 342a-1.003(a)(2), and 342a-5.201(c), which authorize the commission to adopt rules to implement and clarify Texas Civil Statutes, Articles 342a-1.001 et seq, to preserve or protect the safety and soundness of state trust companies, and to establish limits, requirements, or exemptions for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

Texas Civil Statutes, Article 342a-5.201, and Article 342a-5.202, are affected by the proposal.

§19.1. Grandfathered Loans.

(a) Texas Civil Statutes, Article 342a-5.201, and this subchapter apply to loans or extensions of credit made on or after September 1, 1997. A loan or extension of credit existing prior to September 1, 1997, that was within a trust company's lending limit when made but is currently in excess of the limitations of Texas Civil Statutes, Article 342a-5.201, is not a violation of Texas Civil Statutes, Article 342a-5.201, or this subchapter, but is considered a nonconforming loan.

(b) Except as provided in subsections (c)-(e) of this section, a trust company may not renew, extend the maturity of, or restructure a nonconforming loan or extension of credit described in subsection (a) of this section unless the renewed, extended, or restructured loan complies with Texas Civil Statutes, Article 342a-5.201.

(c) Provided a trust company first makes a reasonable effort, consistent with safety and soundness principles, to collect a loan or extension of credit described in subsection (a) of this section at its maturity or to comply with subsection (b) of this section, a trust company may renew, extend the maturity of, or restructure the nonconforming loan or extension of credit unless:

(1) additional funds are advanced by the trust company to the borrower;

(2) a new borrower replaces the original borrower; or

(3) the banking commissioner determines that the renewal, extension, or restructuring of the loan or extension of credit is designed to evade the trust company's lending limit.

(d) An extension, if any, of the maturity of the loan or extension of credit, in the aggregate, may not exceed the lesser of the original term of the loan or one year.

(e) Notwithstanding subsections (b)-(d) of this section, the banking commissioner may authorize terms for the renewal, extension, or restructuring of an existing loan or extension of credit on written application if the banking commissioner concludes that:

(1) the excess loan or extension of credit is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting trust company:

(A) would not be adversely affected by renewal, extension, or restructuring of the existing loan or extension of credit; or

(B) would be adversely affected if the loan or extension of credit is not renewed, extended, or restructured as requested.

(f) A lease financing transaction is considered an extension of credit for lending limit purposes. A lease financing transaction in existence prior to September 1, 1997, is therefore subject to this section.

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

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Everette D. Jobe
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

Subchapter B. Investments

7 TAC §19.21, §19.22

The sections are proposed under Texas Civil Statutes, Articles 342a-1.003(a)(1), 342a-1.003(a)(2), and 342a-5.101(h), which authorize the commission to adopt rules to implement and clarify Texas Civil Statutes, Articles 342a-1.001 et seq, to preserve or protect the safety and soundness of state trust companies, and to establish limits, requirements, or exemptions for particular classes or categories of investment, or limit or expand investment authority for trust companies for particular classes or categories of securities or other property.

Texas Civil Statutes, Article 342a-5.101, are affected by the proposal.

§19.21. Grandfathered Investments.

(a) An investment in securities made prior to September 1, 1997, that was within a trust company's investment limit when made but exceeds the new limitations of Texas Civil Statutes, Article 342a-5.101(c) or (e), effective September 1, 1997, is not a violation of Texas Civil Statutes, Article 342a-5.101, but is considered a nonconforming investment.

(b) Without the prior written approval of the banking commissioner pursuant to Texas Civil Statutes, Article 342a-5.101(c), a trust company may not make an investment on or after September 1, 1997, that is not in compliance with law, or that would increase an existing investment described in subsection (a) of this section and cause it to become further out of compliance with law.

§19.22. Investments in Mutual Funds.

(a) Subject to Texas Civil Statutes, Article 342a-5.101(f), and this section, a trust company may invest for its own account in a mutual fund as defined in Texas Civil Statutes, Article 342a-1.002(a)(31), unless the mutual fund portfolio contains an investment that the trust company could not make directly.

(b) Notwithstanding the limits stated in Texas Civil Statutes, Article 342a-5.101(c), a trust company may invest in a mutual fund not more than an amount equal to 15% of the trust company's restricted capital unless a larger investment is permitted under subsection (c) of this section. Pursuant to Texas Civil Statutes, Article 342a-5.101(c), the banking commissioner may authorize investments in excess of this limitation on written application if the banking commissioner concludes that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting trust company is not adversely affected.

(c) Notwithstanding the limits stated in Texas Civil Statutes, Article 342a-5.101(c), and subsection (b) of this section, a trust company may invest in a mutual fund without limit if:

(1) the mutual fund's stated investment objective is to invest solely in securities that the trust company could invest in directly for its own account without limit under Texas Civil Statutes, Article 342a-5.101(d); and

(2) the mutual fund's portfolio in fact consists wholly of investments in which the trust company could invest directly without limitation under Texas Civil Statutes, Article 342a-5.101(d).

(d) A trust company that invests in an mutual fund as permitted by subsection (b) of this section shall periodically determine that its pro rata share of any security in the portfolio of the mutual fund is not in excess of applicable investment and lending limits by reason of being combined with the trust company's pro rata share of that security held by all other mutual funds in which the trust company has invested and with the trust company's own direct investment and loan holdings. Documentation of periodic reviews must be maintained by the trust company for examination purposes.

(e) A trust company's investment in a mutual fund made prior to September 1, 1997, is subject to §19.21 of this title (relating to Grandfathered Investments). Pursuant to §19.21, without the written approval of the banking commissioner, a trust company may not increase its grandfathered investment in a mutual fund on or after September 1, 1997, including by means of an election to reinvest dividends, unless subsection (c) of this section applies.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716989
Everette D. Jobe
General Counsel
Texas Department of Banking
Proposed date of adoption: February 20, 1998
For further information, please call: (512) 475-1300

Chapter 21. Trust Company Corporate Activities

Subchapter A. Fees and Other Provisions of General Applicability

7 TAC §21.2

The Finance Commission of Texas (the commission) proposes new §21.2, regarding filing and investigation fees applicable to trust company corporate applications.

Effective September 1, 1997, Texas Civil Statutes, Articles 342a-1.001 et seq, became the governing law for trust companies. New regulations implementing this new law require proposal and adoption. As part of this process, Chapter 21 will contain rules applicable to corporate applications filed by trust companies. Proposed §21.2 will be the initial section in Subchapter A, entitled "Fees and Other Provisions of General Applicability."

Pursuant to Texas Civil Statutes, Article 342a-1.003(a)(4), the commission must recover the cost of maintaining and operating the department and the cost of enforcing the law by imposing and collecting ratable and equitable fees for notices, applications, and examinations. Proposed §21.2 will establish fees applicable to the corporate application process, and is based on existing §15.2, currently applicable to trust companies. The purpose of a fee charged by the department, whether the fee is for applications, annual assessments, examinations, recovery of costs, or other purposes, is to enable the department to be self-supporting. Proposed §21.2 is designed to impose appropriate fees and cost recovery provisions to make application processing services self-sustaining to the extent possible. The following paragraphs discuss only those fees that are proposed to change.

Five new fees are proposed in connection with new notices and applications. An application for authority to accept deposits, a power newly available effective September 1, 1997, is proposed to bear a fee of $1,000. A notice of additional office pursuant to Texas Civil Statutes, Article 342a-3.203(a), will bear a fee of $200, and an application for an additional office under Texas Civil Statutes, Article 342a-3.203(b), must be accompanied by a $1,500 fee. A fee of $1,500 is added for an application for approval of a reverse stock split, although few if any such applications are expected. Until a rule is adopted regarding reverse stock splits, trust companies should comply with existing §15.122 (relating to Amendment of Articles to Effect a Reverse Stock Split). Finally, a $100 fee will be imposed for statements of condition and income filed pursuant to Texas Civil Statutes, Article 342a-2.003.

Three fees are increased to better match actual resources used in processing the related notices or applications. A $1,000 fee will be imposed for an application for trust company exemption pursuant to Texas Civil Statutes, Article 342a-3.012 (formerly $500). A fee of $100 will be charged for the annual certification filed by an exempt trust company pursuant to Texas Civil Statutes, Article 342a-3.013 (formerly $50).

In addition, trust company charter and conversion applications currently bear a per hour charge for investigation and that charge is proposed to be replaced with a flat $5,000 investigation fee. Annual revenues from investigation fees are expected to be less than revenues generated by investigative cost recovery under existing §15.2.

The fee for an application for approval of a change of control has been and continues to be $5,000, except that the proposed fee structure will reduce this fee to $2,500 for an expedited application if the applicant has previously been approved to control another trust company and no material changes in the applicant's circumstances have occurred since the prior approval. Other reduced fees for expedited applications will be proposed in 1998 in conjunction with a proposed rule or rules to permit such applications. Applicants and applications that meet certain minimum qualifications are anticipated to eventually be able to pay lower fees and file for expedited treatment of applications for charter, change of control, merger, and purchase of assets and assumption of liabilities.

Lynda A. Drake, Director of the Corporate Activities Division, Texas Department of Banking, has determined that for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section because the fee provisions in the proposal are expected to be revenue neutral.

Ms. Drake also has determined that for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of the proposed section will be better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for application processing within the department. The fee provisions in the proposed section will merely rearrange sources of revenue and is not expected to increase or decrease the net revenue of the department from the trust company industry. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted in writing to Jerry Sanchez, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to jerry.sanchez@banking.state.tx.us.

The new section is proposed under Texas Civil Statutes, Article 342a-1.003(1) and Article 342a-1.003(a)(4), which authorize the commission to adopt rules to implement and clarify Texas Civil Statutes, Articles 342a-1.001 et seq, and to provide for the recovery of the cost and maintenance and operation of the Texas Department of Banking and the cost of enforcing Texas Civil Statutes, Article 342a-1.001 et seq, through the imposition and collection of ratable and equitable fees for notices, applications, and examinations.

Texas Civil Statutes, Articles 342a-6.202, 342a-3.003, 342a-3.011, 342a-3.012, 342a-3.013, 342a-3.101, 342a-3.103, 342a-3.202, 342a-3.203, 342a-3.302, 342a-3.401, 342a-3.405, 342a-4.002, 342a-5.102, and 342a-5.103, are affected by the proposal.

§21.2. Filing and Investigation Fees.

(a) Types of fees. Subsection (b) of this section contains filing fees for specified applications and notices submitted to the department, and subsection (c) of this section requires a fee for protesting an application. These fees are due at the time the application or protest is submitted. Subsection (d) of this section requires an investigation fee to be paid in certain cases once an application has been accepted by the department for filing, and in other cases may require payment of investigative costs upon written request of the department. Pursuant to subsection (e) of this section, an applicant may seek waiver or reduction of required fees.

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) $5,000 for an application for trust company charter pursuant to Texas Civil Statutes, Article 342a-3.003;

(2) $5,000 for an application for conversion of exempt trust company to non-exempt pursuant to Texas Civil Statutes, Article 342a-3.011(d);

(3) $4,000 for an application to authorize a merger or share exchange pursuant to Texas Civil Statutes, Article 342a-3.302;

(4) $2,500 for each request to authorize an additional merger if more than one affiliated merger is to occur simultaneously;

(5) $4,000 for an application to authorize a purchase of assets pursuant to Texas Civil Statutes, Article 342a-3.401;

(6) $1,000 for an application to authorize the sale of substantially all assets pursuant to Texas Civil Statutes, Article 342a-3.405;

(7) $500 for a subsidiary notice letter pursuant to the Texas Civil Statutes, Article 342a-5.103(c), plus an amount up to an additional $3,500 if the banking commissioner notifies the applicant that additional information and analysis is required;

(8) $5,000 for an application regarding acquisition of control pursuant to Texas Civil Statutes, Article 342a-4.002, or $2,500 for an expedited application if the applicant has previously been approved to control another trust company and no material changes in the applicant's circumstances have occurred since the prior approval;

(9) $200 for a notice to change home office with no abandonment of existing office pursuant to Texas Civil Statutes, Article 342a-3.202(c);

(10) $1,500 for an application to relocate the home office with abandonment of existing office pursuant to Texas Civil Statutes, Article 342a-3.202(d);

(11) $200 for a notice of additional office pursuant to Texas Civil Statutes, Article 342a-3.203(a);

(12) $1,500 for an application to open an additional office pursuant to Texas Civil Statutes, Article 342a-3.203(b);

(13) $200 for an application to amend a trust company charter (articles of association) pursuant to Texas Civil Statutes, Article 342a-3.101;

(14) $1,500 for an application to authorize a reverse stock split subject to the substantive provisions of §15.122 of this title (relating to Amendment of Articles to Effect a Reverse Stock Split);

(15) $100 for a request for a "no objection" letter to use a name containing a term listed in Texas Civil Statutes, Article 342a-6.202, by an entity other than a depository institution or a trust company;

(16) $500 for an application to authorize acquisition of treasury stock pursuant to Texas Civil Statutes, Article 342a-5.102, and §15.121 of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(17) $500 for an application to authorize an increase or reduction in capital and surplus pursuant to Texas Civil Statutes, Article 342a-3.103;

(18) $1,000 for an application for trust company exemption pursuant to Texas Civil Statutes, Article 342a-3.012;

(19) $1,000 for an application for authority to accept deposits pursuant to Texas Civil Statutes, Article 342a-3.101 and Article 342a-5.401, and §21.24 of this title (relating to Trust Deposits);

(20) $100 for the annual certification filing for an exempt trust company pursuant to Texas Civil Statutes, Article 342a-3.013; and

(21) $100 for required filing of a statement of condition and income pursuant to Texas Civil Statutes, Article 342a-2.003.

(c) Filing fee for protest. A person or entity filing a protest to the application of another person or entity shall pay a fee of $2,500 simultaneously with such protest filing. The purpose of the fee required under this subsection is to partially offset the department's increased cost of processing and reduce the costs incurred by the applicant resulting solely from the protest.

(d) Investigative fees and costs. An applicant for a trust company charter or conversion from an exempt trust company to a non-exempt trust company or limited trust association shall pay an investigation fee of $5,000 once the application has been accepted for filing. If required by the banking commissioner, an applicant under another type of application or filing listed in subsection (b) of this section shall pay the reasonable investigative costs of the department incurred in any investigation, review, or examination considered appropriate by the department, calculated as provided by §17.22(a) of this title (relating to Examination and Investigation Fees). Such investigation fee or costs must be paid by the applicant upon written request of the department. Failure to timely pay the investigation fee or a bill for investigative costs constitutes grounds for denial of the submitted or accepted filing.

(e) Reduction or waiver of fees. Fees paid are nonrefundable and the banking commissioner shall charge fees on a consistent and nondiscriminatory basis. However, in the exercise of discretion, the banking commissioner may reduce, waive, or refund all or part of a filing fee, investigation fee, or bill for investigative costs if the banking commissioner concludes that:

(1) the application demonstrates that the fee creates an unreasonable hardship on the applicant; or

(2) the nature of the application will result in substantially reduced processing time compared to normal expectations for an application of that type.

(f) Severability. If any fee or cost recovery set forth in this section is finally determined by a court of competent jurisdiction to be invalid that fee or cost recovery shall be severed from this section and the remainder of this section shall remain fully enforceable.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716990
Everette D. Jobe
General Counsel
Texas Department of Banking
Proposed date of adoption: February 20, 1998
For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

16 TAC §3.57, §3.76

The Railroad Commission of Texas proposes amendments to §3.57 of this title (relating to reclaiming tank bottoms, other hydrocarbon wastes, and other waste materials) and §3.76 of this title (relating to fees, performance bonds and alternate forms of financial security required to be filed).

The commission proposes to delete §3.57(c)(7) and renumber the subsequent paragraphs of subsection (c) because the requirements of paragraph (c)(7) would be replaced by the changes proposed in amendments to §3.76. The commission proposes to add §3.57(c)(10) to provide a cross-reference to §3.76(q) to indicate that financial responsibility requirements for reclamation plants will be governed by §3.76(q).

The commission proposes to amend §3.76(a) to change paragraph (3) which defines the term "an acceptable record of compliance" to allow one violation of commission rules provided that the violation was settled through an agreed order with the commission.

The commission proposes to further amend §3.76(a) to add a new paragraph (4) which defines the term "commercial facility" as any facility whose owner or operator receives compensation from others for the storage, reclamation, treatment, or disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the facility and whose primary business purpose is to provide these services if: (1) the facility is permitted under §3.8 of this title; (2) the facility is permitted under §3.57 of this title; (3) the facility is permitted under §3.9 of this title and a collecting pit permitted under §3.8 is located at the facility; or (4) the facility is permitted under §3.46 of this title and a collecting pit permitted under §3.8 is located at the facility.

The commission proposes to further amend §3.76 by adding a new subsection (q) which would require commercial facilities to provide financial security.

Proposed new subsection (q) describes requirements for submission of financial security information to the commission for review for both new and existing commercial facilities and provides for notice and hearing in certain situations.

The proposed new subsection (q) also requires that a bond or letter of credit, in an amount approved by the commission or its delegate and meeting the requirements of the subsection as to form and issuer, be filed with the commission prior to receipt of waste at a new facility. After one year from the effective date of the subsection, an existing facility may not continue to receive waste unless financial security has been filed with the commission. An extension of the time for filing financial security may be granted upon written request and for good cause shown. In addition, the time period for filing financial security is automatically extended pending final commission action on review of proposed financial security.

The proposed subsection (q) specifies that the amount of financial security be estimated by or under supervision of a licensed professional engineer. The amount of financial security must be equal to or greater than the maximum amount necessary to close the facility at any time during the permit term, exclusive of plugging costs, but no less than $10,000. The amount of financial security required may be reduced by $25,000, an amount equivalent to the minimum commission form P-5 financial assurance amount. Subsection (q) also provides that proceeds from financial security provided under the subsection may be used to plug a well or wells at the facility if the P-5 financial assurance provided by the operator for plugging wells is insufficient to cover the costs of plugging such well or wells.

The proposed subsection also specifies that bonds and letters of credit must be issued by a corporate surety or bank, respectively, authorized to do business in the State of Texas.

Rita Percival, planner, Oil and Gas Division, has determined that for the first five-year period the proposed amendments to §3.57 are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering them. Ms. Percival has also determined that for the first five-year period the amendments to §3.76 are in effect, there will be fiscal implications to state government as a result of enforcing or administering them; there are no fiscal implications to local governments. The effect on state government for the first five-year period the amendments to §3.76 are in effect will be $20,875 in fiscal year 1998 and $2,269 annually in fiscal years 1999 through 2002. These costs are associated with staff review and approval of the bonds.

Terri Eaton, assistant director, Office of General Counsel, has determined that for each year of the first five years the amendments to §3.57 are in effect, there will be no cost of compliance to small businesses, individuals, and other affected operators.

Ms. Eaton has also determined that for each year of the first five years the amendments to §3.76 are in effect, there will be some cost of compliance for small businesses, individuals, and other affected operators. For the first year the proposed amendments are in effect, the anticipated cost of compliance will be approximately $395,000. For the second year the proposed amendments are in effect, the cost of compliance for all affected operators will be approximately $270,000. Costs of compliance will increase at a rate of $21,250 per year thereafter, for a total cost of compliance in the fifth year after adoption of the amendments of $334,000. The cost of compliance was estimated in the following manner.

There are currently 30 reclamation plants permitted under §3.57 and 38 commercial surface disposal facilities permitted under §3.8 of this title that would be required to provide financial assurance for facility closure costs under these proposed amendments. It is anticipated that closure costs for each of these facilities are $100,000 and that each operator owns or operates only one facility.

The total bond amount for each of these facilities would therefore be $75,000, or $100,000 minus the $25,000 credit allowed under the amendments to reflect the fact that each of these operators has already provided financial assurance in the amount of $25,000 to the commission. The initial cost per facility of obtaining a $75,000 bond is estimated to be $3,000 (five percent of the total bond amount) plus $2,000 to cover services of a licensed professional engineer, or a total of $5,000 per facility for the first year. The annual fee for renewal of the bond would be $3,000 per facility (five percent of the total bond amount).

There are currently 94 commercial facilities permitted under §3.9 and §3.46 (relating to disposal wells and to fluid injection into productive reservoirs). It is estimated that the cost to close each of these facilities, exclusive of plugging costs, is $25,000. It is further estimated that half of the facilities are operated by

operators having only one commercial facility. Therefore, 47 operators would not be required to provide additional financial assurance and would incur no costs under these amendments. The remaining half of the facilities are assumed to be operated by persons operating two facilities each. These operators would be required to provide the full $25,000 financial assurance for one of their two facilities, for a total of 23.5 (rounded up to 24) facilities. The initial cost of obtaining a bond for each of these 24 facilities would be $1,250 (five percent of the bond amount) plus $1,000 for the services of a licensed professional engineer. Thereafter, the annual cost per operator would be the bond renewal fee, estimated to be $1,250.

It is further estimated that five new commercial facilities permitted under §3.57 or §3.8 (relating to reclaiming tank bottoms, other hydrocarbon wastes, and other materials and to water protection) and five new commercial facilities permitted under §3.9 or §3.46 (relating to disposal wells and to fluid injection into productive reservoirs) will be opened annually and that each of these 10 facilities will be required to provide financial assurance.

Ms. Eaton has also determined that the public benefit from adoption of the proposed amendments will be assurance that funds are available to close commercial facilities permitted under §§3.8, 3.57, 3.9, and 3.46 of this title (relating to water protection, to reclaiming tank bottoms, other hydrocarbon wastes, and other materials, to disposal wells and to fluid injection into productive reservoirs) in the event the owners or operators of such facilities are unable or unwilling to pay closure costs.

Ms. Percival has determined that the cost of compliance for small businesses as a result of enforcing or administering the proposed amendments will be comparable to the costs incurred by oil and gas operators.

Comments on the proposal should be submitted to Mark H. Barnett, Staff Attorney, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, TX 78711-2967. Comments will be accepted until 5:00 p.m. on the 13th day after publication in the *Texas Register* . For further information, please call Mark H. Barnett at (512) 463-6801.

The amendments are proposed under Texas Water Code, §§27.001 et seq., which authorizes the commission to adopt and enforce rules relating to oil and gas waste disposal wells; Texas Natural Resources Code, §91.101, which authorizes the commission to adopt rules for the prevention of pollution of surface or subsurface water associated with the management of oil field fluids in oil and gas waste; and Texas Natural Resources Code, §91.109, which authorizes the commission to require performance bonds or other forms of financial security from a person permitted to manage oil and gas waste.

The Texas Water Code, §§27.001 et seq., and the Texas Natural Resources Code, §91.101 and §91.109, are affected by the proposed amendments.

§3.57. Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials.

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

(c) Permitting process.

(1)-(6) (No change.)

[~~(7) It shall be a permit condition that a reclamation plant operator maintain financial responsibility and resources to operate and close the reclamation site in accordance with the state law, Commission rules, and the permit. The operator shall show evidence of financial responsibility by submitting a bond or letter of credit in the amount of $100,000 in a form prescribed by the Commission. The bond or letter of credit may be in a lesser amount provided the operator shows that the lesser amount will be sufficient to operate and close the reclamation site in accordance with state law, Commission rules, and the permit. The bond or letter of credit shall be renewed and continued in effect until its conditions have been met or release is authorized by the Commission.~~]

(7) [~~(8)~~] Except as provided in subparagraphs (A) and (B) of this paragraph, a permit to operate a reclamation plant shall remain in effect until canceled at the request of the operator. Existing permits subject to annual renewal may be renewed so as to remain in effect until canceled. Such renewal shall be subject to the requirements of paragraph (10) [~~(7)~~] of this subsection. A reclamation plant permit may be canceled by the commission after notice and opportunity for hearing, if:

(A) the permitted facility has been inactive for 12 months; or

(B) there has been a violation, or a violation is threatened, of any provision of the permit, the conservation laws of the state, or rules or orders of the commission.

(8) [~~(9)~~] If the operator objects to the cancellation, the operator must file, within 15 days of the date shown on the notice, a written objection and request for a hearing to determine whether the permit should be canceled. If such written request is timely filed, the cancellation will be suspended until a final order is issued pursuant to the hearing. If such request is not received within the required time period, the permit will be canceled. In the event of an emergency which presents an imminent pollution, waste, or public safety threat, the commission may suspend the permit until an order is issued pursuant to the hearing.

(9) [~~(10)~~] A permit to operate a reclamation plant is not transferable. A new permit must be obtained by the new operator.

(10) Reclamation plants permitted under this section shall file financial security as required under §3.76(q) of this title (relating to fees, performance bonds and alternate forms of financial security required to be filed).

(d)-(h) (No change.)

§3.76. Fees, Performance Bonds and Alternate Forms of Financial Security Required to be Filed.

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

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

(3) An acceptable record of compliance:[~~–a record of compliance showing:~~]

(A) A record of compliance showing:

(i) No referrals to the Commission's enforcement section relating to a violation;

(ii) No pending legal enforcement action relating to a violation; and

(iii) No outstanding violations; or

(B) A record of compliance showing:

(i) Only one enforcement order, provided the order specifies that it shall not be considered to meet the elements of

subparagraph (A) of this definition and provided the requirements of the order are met;

(ii) No referrals to enforcement other than those that are resolved in the order referenced in clause (i) of this subparagraph;

(iii) No pending enforcement actions other than those resolved in the order referenced in clause (i) of this subparagraph; and

(iv) No outstanding violations other than those resolved in the order referenced in clause (i) of this subparagraph.

[(A) No referrals to the Commission's legal enforcement section relating to a violation;]

[(B) No pending legal enforcement action relating to a violation; and]

[(C) No outstanding violations.]

(4) Commercial facility - A facility whose owner or operator receives compensation from others for the storage, reclamation, treatment, or disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the facility and whose primary business purpose is to provide these services if:

(A) the facility is permitted under §3.8 of this title (relating to water protection);

(B) the facility is permitted under §3.57 of this title (relating to reclaiming tank bottoms, other hydrocarbon wastes, and other waste materials);

(C) the facility is permitted under §3.9 of this title (relating to disposal wells) and a collecting pit permitted under §3.8 is located at the facility; or

(D) the facility is permitted under §3.46 of this title (relating to fluid injection into productive reservoirs) and a collecting pit permitted under §3.8 is located at the facility.

(b)-(p) (No change.)

(q) Financial security for commercial facilities. The provisions of this subsection shall apply to the holder of any permit for a commercial facility.

(1) Application.

(A) New permits. Any application for a new or amended commercial facility permit filed after the effective date of this subsection shall include:

(i) a written estimate of the maximum dollar amount necessary to close the facility prepared in accordance with the provisions of paragraph (4) of this subsection that shows all assumptions and calculations used to develop the estimate;

(ii) a copy of the form of the bond or letter of credit that will be filed with the commission; and

(iii) information concerning the issuer of the bond or letter of credit as required under paragraph (5) of this subsection including the issuer's name and address and evidence of authority to issue bonds or letters of credit in Texas.

(B) Existing permits. Within 180 days of the effective date of this subsection, the holder of any commercial facility permit issued on or before the effective date of this subsection shall file with the commission the information specified in subparagraph (A)(i)-(iii) of this paragraph.

(2) Notice and hearing.

(A) New permits. For commercial facility permits issued after the effective date of this subsection, the provisions of §3.8 or §3.57 of this title (relating to water protection and to reclaiming tank bottoms, other hydrocarbons wastes, and other waste materials), as applicable, regarding notice and opportunity for hearing, shall apply to review and approval of financial security proposed to be filed to meet the requirements of this subsection.

(B) Existing permits. Notice of filing of information required under paragraph (1)(B) of this subsection shall not be required. In the event approval of the financial security proposed to be filed for a commercial facility operating under a permit in effect as of the effective date of this subsection is denied administratively, the applicant shall have the right to a hearing upon written request. After hearing, the examiner shall recommend a final action by the commission.

(3) Filing of instrument.

(A) New Permits. A commercial facility permitted after the effective date of this subsection may not receive oil field fluids or oil and gas waste until a bond or letter of credit in an amount approved by the commission under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with the commission.

(B) Existing permits. Except as otherwise provided in this subsection, after one year from the effective date of this section, a commercial facility permitted on or before the effective date of this subsection may not continue to receive oil field fluids or oil and gas waste unless a bond or letter of credit in an amount approved by the commission under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with and approved by the commission.

(C) Extensions for existing permits. On written request and for good cause shown, the commission or its delegate may authorize a commercial facility permitted before the effective date of this subsection to continue to receive oil field fluids or oil and gas waste after one year after the effective date of this section even though financial security required under this subsection has not been filed. In the event the commission or its delegate has not taken final action to approve or disapprove the amount of financial security proposed to be filed by the owner or operator under this subsection one year after the effective date of the section, the period for filing financial security under this subsection is automatically extended to a date 45 days after such final commission action.

(4) Amount.

(A) Except as provided in subparagraphs (B) or (C) of this paragraph, the amount of financial security required to be filed under this subsection shall be an amount approved by the commission or its delegate as being equal to or greater than the maximum amount necessary to close the commercial facility, exclusive of plugging costs for any well or wells at the facility, at any time during the permit term in accordance with all applicable state laws, commission rules and orders, and the permit, but shall in no event be less than $10,000.

(B) The owner or operator of a commercial facility may reduce the amount of financial security required under this subsection by $25,000 if the owner or operator holds only one commercial facility permit.

(C) The owner or operator of more than one commercial facility may reduce the amount of financial security required under this subsection for one such facility by $25,000. The full

amount of financial security required under subparagraph (A) of this paragraph shall be required for the remaining commercial facilities.

(D) A qualified professional engineer licensed by the State of Texas shall prepare or supervise the preparation of a written estimate of the maximum amount necessary to close the commercial facility as provided in subparagraph (A) of this paragraph. The owner or operator of a commercial facility shall submit the written estimate under seal of a qualified licensed professional engineer to the commission as required under paragraph (1) of this subsection.

(E) Notwithstanding the fact that the maximum amount necessary to close the commercial facility as determined under this paragraph is exclusive of plugging costs, the proceeds of financial security filed under this subsection may be used by the commission to pay the costs of plugging any well or wells at the facility if the financial security for plugging costs filed with the commission under subsection (c) of this section is insufficient to pay for the plugging of such well or wells.

(5) Issuer and form.

(A) Bond. The issuer of any commercial facility bond filed in satisfaction of the requirements of this subsection shall be a corporate surety authorized to do business in Texas. The form of bond filed under this subsection shall provide that the bond be renewed and continued in effect until the conditions of the bond have been met or its release is authorized by the commission or its delegate.

(B) Letter of credit. Any letter of credit filed in satisfaction of the requirements of this subsection shall be issued by and drawn on a bank authorized under state or federal law to operate in Texas. The letter of credit shall be an irrevocable, standby letter of credit subject to the requirements of Texas Business and Commerce Code, §§5.101 - 5.117. The letter of credit shall provide that it will be renewed and continued in effect until the conditions of the letter of credit have been met or its release is authorized by the commission or its delegate.

(r) [(q)] Hazardous waste generation fee. A person who generates hazardous oil and gas waste, as that term is defined in § 3.98 of this title (relating to Standards for Management of Hazardous Oil and gas Waste), shall pay to the commission the fees specified in subsection (z) of § 3.98.

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.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716899
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–7008

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

16 TAC §23.52, §23.56

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

The Public Utility Commission of Texas proposes the repeal of §23.52 relating to Tel-Assistance and Lifeline Service and §23.56 relating to Statewide Dual-Party Relay Service. On August 26, 1997 the commission published in the *Texas Register* proposed new rule §23.142 relating to Lifeline Service and Link Up Service Programs, §23.143 relating to Tel-Assistance Service (both at 22 TexReg 8494), and §23.144 relating to Telecommunications Relay Service (22 TexReg 8513). Upon adoption of these new rules, §23.52 and §23.56 will be duplicative and no longer be necessary. Project Number 18426 has been assigned to the proposed repeal of §23.52 and §23.56.

Diana Zake, senior policy analyst, Office of Policy Development, has determined that for each year of the first five-year period these repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Diana Zake has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of the repeals will be the elimination of confusion resulting from duplicative rule sections. There will be no effect on small businesses as result of repealing these sections. There is no anticipated economic cost to persons as a result of repealing these sections.

Diana Zake has also determined that for each year of the first five years the repeals are in effect there will be no impact on employment in the geographical area affected by the repeal of these sections.

Comments on the proposed repeals (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326, within 30 days after publication. All comments should refer to Project Number 18426.

These repeals are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 1998)) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act, §14.002.

§23.52. Tel-Assistance and Lifeline Service.

§23.56. Statewide Dual-Party Relay Service.

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.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716922
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 936–7308

Part IX. Texas Lottery Commission

Chapter 401. Administration of the State Lottery Act

Subchapter D. Lottery Game Rules

16 TAC §401.311

The Texas Lottery Commission proposes new §401.311, concerning on-line game rules relating to a new on-line game, "Texas Million". The new section is being proposed to provide specific game details and requirements for the new on-line game "Texas Million".

Richard Sookiasian, Budget Analyst, has determined that for the first five-year period the section is in effect the fiscal implications for state government as a result of enforcing or administering the section will be:

Figure 1: 16 TAC Preamble

Mr. Sookiasian has determined that for the first five-year period the sections are in effect there will be no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Sookiasian also has determined that for each year of the first five-year period the section is in effect the public benefit anticipated as a result of enforcing the section will be to generate additional revenue for the State of Texas through the sale of the new on-line game's tickets. Mr. Sookiasian has also determined that there will be no cost to small businesses or individuals who are required to comply with the section as proposed, and no effect on local employment is anticipated.

Comments on the proposal may be submitted to Colette Davis Pena, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The new section is proposed under Texas Government Code, §466.016, which provides the Texas Lottery Commission with the authority to adopt rules governing the type of lottery games to be conducted.

Texas Government Code, Chapter 466 is affected by this proposed section.

§401.311. "Texas Million" On-Line Game Rule.

(a) Texas Million. A Texas Lottery on-line game to be known as 'Texas Million' is authorized to be conducted by the executive director under the following rules and under such further instructions and directives that may issue in furtherance thereof. If a conflict arises between this section and §401.301 of this title (relating to Lottery Game Rules (General Definitions)) or between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §401.301 and §401.304 of this title, and unless the context in this section otherwise requires, the following definitions listed in paragraphs (1)-(6) of this subsection apply.

(1) Number - Any play integer from 00 through 99 inclusive.

(2) Play - The seven sets of four numbers printed on the ticket. The player can select only the first set of the seven sets of four numbers for the 'million dollar prize'. The terminal will randomly select the remaining six sets of four numbers. The player can also have the terminal randomly select all seven sets of four numbers.

(3) Multi Draw - A player may purchase a Texas Million ticket for up to ten consecutive drawings beginning with the current draw period.

(4) Play Board - A field of numbers from 00 through 99 found on the playslip. Each playslip has three play boards on it.

(5) Playslip- An optically readable card issued by the Texas Lottery used by players of Texas Million to select plays. There shall be three play boards on each playslip identified as Game 1, Game 2, and Game 3.

(6) A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Texas Million play shall be $2.00. A player may purchase up to three plays on one playslip. A player may also select the Multi Draw feature.

(d) Play for Texas Million.

(1) Type of play. A Texas Million player must select one set of four numbers from 00 through 99 for the million dollar cash prize, or select the Quick Pick option. The on-line terminal will randomly select the other six sets of four numbers for other cash prizes. The seven sets of four numbers are divided into three groups. The first group has one set of four numbers, the second group of numbers has two sets of four numbers, and the third group has four sets of four numbers. A winning play is achieved only when two, three or four numbers in one or more of the seven sets of four numbers selected by the player match, in any order, with the four winning numbers drawn by the Texas Lottery. Each set of four numbers is a separate set which must match with the four winning numbers drawn by the Texas Lottery.

(2) Method of play. The player will use playslips to make number selections for the first set of four numbers. The other six sets of four numbers will be selected by a random number generator operated by the computer, referred to as Quick Pick. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. If offered by the lottery, the player may also choose the Quick Pick feature and have the random number generator operated by the on-line terminal randomly select all seven sets of four numbers.

(3) Multiple prizes. The total number of prizes that can be won from one play is seven. The holder of a winning ticket may win only one prize for each set of four numbers and shall only be entitled to the highest prize category won by the set of four numbers.

(e) Prizes for Texas Million.

(1) Prize amounts. At the discretion of the executive director, a prize amount may be altered temporarily for marketing or promotional purposes. This temporary alteration of the prize amount will be announced in advance of ticket sales for the affected draw. Prize amounts are a guaranteed amount except in the situation where more than ten prizes are won in the first prize group in a single drawing wherein the prize in the first prize group becomes pari-mutuel for a total prize value of $10,000,000. Otherwise, each Texas Million player who matches two, three or four numbers in any one set of four numbers per play will be guaranteed a set prize amount as follows:
Figure 2: 16 TAC §401.311(e)(1)

(2) Prize pool. The prize pool for Texas Million prizes shall be 50% of Texas Million sales for each drawing. The amount of actual prizes won may vary since most prize amounts are guaranteed.

(3) Prize categories.

(A) First Prize consists of matching all four numbers in the first group of numbers with the winning numbers. This prize must be claimed at the Austin claim center.

(B) Second Prize consists of matching all four numbers in either one of the two sets of four numbers in the second group of numbers with the winning numbers.

(C) Third Prize consists of matching all four numbers in any one of the four sets of four numbers in the third group of numbers with the winning numbers.

(D) Fourth Prize consists of matching any three numbers in any one of the seven sets of four numbers on the ticket with the winning numbers, excluding any situation where a First, Second or Third prize has already been won for that set of four numbers.

(E) Fifth Prize consists of matching any two numbers in any one of the seven sets of four numbers on the ticket with the winning numbers, excluding any situation where a First, Second, Third or Fourth prize has already been won for that set of four numbers.

(4) Prize reserve fund. The prize reserve fund may be increased or decreased depending on amounts won by winners as compared to the appropriate percentage of the prize pool. The prize reserve fund may be decreased by any amounts won by winners, due to the guaranteed prize amounts. For example, money may be allocated from the prize reserve fund to the Texas Million prize pool if the prize liability is greater than the 50% prize pool for that drawing. The prize reserve fund will also increase or decrease depending upon the number of times the First Prize is won. If the First Prize of a guaranteed $1,000,000 is not won after each drawing, the amount of money in that prize pool will be designated to the prize reserve fund. If multiple winners claim the First Prize of a guaranteed $1,000,000, the additional million dollar prize money will come from the prize reserve fund, up to ten First Prizes, where upon the First Prize becomes pari-mutuel on a value of $10,000,000. The pari-mutuel prize amount shall be calculated by dividing the prize category contributions of the First Prize pool for that drawing, plus prize reserve monies up to $10,000,000, by the number of shares for the prize category.

(5) Unclaimed prize fund. In the event any player who has a valid winning ticket does not claim the prize within 180 days after the drawing in which the prize was won, the prize amount shall be added to the unclaimed prize fund and all rights to the prize shall terminate.

(f) Odds of winning. The following table shown in this subsection sets forth the odds of winning and guaranteed prizes in each prize category, based upon the total number of possible combinations of matching 2, 3 or 4 numbers in one set of four numbers per play. The overall odds of winning are 1:20.
Figure 3: 16 TAC §401.311(f)

(g) Ticket purchases.

(1) Texas Million tickets may be purchased only at a licensed location from a lottery retailer authorized by the director to sell on-line tickets.

(2) Texas Million tickets shall show the player's selection of numbers and numbers selected by Quick Pick, play amount, drawing date(s), validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s), draw date(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Texas Million tickets must be purchased using official Texas Million playslips. Playslips which have been mechanically completed are not valid. Texas Million tickets must be printed on official Texas Lottery on-line game paper stock and purchased at a licensed location through an authorized Texas Lottery retailer's on-line terminal.

(h) Drawings.

(1) The Texas Million drawing shall be held every Friday evening at 9:58 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) Texas Million tickets will not be sold from 9:45 p.m. Central Time to 10:00 p.m. Central Time on drawing days.

(3) The drawings will be conducted by Texas Lottery officials.

(4) Each drawing shall determine, at random, four winning numbers in accordance with Texas Million drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the drawing procedures. The winning numbers shall be used in determining all Texas Million winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one lottery security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after a drawing.

(6) A drawing will not be invalidated based on the financial liability of the lottery.

(i) Announcement of retailer incentive or bonus program. The director shall announce each retailer incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value of the award(s).

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717069
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 344–5113

Chapter 402. Bingo Regulation and Tax

16 TAC §§402.544, 402.550, 402.552, 402.553, 402.557, 402.560-402.562, 402.564, 402.566

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission proposes the repeal of §§402.544, 402.550, 402.552, 402.553, 402.557, 402.560-402.562, 402.564, and 402.566, concerning bingo regulation and tax. The repeal of these sections is necessary to remove these sections from the Texas Register since the sections have expired by operation of law on April 1, 1995.

Richard Sookiasian, Budget Analyst, has determined that for each year of the first five years the repeals are in effect there will be no fiscal implications for state or local government or small business as a result of the proposed repeals.

Kimberly L. Kiplin, General Counsel, has determined that the public benefit anticipated as a result of the repeals will be to lessen any possible confusion of the public that these sections are still effective since they expired by operation of law on April 1, 1995. The proposed action will not impose any economic costs on individuals since the rules expired by operation of law on April 1, 1995.

Comments on the proposal may be submitted to Colette Davis Pena, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The repeals are proposed under authority of Texas Revised Civil Statutes, Article 179d, §§16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the Bingo Enabling Act.

Texas Revised Civil Statutes, Article 179d is affected by this action.

§402.544. Definitions.

§402.550. Bingo Reports.

§402.552. Licenses, Fees, and Bonds for Manufacturers and Distributors.

§402.553. Books and Records-Distributor and Manufacturers.

§402.557. Manufacturer's and Distributor's Quarterly Reports.

§402.560. Promotional Bingo.

§402.561. Interview Requirements.

§402.562. Unauthorized Prizes.

§402.564. Number and Type of Bingo Games Allowed.

§402.566. Amendment of Commercial License to Lease Bingo Premises.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717070
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 344–5113

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 73. Licenses and Renewals

22 TAC §73.2

The Texas Board of Chiropractic Examiners proposes an amendment to §73.2, concerning renewal of license. The current fee schedule in §73.2(c) is amended to reflect the correct fees for late renewal of a license, which a licensee must pay under Texas Civil Statutes, Article 4512b, §8a. Article 4512b, §8a calculates late fees as part or all of the fee for the examination for new applicants, depending on how long a license has expired for nonrenewal. The current late fees set out in §73.2(c) are not based on the current examination fee and thus, need to be amended. The proposed amendment sets out the correct fees for late renewal. The section is also amended to change the date of renewal for licensees. The board has implemented a stagger system of renewal based on a licensee's birth date. Under the amendment, renewal is due on or before the first day of a licensee's birth month, instead of January 1 of each year. Lastly, the rule is amended by adding a new paragraph (5) which sets out the statutory late fee for persons whose license has expired for one year or longer, but who have been practicing in another state for two years.

Joyce Kershner, director of licensure, has determined that for the first five year period the rule is in effect, there may be some positive fiscal implications for state government, but none for local government, as a result of enforcing or administering the rule. To the extent that licensees are late in renewing their annual licenses and thus are required to pay the additional late fees, additional revenue will be gained for the state. An exact dollar amount cannot be estimated because the amount of late fees collected has not been tracked as a separate revenue item.

Dr. Keith Hubbard, D.C. chairman of the rules committee also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that licensees are provided notice of the exact dollar amount of the statutory fee for failing to renew timely their state license. It is anticipated that the fees for late renewal will encourage more licensees to renew timely each year which will enable the board to have more accurate and timely information, not only on the status of current licensees, but also on the expected revenue from license renewals. There will be no added effect on small businesses versus that on larger businesses. Each licensee is subject to the same requirements, regardless of the size of their practice. The anticipated economic cost to persons who are required to comply with the rule as proposed will be a greater cost to licensees who fail to renew timely their licensee as required by statute. A licensee may avoid an increase in the total cost to renew through the imposition of the late fee by applying for renewal within the statutory deadline for renewal.

Comments may be submitted, no later than 30 days form the date of this publication to Dr. Keith Hubbard, D.C., Chairman, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, and §8a which sets out the statutory fees relating to late renewal of a license issued by the board.

The following are the statutes, articles or codes affected by the proposed amendment: §73.2 - Texas Civil Statutes, Article 4512b, §§4(c), 4a, 8a.

§73.2. Renewal of License.

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

(c) Expired License.

(1) If a license is not renewed on or before the first day of the licensee's birth month [~~January 1~~] of each year, it becomes expired.

(2) If a person's license has [~~been~~] expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee as provided in §75.7 of this title (relating to Fees), and a late fee of $222 [~~$60~~].

(3) If a person's license has [~~been~~] expired for longer than 90 days but less than one year, the person may renew the license by paying to the board the required [~~all unpaid~~] renewal fee [~~fees~~], as provided in §75.7 of this title (relating to Fees) and a late fee of $445 [~~$120~~].

(4) If a person's license has [~~been~~] expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.] expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state and is currently licensed and has been in practice in the other state for two years preceding application for renewal. The person must also pay the board the required renewal fee, as provided in §75.7 of this title (relating to Fees), and a late fee of $445.

(6) [~~(5)~~] The annual renewal application will be deemed to be the written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the board.

(d) (No change.)

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

Issued in Austin, Texas, on December 22, 1997.

TRD-9717092
Joyce Kershner
Director of Licensure
Texas Board of Chiropractic Examiners
Proposed date of adoption: February 2, 1998
For further information, please call: (512) 305-6700

Chapter 75. Rules of Practice

22 TAC §75.7

The Texas Board of Chiropractic Examiners proposes an amendment to §75.7, concerning fees. The current fee schedule in §75.7 is amended to remove the processing fee for an inactive license and the reference to the "retired license processing fee" since the Chiropractic Act provides only a fee for processing active license applications. The charges for certain documents, which are available through the board and are listed in items I through L and Q through R currently existing as a table in the Texas Administrative Code, are moved to a new subsection and changed to reflect the correct charges for public information which the board uses as determined under General Services Commission (GSC) rules, 1 TAC §§111.61-111.70, relating to (Cost of Copies of Open Records).

Joyce Kershner, director of licensure, has determined that for the first five year period the rule is in effect, there will be some negative fiscal implications for the state but none for local government as a result of enforcing or administering the rule. In FY97, inactive registration has provided for approximately $59,125 in revenue from 473 inactive applications. Assuming the same number of inactive applications for the first five year period after adoption of the amendment, this yearly revenue will no longer be collected under the proposed rule. This loss, however, may be offset by an increase in the penalties for late renewal, which is being proposed under a separate rulemaking. The state could experience reduced revenue from providing copies of agency information under the amendments, depending on the number of requests for copies of public information and the personnel time involved to provide the information. The cost per page is reduced to $.10 for regular size copies from $.50 per page; for labels, to $.22 per page from $1 per page. The personnel cost is estimated at a minimum of $7.50 per 1/2 hour. Accordingly, the minimum cost for information such as a list of active licensees would be reduced from $67.50 to $18.50.

Ms. Kershner also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that licensees are provided notice of the current fees charged by the board. There will be no added effect on small businesses versus that on larger businesses. Each licensee is subject to the same requirements, regardless of the size of their practice. The anticipated economic cost to persons who are required to comply with the rule as proposed will include less cost to those licensees who apply for inactive status. Members of the public who request copies of documents affected by the amendment may obtain those documents at a lower cost depending on the number of copies and personnel costs to provide. The overall public benefit of the change in fees on board documents will be to ensure that the public has access to copies of public documents at a reasonable and consistent price while the board is able to recoup its actual costs for such documents as provided in the Texas Open Records Act and the GSC's open records charges.

Comments may be submitted, no later than 30 days form the date of this publication to Dr. Keith Hubbard, D.C., Chairman, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendments are proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, and Government Code, Chapter 552, Subchapter F relating to charges for providing copies of public information.

The following are the statutes, articles or codes affected by the proposed amendment: §75.7 - Texas Civil Statutes, Article 4512b, §4(c), 4a.

§75.7. Fees and Charges for Public Information

(a) Current fees required by the board are listed as follows, in paragraphs (1)-(11) of this subsection:

(1) [~~A.~~] License Renewal (Active)- $325

[~~B. Inactive License Processing Fee $125~~]

[~~C. Retired License Processing Fee $0~~]

(2) [~~D.~~] Examination Fee-$445

(3) [~~E.~~] Re-examination Fee-$275

(4) [~~F.~~] Provisional Licensure (application only, license fee $325 upon approval)-$200

(5) [~~G.~~] License Replacement-$ 25

(6) [~~H.~~] Annual Certificate Replacement-$ 10

[~~I. List of New Licensees $ 25~~]

[~~J. Lists of Licensees $12.50 processing fee + $.50/pg.~~]

[~~K. Licensee Labels $12.50 processing fee + $1.00/pg.~~]

[~~L. Demographic Profile $12.50 processing fee + $.50/pg.~~]

(7) [~~M.~~] Certification of License-$ 25

(8) [~~N.~~] Continuing Education Application Fee $100/yr. per sponsor

(9) [~~O.~~] Radiologic Technologist Application-$ 35

(10) [~~P.~~] Facilities Registration-$ 40

[~~Q. Facilities List $12.50 processing fee + $.50/pg.~~]

[~~R. Facilities Labels $12.50 processing fee + $1.00/pg.~~]

(11) [~~S.~~] Examination Appeal Fee-$ 25

(b) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Government Code, Chapter 552, including the information listed in paragraphs (1)-(6) of this subsection, may be obtained upon written request to the board, at the rates established by the General Services Commission for copies of public information, 1 TAC §§111.61-111.70.

(1) List of New Licensees

(2) Lists of Licensees

(3) Licensee Labels

(4) Demographic Profile

(5) Facilities List

(6) Facilities Labels

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717093

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

Proposed date of adoption: February 2, 1998

For further information, please call: (512) 305-6700

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Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

22 TAC §§163.1, 163.8

The Texas State Board of Medical Examiners proposes amendments to §163.1 and §163.8, concerning definitions and administration of examinations. The amendments are proposed to ensure that all examination requirements are consistent and equal.

Tony Cobos, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Cobos also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that all examination requirements are consistent and equal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.05, is affected by the proposed amendments.

§163.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Acceptable approved medical school - A medical school or college located in the United States or Canada that was approved by the board at the time the degree was conferred.

(2) Acceptable unapproved medical school - A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred but whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board.

(3) Affiliated hospital - Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(4) Applicant - One who files an application as defined in this section.

(5) Application - An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be printed in ink;

(ii) photographs must meet United States government passport standards;

(B) a fingerprint card, furnished by the board, completed by the applicant, that must be readable by the Texas Department of Public Safety;

(C) all documents required under § 163.7 of this title (relating to Licensure Documentation); and

(D) the required fee, payable by check through a United States bank.

(6) Eligible for licensure in country of graduation - An applicant must be eligible for licensure in the country in which the medical school is located except for any citizenship requirements.

(7) Equivalent registration - An applicant for licensure by endorsement must apply for licensure based upon another state or provincial license that requires as part of its registration:

(A) a form signed by the physician;

(B) a fee; and

(C) periodic registration of a physician's license.

(8) Examinations accepted by the board for licensure by endorsement -

(A) United States Medical Licensing Examination (USMLE), passed within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years;

(B) Federation Licensing Examination (FLEX), after July 1985, passed within three attempt, passage of both components within seven years with a score of 75 or better on each component;

(C) Federation Licensing Examination (FLEX), prior to June 1985, passed within three attempts, with a FLEX weighted average of 75 or better in one sitting;

(D) National Board of Medical Examiners Examination (NBME) or its successor; within three attempts, all steps must be passed within seven years;

(E) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor within three attempts, all steps must be passed within seven years;

(F) Medical Council of Canada Examination (LMCC) or its successor, within three attempts, all steps must be passed within seven years;

(G) state board examination, within three attempts, (with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico after June 30, 1963); or

(H) one of the following examination combinations, passed within three attempts with a score of 75 or better on each part, level, component, or step, all parts, levels, components, or steps must be passed within seven years [~~prior to 1998~~]:

(i) FLEX I plus USMLE 3;

(ii) USMLE 1 and USMLE 2, plus FLEX II;

(iii) NBME I and NBME II, plus USMLE 3;

(iv) NBME I or USMLE 1, plus NBME II or USMLE 2, plus NBME III or USMLE 3;

(v) NBME 1 or USMLE 1, plus NBME II or USMLE 2, plus FLEX II.

(vi) the NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III.

(9) Examinations administered by the board for licensure by examination - To be eligible for licensure by examination an applicant must sit for the required examination administered by the board and pass. A passing score is 75 or better on the USMLE and the Texas medical jurisprudence examinations. A passing score is 75 or better on COMLEX Level III of the NBOME examination or its successor. All steps or components must be passed within seven years. The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE); COMLEX Level III of the National Board of Osteopathic Medical Examiners (NBOME) examination or its successor after September 1, 1997; and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

(10) Full force - Applicants for licensure by endorsement must possess a license in another jurisdiction which is in full force and not restricted, canceled, suspended, or revoked. A physician with a license in full force may include a physician who does not have a current, active, valid annual permit in another jurisdiction because:

(A) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current; or

(B) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

(11) Good professional character - An applicant for licensure must not be in violation of or have committed any act described in the Medical Practice Act, §3.08.

(12) Hardship - The practice of medicine in a Texas county with less than three active full-time physicians in the entire county.

(13) One-year training program - Applicants who are graduates of acceptable approved medical schools must successfully complete one year of postgraduate training approved by the board that is:

(A) accepted for certification by an American specialty board that is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

(14) Requisite qualifications - An endorsement applicant who is a graduate of an unapproved acceptable medical school who:

(A) has for the preceding five years been a licensee of another state or a Canadian province;

(B) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice medicine; and

(C) is either specialty board certified by a board that is a member of the American Board of Medical Specialities or the Advisory Board for Osteopathic Specialists or successfully passes the Special Purpose Examination (SPEX).

(15) Sponsor - A licensed Texas physician who:

(A) holds a current annual registration in this state that is current and in full force;

(B) has no past, present, or pending disciplinary matters in any jurisdiction; and

(C) will be on site to supervise a physician who has been issued a temporary license for out-of-state practitioners under the Medical Practice Act, §3.0305.

(16) Substantially equivalent to a Texas medical school - A medical school or college located outside the United States or Canada must be an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; to provide advancement of knowledge through research; to develop programs of graduate medical education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics:

(A) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) The admissions standards shall be substantially equivalent to a Texas medical school.

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled anatomy, biochemistry, physiology, microbiology and immunology, pathology, pharmacology and therapeutics, and preventive medicine, as defined by the Texas Higher Education Coordinating Board.

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and surgery, as defined by the Texas Higher Education Coordinating Board.

(E) The curriculum shall be of at least 130 weeks in duration.

(F) All medical or osteopathic medical education received by the applicant in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training.

(G) An applicant who is unable to comply with the requirements of subparagraph (F) of this definition is eligible for an unrestricted license if the applicant:

(i) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(ii) is specialty board certified by a board approved by the American Osteopathic Association or the American Board of Medical Specialties.

(17) Three-year training program - Applicants who are graduates of unapproved medical schools must successfully complete three years of postgraduate training in the United States or Canada:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; and

(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a faculty temporary license was issued; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

(18) Unapproved medical school - A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred.

§163.8. Administration of Examinations.

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

(e) All [~~NBOME~~] COMLEX Level III questions and answers, with grades attached, shall be preserved for at least one year at the National Board of Osteopathic Medical Examiners offices.

(f)-(g) (No change.)

(h) An applicant shall not be eligible to sit for the [~~NBOME~~] COMLEX Level III examination until:

(1) (No change.)

(2) the applicant has passed the NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II examinations with a passing grade of 75 or better on each part within three attempts; and

(3) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9717071

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: February 2, 1998

For further information, please call: (512) 305–7016

Chapter 166. Physician Registration

22 TAC §166.2

The Texas State Board of Medical Examiners proposes an amendment to §166.2, concerning continuing medical education. The amendment will clarify that continuing medical education courses recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education and sponsored by state medical societies, meet the Texas State Board of Medical Examiners' requirements for continuing medical education for license renewal.

Tony Cobos, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Cobos also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of continuing medical education courses regarding the Texas State Board of Medical Examiners' requirements for continuing medical education for license renewal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.025 is affected by this proposal.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the annual registration of a physician's license, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) At least one-half of the hours are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or [~~the Texas Medical Association~~] a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B)-(D) (No change.)

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

(b)-(p) (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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717081

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: February 2, 1998

For further information, please call: (512) 305–7016

Chapter 171. Institutional Permits

22 TAC §171.9

The Texas State Board of Medical Examiners proposes an amendment to §171.9, concerning faculty temporary license. The amendment will ensure that medical school faculty who would not be eligible for an unrestricted physician license, as outlined in chapter 163 of this title (relating to Licensure) would also not be eligible for a faculty temporary license.

Tony Cobos, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Cobos also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency among chapters concerning licensure and institutional permits. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.01(b), is affected by the proposed amendment.

§171.9. Faculty Temporary License.

(a) The board may issue a faculty temporary license to practice medicine to a physician appointed by a Texas medical school in accordance with this subchapter:

(1) who holds a valid license in another state or Canadian province or has completed three years of post-graduate training and has not failed a licensure examination that would prevent the faculty temporary license permit holder from obtaining an unrestricted physician license in Texas; and

(2) (No change.)

(b)-(i) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9717072
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 305–7016

Chapter 175. Schedule of Fees and Penalties

22 TAC §§175.1, 175.2

The Texas State Board of Medical Examiners proposes amendments to §175.1 and §175.2, concerning fees and penalties. The amendments to §175.1 will outline fees for processing an application for acudetox specialists and annual renewal of acudetox specialists; fees for approval of continuing acupuncture and acudetox acupuncture education courses. The amendments to §175.2 will outline penalty fees for renewal of non-certified radiologic technician's registration expired for 1-90 days.

Tony Cobos, general counsel, has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. The cost to the agency to implement the rules should be offset by the fees collected.

Mr. Cobos also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the establishment of reasonable fees and penalties for administering the program. There may be an effect on small businesses, which provide continuing education courses; exact cost cannot be determined at this time.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §2.09(a) which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Texas Civil Statutes, Article 4495(b), §209 and Subchapter F are affected by the proposed amendments.

§175.1. Fees.

The board shall charge the following fees:

(1)-(21) (No change.)

(22) processing an application for acudetox specialist - $50;

(23) acudetox specialist annual renewal - $25;

(24) review and approval of continuing acupuncture education courses - $50;

(25) review and approval of continuing acudetox acupuncture education courses - $50.

§175.2. Penalties.

The board shall charge the following penalties:

(1)-(6) (No change.)

(7) renewal of non-certified radiologic technician's registration expired for 1-90 days - $25.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717082
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 305–7016

Chapter 181. Contact Lens Prescriptions

22 TAC 181.1–181.7

(Editor's note: The Texas State Board of Medical Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas State Board of Medical Examiners proposes new §§181.1-181.7, concerning contact lens prescriptions. New chapter 181 is mandated by the 75th Legislature through the Texas Contact Lens Prescription Act, Chapter 1345. The new chapter is proposed in order to set forth the criteria under which a patient may request and receive a contact lens prescription and under which a physician shall provide such prescription.

Tony Cobos, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Cobos also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to set forth the criteria under which a patient may request and receive a contact lens prescription and under which a physician shall provide such prescription. There will be no effect on small

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

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Texas Contact Lens Prescription Act, Chapter 1345 and Texas Revised Civil Statutes Article 4552-A, are affected by the proposed new sections.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717074
Bruce A.Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 305–7016

Chapter 183. Acupuncture

The Texas State Board of Medical Examiners proposes the repeal of §183.17 and new §183.17 and §183.23, concerning acupuncture. The proposed repeal and proposed new sections are as a result of Senate Bill 1765, 75th Legislature, which requires the Board of Medical Examiners to certify acudetox specialists, annually renew certification, and monitor continuing education for these registrants.

Tony Cobos, general counsel, has determined that for the first five-year period the sections are in effect there will be fiscal implications to state and local government as a result of enforcing or administering the sections as proposed. In accordance with §183.17, the revenue to the state is estimated at $15,000 for the first year and $7,500 each year thereafter. In accordance with §183.23, the cost is undetermined at this time.

Mr. Cobos also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the certification of acudetox specialists, the annual certification renewal, and the monitoring of continuing education for registrants. There will be no effect on small businesses. The cost to implement the program is estimated to be at least $11,540 per year.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

22 TAC §183.17

(Editor's note: The Texas State Board of Medical Examiners proposes for permanent adoption the repeal section it adopts on an emergency basis in this issue. Therepeal section is in the Emergency Rules section of this issue.)

The repeal is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §6.02 and §6.118 is affected by this proposal.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717079
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 305–7016

22 TAC §§183.17, 183.23

(Editor's note: The Texas State Board of Medical Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §6.02 and §6.118 is affected by this proposal.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717080
Bruce A. Levey, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 305–7016

Part XV. Texas State Board of Pharmacy

Chapter 283. Licensing Requirements for Pharmacists

22 TAC §283.2, §283.4

The Texas State Board of Pharmacy proposes amendments to §283.2 and §283.4, concerning definitions and Internship Requirements. The amendments, if adopted, will establish a definition for the "Texas Pharmacy Jurisprudence Exam"

and establish an expiration date for pharmacist internship as specified in SB 609 passed by the 75th Legislature.

Gay Dodson, R.Ph., Executive Director, 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.

Ms. Dodson also has determined that for each year of the first five-year period the rule will be in effect the public benefit anticipated as a result of enforcing the rule will be the establishment of requirements for practical training of pharmacists.

There will be no effect on small businesses. There are not anticipated economic costs to person who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Compliance, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942.

The amendments are proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes, §17(a)(3) which gives the Board the responsibility for the specification and enforcement of requirements for practical training including internship and §20(a) which gives the Board the authority to adopt rules regarding the expiration date of internship.

The statutes affected by these rules: Texas Civil Statutes, Article 4542a-1.

§283.2. Definitions.

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

Texas Pharmacy Jurisprudence Exam or Texas Drug and Pharmacy Jurisprudence Examination - A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

Extended-intern - A pharmacist-intern, registered with the board, who has:

(A) (No change.)

(B) applied to the board to take the [~~next scheduled examination~~] NAPLEX and Texas Jurisprudence Examinations within three calendar monthsafter graduation and has either:

(i)-(ii) (No change.)

(C) applied to the board to take the [~~next scheduled examination~~] NAPLEX and Texas Jurisprudence Examinations within three calendar monthsafter obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D)-(E) (No change.)

§283.4. Internship Requirements.

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

(c) Student Internship Programs.

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

(3) Expiration date for student-intern designation. The student-internship remains in effect until the earlier of the following occurs:

(A) (No change.)

(B) the failure of the student-intern to take the [~~next regularly scheduled examination~~] NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation;

(C) upon receipt of the results of the [~~next regularly scheduled examination after graduation~~] NAPLEX and Texas Jurisprudence Examinations specified in this section.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has made application to the board and met one of the following requirements:

(A) (No change.)

(B) applied to the board to take the [~~next scheduled examination~~]NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation and has:

(i)-(ii) (No change.)

(C) applied to the board to take the [~~next scheduled examination~~] NAPLEX and Texas Jurisprudence Examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D)-(E) (No change.)

(2) (No change.)

(3) The extended internship remains in effect until the earlier of the following occurs:

(A) the failure of the extended-intern to take the [~~next regularly scheduled examination~~] NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation or Foreign Pharmacy Graduate Equivalency Commission (FPGEC) certification;

(B) the failure of the extended-intern to pass the [~~next regularly scheduled examination~~] NAPLEX and Texas Jurisprudence Examinations specified in this section; ; or

(C) (No change.)

(4) (No change.)

(e) (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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717054
Gay Dodson, R.Ph
Executive Director
Texas State Board of Pharmacy
Proposed date of adoption: February 10, 1998
For further information, please call: (512) 305-8026

Chapter 305. Education Requirements

22 TAC §305.1

The Texas State Board of Pharmacy proposes an amendment to §305.1, concerning Pharmacy Education Requirements. These amendments, if adopted, will modify the description of a professional practice degree to match language in SB 609 passed by the 75th Texas Legislature.

Gay Dodson, R.Ph., Executive Director 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.

Ms. Dodson also has determined that for each year of the first five-year period the rule will be in effect the public benefit anticipated as a result of enforcing the rule will be the establishment of a standard for education necessary for a candidate to take the pharmacy licensing exam.

There will be no effect on small businesses. There are not anticipated economic costs to person who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Cathy Stella Director of Licensing and Administrative Services, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942.

The amendment is proposed under the Texas Pharmacy Act Article 4542a-1, Texas Civil Statutes, §17(a)(3) which gives the Board the authority to determine and issue standards for recognition and approval of degree requirements of colleges of pharmacy whose graduates shall be eligible for licensing in this state; and §21 (a) and (e) which give the Board the authority to require that a candidate for licensure must have graduated and received a professional practice degree, as defined by the rules adopted by the board, from an accredited pharmacy degree program approved by the board.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1. Chapter 305 Educational Requirements.

§305.1. Pharmacy Education Requirements.

[~~(a)~~] [~~Minimum Standards.~~] The minimum standards for the [~~first professional undergraduate degree programs or the advanced~~] professional practice degree programs of a university, school, or college of pharmacy whose graduates shall be eligible for licensing in this state, shall be the minimum standards required by the American Council of Pharmaceutical Education. The universities, schools, and colleges of pharmacy whose [~~first professional undergraduate degree programs or advanced~~] professional practice degree programs have been approved by the board shall be published in the minutes of each annual meeting of the board.

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

[~~(1) First professional undergraduate degree - A bachelor of science in pharmacy degree.~~]

[~~(2) Advanced professional practice degree - A doctorate in pharmacy degree.~~]

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717055
Gay Dodson, R.Ph
Executive Director
Texas State Board of Pharmacy
Proposed date of adoption: February 10, 1998
For further information, please call: (512) 305-8026

Part XXV. Structural Pest Control Board

Chapter 599. Treatment Standards

22 TAC §599.5

The Texas Structural Pest Control Board proposes an amendment to §599.5, concerning inspection procedures. The proposed amendment clarifies that a licensed certified applicator or technician must perform inspections for purposes of issuing a wood destroying insect report. This is already required on the form and is being added for clarification.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule. There will be no estimated additional cost, estimated reduction in cost or estimated loss or increase in revenue to state or local government for the first five year period the rule will be in effect.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be better understanding of the requirements for who must conduct a wood destroying insect inspection. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723.

The amendment is proposed under Article 135b-6 which provides the Structural Pest Control Board with the authority to license and regulate persons who perform wood destroying insect inspections.

The following is affected by this proposed amendment:

Section 599.6–Texas Revised Civil Statutes Annotated, Article 135b-6.

§599.5. Inspection Procedures.

(a) Inspections for the purpose of issuing a wood destroying insect report or for post- construction termite treatment shall be conducted in a manner consistent with the procedures described in this section. Inspections for the purpose of issuing a Wood Destroying Insect Report must be conducted by a licensed certified applicator or technician. The purpose of the inspection is to provide a report regarding the absence or presence of Wood Destroying Insects (W.D.I.). The inspection should provide the basis for recommendations of preventive or remedial actions to minimize economic losses. For purposes of a Real Estate Transaction Inspection (Section 599.6 of this title (relating to Real Estate Transaction Inspection Reports) only, there must be visible evidence of active infestation in the structure or visible evidence of a previous infestation in the structure with no evidence of prior treatment to recommend a corrective treatment. The inspection must be conducted so as to ensure examination of visible accessible areas in accordance with accepted procedures. While such an examination may reveal W.D.I., there are instances when concealed infestations and/or damage may not be discovered. Examinations of inaccessible or obstructed areas are not required.

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

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

Issued in Austin, Texas, on December 18, 1997.

TRD-9716930
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 451–7200

22 TAC §599.6

The Texas Structural Pest Control Board proposes an amendment to §599.6, concerning Real Estate Transaction Inspection Reports. The proposed amendments modify the adoption by reference material to modify scope of inspection to include baits, delete the technician license number from 1E. 4B is deleted and 4C is renumbered. 5A and 5B are deleted and 5C is renumbered as 5. 8F is expanded to include baits. 9B allows treatment and/or correction of conducive conditions. 10A is expanded to include formosan termites and bait treatments. The option of a full treatment is eliminated and reference is made to the termite treatment disclosure documents. Information on drywood termites is added. 10B is amended to include baits as a treatment option and the information on any contract or warranty in effect is bolded, along with the requirement that copies of warranties be attached. Address is removed from the structure diagram and approximate measurements are also removed. The term diagram rather than graph is used throughout the document. The Board proposes an effective date of September 1, 1998 for these changes.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule. There will be no estimated additional cost, estimated reduction in cost or estimated loss or increase in revenue on state or local government for the first five-year period the rule will be in effect.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be improvement in the understanding and use of the Texas Official Wood Destroying Insect Report by consumers, the real estate industry and the structural pest control industry. The cost of re-printing the Texas Official Wood Destroying Insect Report form is the anticipated economic cost to those individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate persons who perform wood destroying insect inspections.

The following is affected by this proposed amendment:

Section 599.5–Texas Revised Civil Statutes Annotated, Article 135b-6.

§599.6. Real Estate Transaction Inspection Reports.

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

(c) The Texas Official Wood Destroying Insect Report Form SPCB\T-3[~~SPCB\T-2~~] is adopted by reference. The form may be examined in the office of the Texas Register and the Structural Pest Control Board. Forms for reproduction may be obtained from the Structural Pest Control Board office, 1106 Clayton Lane, Suite 100LW, [~~9101 FM 1325, Suite 201~~] Austin, Texas.

(d) (No change.)

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

Issued in Austin, Texas, on December 18, 1997.

TRD-9716931
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 451–7200

Part XXXIII. Texas State Board of Examiners of Perfusionists

Chapter 761. Perfusionists

22 TAC §761.6

The Texas State Board of Examiners of Perfusionists (board) proposes an amendment to §761.6, concerning the practice of perfusion. The amendment defines approval criteria, notification process, and the allowable time period for exemption from licensure in Texas for out of state residents.

The amendment requires that certain criteria for approval of exemption be met and that notification of intended exemption dates be made. The exempt person must be authorized to perform the activities and services of perfusion under the state law of the person's residence and be currently certified as a Certified Clinical Perfusionist. Notification to the board must be made at least three working days prior to the requested exemption dates and the person must not have exceeded the maximum of ten days in the last 365 days.

Bobby D. Schmidt, Executive Secretary for the board, has determined that for the first five-year period the section will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the section as proposed. The costs and process of administering the program will be offset by revenues generated from licensing fees. There will be no fiscal implications for local government.

Mr. Schmidt also has determined that for each year of the first five years the section is in effect, the public benefit as a result of enforcing or administering the section will be to require that out of state perfusionists meet approved criteria and do not exceed the maximum exemption without applying for Texas licensure. There will be no effect on small businesses, because the practice of perfusion is performed in large hospitals. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Secretary, Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6751. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4529e, which provides the Texas State Board of Examiners of Perfusionists with the authority to adopt rules concerning the regulation of perfusionists.

The amendment affects Texas Civil Statutes, Article 4529e.

§761.6. Exemptions.

[~~Exemptions are set out in Section 17 of the Act.~~]

(a) Purpose. The purpose of this section is to set out the notification procedures and criteria for approval of exemption from the Act for a person who is not a resident of Texas to practice perfusion in Texas, and to define the allowable exempted time period. Other exemptions are set out in §17 of the Act.

(b) Criteria for approval. A person who is not a resident of Texas is exempt from the Act to the extent provided in this section if:

(1) the person is authorized to perform the activities and services of perfusion under the laws of the state of the person's residence; and

(2) the person is currently certified as a Certified Clinical Perfusionist (CCP) by the American Board of Cardiovascular Perfusion (ABCP).

(c) Notification and approval process.

(1) A person must submit, either by mail or facsimile transmission, a completed notification form which verifies both subsection (b)(1) and (2) of this section at least three working days prior to the requested exemption dates.

(2) Upon receipt of the notification form and upon verification that the person has not exceeded the maximum of ten days in the last 365 days, an approval letter which lists the dates approved for exemption will be returned to the person.

(3) Upon receipt of the notification form and upon verification that the person has exceeded the maximum of ten days in the last 365 days, a disapproval letter will be returned to the person. The letter will state that the person shall not practice perfusion in Texas without being licensed by the board. The letter will also state when the next 365 day time period will begin, which will allow for another maximum of ten days exemption during that 365 days.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717050
James O. Fines
Chair
Texas State Board of Examiners of Perfusionists
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 458–7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter M. Mandatory Benefit Notice Requirements

28 TAC §§21.2101–21.2106

The Texas Department of Insurance proposes new Subchapter M, §§21.2101-21.2106, concerning mandatory benefit notice requirements. The proposed subchapter requires the issuance of notices relating to newly enacted mandated benefits for certain health benefit plans for in-patient care for mastectomy services, prostate cancer examinations, and in-patient care for maternity and childbirth coverage. The proposed sections are necessary to implement the Insurance Code Articles 21.52G, §5 (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures)(HB 349), 21.53F, §4 (relating to coverage of certain tests for detection of prostate cancer) (SB 258), and 21.53F, §7 (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102) which were enacted by the 75th Legislature, and require that notices be sent to enrollees of health benefit plans, informing the enrollees of benefits for in-patient care for mastectomy services, prostate cancer examinations, and in-patient care for maternity and childbirth coverage.

During the 75th legislative session, various coverages were added to the benefits which must be provided by certain health benefit plans. Whether a given health benefit plan must provide these mandated benefits is determined by the benefits already provided by that plan. If a health benefit plan includes coverage for the treatment of cancer, Insurance Code Article 21.52G, §3 (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures) (HB 349) requires minimum in-patient care for a mastectomy or lymph node dissection. If a health benefit plan includes diagnostic medical procedures, Insurance Code Article 21.53F, §3 (relating to coverage of certain tests for detection of prostate cancer) (SB 258) requires a diagnostic examination for the detection of prostate cancer. If a health benefit plan includes coverage for maternity or childbirth, Insurance Code Article 21.53F, §4 (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102) requires minimum in-patient or postdelivery care following birth. Each of these legislative enactments require carriers to send notices to enrollees of health benefit plans of these mandated benefits. The proposed subchapter delineates the timing, format, and contents of these notices.

Section 21.2101 states the purpose of the rule and identifies by date of issuance or renewal health benefit plans to which the sections apply. Section 21.2102 defines the terms used in this subchapter. Specifically, health benefit plan is defined as it applies to each specific mandated benefit. The mandated benefit requiring minimum in-patient care for maternity and childbirth coverage includes in the definition of health benefit plan small employer plans. The inpatient maternity and childbirth coverage includes small employer plans because the minimum inpatient maternity stay is required by federal law, pursuant to the Newborns' and Mothers' Health Protection Act of 1996, Pub. L. No 104-204, tit. VI, §§601-606. In order to maintain regulatory authority over health benefit plans in the State of Texas, the commissioner is required to implement the provisions of the Health Insurance Portability and Accessibility Act (HIPAA), which was amended to include the Newborns' and Mothers' Health Protection Act. Thus, small employer plans are necessarily included

in the definition of health benefit plan for the inpatient maternity and childbirth coverage.

The mandated benefit for prostate cancer examination includes in the definition of health benefit plan large employer plans. Insurance Code Article 21.53F, §2(b)(2) (relating to coverage of certain tests for detection of prostate cancer) (SB 258) excludes from the definition of health benefit plan plans written under Chapter 26 of the Insurance Code. During the same legislative session in which the prostate cancer examination benefit was passed, Chapter 26 was amended by HB 1212 to add large employer plans, whereas previously it had contained only small employer plans. A determination has been made that the legislature, by excluding health benefit plans under Chapter 26 from Article 21.53F, §2(B)(2) (relating to coverage of certain tests for detection of prostate cancer) (SB 258), intended only to exclude small employer plans from the mandated prostate cancer examination coverage, and only because of the simultaneous enactment of HB 1212 and SB 258 did the legislative oversight by which both large and small employers were included in the exclusionary language of Article 21.53F, §2(B)(2) (relating to coverage of certain tests for detection of prostate cancer) (SB 258) occur. If health benefit plans for both large and small employer plans under Chapter 26 were excluded from coverage under Article 21.53F (relating to coverage of certain tests for detection of prostate cancer) (SB 258), very few group plans would be included in the prostate cancer examination coverage. The Legislature obviously did not intend to mandate prostate cancer examination coverage only to exclude most plans from compliance, rather, the Legislature intended to exempt only small employer plans from the coverage provided in Article 21.53F (relating to coverage of certain tests for detection of prostate cancer) (SB 258).

Section 21.2103 provides the circumstances under which a certain notice must be delivered. For the in-patient mastectomy and the in-patient maternity and childbirth notices, prohibited acts by a carrier must be included. A carrier is allowed to use substantially similar language, rather than the forms provided, to satisfy this subchapter. If a health benefit plan provides coverage or benefits which trigger more than one of the mandated benefits addressed by this subchapter, the required notices may be combined into one notice.

Section 21.2104 requires that the notices be in at least 10 point type. Section 21.2105 sets forth the dates by which the required notices must be provided in cases of existing health benefit plans, and for new enrollees under new and existing health benefit plans, and how the notices are to be delivered. Section 21.2106 provides forms which satisfy the notice requirement of this subchapter.

Rose Ann Reeser, associate commissioner of regulation and safety, has determined that for each year of the first five years the sections are in effect, any fiscal impact on state government will be the result of the legislative enactment of Insurance Code, Articles 21.52G (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures) (HB 349), 21.53F (relating to coverage of certain tests for detection of prostate cancer) (SB 258) and 21.53F (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102), and not the result of the adoption and implementation of these sections. There will be no fiscal impact on state or local government as a result of enforcing or administering the proposed sections. There will be no measurable effect on local employment or the local economy.

Ms. Reeser has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections will be that affected enrollees are notified of benefits for in-patient care for mastectomy services, prostate cancer examinations, and in-patient care for maternity and childbirth coverage on a timely basis.

Ms. Reeser estimates that the majority, if not the entirety, of the costs to comply with this proposed subchapter result from the legislative enactment of the Insurance Code, Articles 21.52G, §5 (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures) (HB 349), 21.53F, §4 (relating to coverage of certain tests for detection of prostate cancer) (SB 258) and 21.53F, §7 (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102). The notices required by this subchapter are specifically required in the enactment of each mandated benefit. If any cost is imposed upon the carriers affected by these sections, such cost is attributable only to the inclusion of the prohibition section of the legislative enactments in the notice. To the extent that such cost is attributable to the inclusion of the prohibition section in the notice, Ms. Reeser estimates that the inclusion of the prohibition section would add not more than one page to the notices without the prohibition section. Ms. Reeser estimates that the time to prepare, copy and mail an additional page to the notice would cost no more than $1.25 per notice. The actual total cost to each carrier would vary depending upon the number of enrollees to whom the notice must be sent and whether the notice is delivered to the group master contract holder or directly to the enrollees. In an effort to minimize costs, carriers are allowed to combine the notices into one notice if more than one benefit is applicable, and carriers are allowed to deliver the notice with other plan documents rather than in a separate mailing.

Ms. Reeser has determined that any effect of these sections on small businesses results mostly, if not entirely, from the legislative enactment of the Insurance Code, Articles 21.52G, §5 (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures) (HB 349), 21.53F, §4 (relating to coverage of certain tests for detection of prostate cancer) (SB 258) and 21.53F, §7 (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102). The maximum additional cost that can possibly be associated with these proposed sections is $1.25 per notice, if it is determined that requiring the prohibition section is attributed to these sections. Assuming the maximum cost of $1.25 per notice applies, the total cost to a carrier is not dependent upon the size of the carrier, but rather it is dependent upon that carrier's number of enrollees under the affected health benefit plans. Both small businesses and the largest business affected by these sections would incur the same cost per notice. Assuming that a small business and the largest business administered health benefit plans with approximately the same number of enrollees to whom this notice must be provided, the cost per hour of labor would not vary between small and the largest businesses. The requirement of notice in this subchapter is mandated by the underlying statutes, and cannot be waived for small businesses.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the Texas Register to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Depart-

ment of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Linda von Quintus, Deputy Commissioner, Regulation and Safety Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

Subchapter M, §§21.2101-21.2106 are proposed under the Insurance Code Articles 21.52G, §5 (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures) (HB 349), & 21.53F, §4 (relating to coverage of certain tests for detection of prostate cancer) (SB 258), and 21.53F, §7 (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102); the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Newborns' and Mothers' Health Protection Act of 1996, the Insurance Code Article 26.04, the Insurance Code Article 3.95-15, and the Insurance Code Article 1.03A. The Insurance Code Article 21.52G (relating to coverage for hospital stays following performance of a mastectomy and certain related procedures) (HB 349) as added by the 75th Legislature, implements mandated coverage for in-patient mastectomy coverage. Under the Insurance Code Article 21.52G, §5, health benefit plans must provide written notice to each enrollee in accordance with rules adopted by the commissioner. The Insurance Code Article 21.52F (relating to coverage of certain tests for detection of prostate cancer) (SB 258), as added by the 75th Legislature, implements mandated coverage for prostate cancer examination. Under the Insurance Code Article 21.53F, §4, health benefit plans must provide written notice to each enrollee in accordance with rules adopted by the commissioner. The Insurance Code Article 21.52F (relating to coverage for minimum inpatient stay in health care facility and postdelivery care following birth of child) (HB 102), as added by the 75th Legislature, implements mandated coverage for inpatient maternity and childbirth benefits. Under the Insurance Code Article 21.53F, §7, health benefit plans must provide written notice to each enrollee in accordance with rules adopted by the commissioner. The minimum requirements of federal law for inpatient maternity benefits are contained in HIPAA, as amended by the Newborns' and Mothers' Health Protection Act. Inclusion of small employer plans in the inpatient maternity and childbirth benefits are necessary to meet the minimum requirements of federal law. The Insurance Code Article 26.04, as amended by the 75th Legislature, instructs the commissioner to adopt rules to meet the minimum requirements of federal law and regulations. The Insurance Code Article 3.95-15, as amended by the 75th Legislature, instructs the commissioner to adopt rules to meet the minimum requirements of federal law and regulations. The Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute.

The following articles are affected by this proposal: Texas Insurance Code, Articles 21.52G (HB 349), 21.53F (SB 258) & 21.53F (HB 102)

§21.2101. Scope.

The purpose of this subchapter is to require notice to enrollees in a health benefit plan of coverage and/or benefits for prostate cancer examinations, minimum inpatient stays for maternity and childbirth, and/or mastectomies. This subchapter applies to all carriers issuing, delivering or renewing health benefit plans as defined in this subchapter as of January 1, 1998.

§21.2102. Definitions.

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

Carrier-An insurance company, a group hospital service corporation, a fraternal benefit society, a stipulated premium insurance company, a health maintenance organization, or a multiple employer welfare arrangement that has a certificate of authority under Insurance Code Article 3.95-2.

Enrollee-An individual who is enrolled in a health benefit plan, including covered dependents.

Health benefit plan-Subject to subparagraphs (A), (B) and (C) of this paragraph, a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness including an individual, group, blanket or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage. The term does not include a plan that provides coverage only for accidental death or dismemberment, disability income, supplement to liability insurance, Medicare supplement, workers' compensation, medical payment insurance issued as a part of a motor vehicle insurance policy or a long-term care policy.

(A) For the inpatient mastectomy coverage notice required by subsection (a)(1) of §21.2103 of this title (relating to Notices), the definition of health benefit plan includes a plan that provides coverage only for a specific disease or condition for the treatment of breast cancer or for hospitalization. The term does not include a small employer health benefit plan issued under the Insurance Code, Chapter 26, Subchapters (A)-(G).

(B) For the prostate cancer examination notice required by subsection (a)(2) of §21.2103 of this title (relating to Notices), the definition of health benefit plan does not include a small employer health benefit plan written under the Insurance Code Chapter 26, Subchapters (A)-(G), or plans that provide coverage only for a specified disease or other limited benefit or only for indemnity for hospitalization.

(C) For the inpatient maternity and childbirth coverage notice required by subsections (a)(3) & (4) of §21.2103 of this title (relating to Notices), the definition of health benefit plan does not include credit insurance, or plans that provide coverage only for a specified disease or other limited benefits, only for dental or vision care, or only for indemnity for hospital confinement.

Other limited benefit-A plan that provides coverage singularly or in combination, for benefits for a specifically named disease, accident or combination of diseases or accidents, including but not limited to heart attack, stroke, AIDS, and travel, farm or occupational accident.

Primary Enrollee-For group coverage, the covered member or employee of the group. For individual coverage, the person first named on the application/enrollment form.

§21.2103. Notices.

(a) Prescribed notices consist of the following:

(1) For a health benefit plan that provides coverage and/or benefits for the treatment of breast cancer, a carrier shall issue a notice which includes the language provided in Figure 1 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number 349 Mastectomy).

(2) For a health benefit plan that provides coverage and/or benefits for diagnostic medical procedures, a carrier shall issue a notice which includes the language provided in Figure 2 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number 258 Prostate).

(3) For a health benefit plan that provides coverage and/or benefits for maternity, including benefits for childbirth, a carrier shall issue a notice which includes the language provided in Figure 3 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number 102 Maternity).

(4) If the health benefit plan described in paragraph (3) of this subsection includes benefits and/or coverage for in-home postdelivery care, the following language, or substantially similar language, shall be inserted immediately before the "Prohibitions" portion of the notice language at Figure 3 of subsection (b) of §21.2106 of this title (relating to Forms); "Since we provide in-home postdelivery care, we are not required to provide the minimum number of hours outlined above unless (a) the mother's or child's physician determines the inpatient care is medically necessary or (b) the mother requests the inpatient stay."

(b) In lieu of the prescribed notices outlined in subsection (a) of this section, a carrier may opt to provide notices with substantially similar language rather than the notices contained in subsection (b) of §21.2106 of this article (relating to Forms). The substantially similar language must be in a readable and understandable format, and must include a clear, complete and accurate description of these items in the following order:

(1) a heading in bold print and all capital letters indicating the information in the notice relates to mandated benefits,

(2) a statement that the notice is being provided to advise the enrollee of the appropriate coverage(s)/benefit(s), including the carrier's complete licensed name,

(3) a heading in bold print describing the benefit/coverage being provided, for example, Examinations for Detection of Prostate Cancer,

(4) a description of the benefit/coverage for which the notice is being provided,

(5) for the notice required by subsections (a)(1) and (3) of this section, the heading "Prohibitions" in bold print, followed by a summary of the prohibited acts by a carrier in providing the benefit/coverage for which the notice is being provided, and

(6) a statement identifying the carrier, and providing a phone number and address to which an enrollee may direct questions regarding the coverage(s)/benefit(s) for which the notice is being provided.

(c) If a health benefit plan provides coverage and/or benefits of more than one of the required notices described in subsection (a) of this section, the carrier may combine the language of the required notices into one notice.

(d) If, before the effective date of these rules, a carrier has provided notice(s) to its enrollees that contains the information required by the notices described in this subchapter, such notices shall be deemed to comply with the requirements of this subchapter as to those enrollees.

§21.2104. Print Size of Notices.

The notices required by this subchapter shall be in no less than 10 point type.

§21.2105. Delivery of Notices.

The notices required by this subchapter shall be issued to enrollees of a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 1998, and shall be provided according to the following paragraphs:

(1) The notice shall be provided

(A) within 60 days of the effective date of this subchapter to enrollees whose plans were renewed or issued between January 1, 1998 and the effective date of this subchapter;

(B) within 60 days of enrollment to new enrollees, whether in a newly issued or newly delivered health benefit plan, or an existing plan which is renewed after the effective date of this subchapter; or

(C) within 60 days of renewal date to existing enrollees of an existing plan which is renewed after the effective date of this subchapter.

(2) Except as specified in paragraph (6) of this section, the notices shall be delivered to enrollees through the U.S. Postal Service.

(3) The notice may be delivered with other health benefit plan documents as long as the time frames set forth in paragraph (1) of this section are met. For example, the notice may be delivered with the policy, certificate, evidence of coverage, or enrollment/insurance card.

(4) If the notices are provided to the primary enrollee's last known address, the requirements of this section are satisfied with respect to all enrollees residing at that address.

(5) If a covered spouse or dependent's last known address is different than the primary enrollee, separate notices are required to be provided to the spouse or the dependent at the spouse's or dependent's last known address.

(6) For group health benefit plans, the notice may be provided to the group master contract holder for distribution to enrollees if the carrier has an agreement with the group master contract holder that the notice will be delivered in accordance with the timelines specified in paragraph (1) of this section however, the carrier will be held responsible for ensuring that notice is provided to the enrollees.

§21.2106. Forms.

(a) The forms identified in §21.2103 of this title (relating to Notices) for notices of mandatory benefits are included in subsection (b) of this section in their entirety and have been filed with the Office of the Secretary of State. The forms can be obtained from the Texas Department of Insurance, Life/Health Group, MC 106-1A, P.O. Box 149104, Austin, Texas, 78714-9104.

(b) The forms referenced in this chapter are as follow:

(1) Figure Number 1: Form Number 349 Mastectomy
FIGURE NO. 1: 28 TAC §21.2106(b)(1)

(2) Figure Number 2: Form Number 258 Prostate
FIGURE NO. 2: 28 TAC §21.2106(b)(2)

(3) Figure Number 3: Form Number 102 Maternity
FIGURE NO. 3: 28 TAC §21.2106(b)(3)

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717067
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 37. Financial Assurance

The Texas Natural Resource Conservation Commission (commission) proposes new §37.271, relating to Local Government Financial Test for Closure; §37.281, relating to Local Government Guarantee for Closure; §37.371, relating to Local Government Financial Test for Closure; §37.381, relating to Local Government Guarantee for Closure; §37.3001, relating to Applicability; and §37.3011, relating to Financial Assurance Requirements for Scrap Tire Storage Facilities.

EXPLANATION OF PROPOSED RULES The purpose of the proposed new sections is to provide the options of satisfying financial assurance requirements for closure through the use of local government financial tests and local government guarantees, and to provide financial assurance requirements for owners and operators of certain scrap tire sites.

Proposed new §37.271 contains provisions relating to the local government financial test which consists of financial, public notice, recordkeeping, and reporting components. This proposed section states that, in order to continue using the local government financial test, the test must be passed on an annual basis.

The financial component, as proposed under §37.271(1), would require a local government to meet one of two main options, plus certain other conditions. The first option is that the local government must have a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; a ratio of annual debt service to total expenditures less than or equal to 0.20; and a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total annual revenue less than or equal to 0.43, with any costs exceeding the 43% limit being covered by an alternate financial assurance mechanism. The second of the two main options is that the local government must have outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee which have a current bond rating of Aaa, Aa, A, or Baa, issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; and a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43. In addition to meeting one of the two main options, the following general conditions are proposed to be required: that the local government's financial statements shall be prepared in accordance with Generally Accepted Accounting Principals for local governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency); that a local government must not have operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; that it must not currently be in default on any outstanding general obligation bonds; that it must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and that it must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statements as required under paragraph (1)(C)(i). The following definitions are proposed: "deficit," "total revenues," "total expenditures," "cash plus marketable securities," and "debt service." Other terms not defined are proposed to be interpreted consistently with generally accepted accounting principles for local governments.

The public notice component, as proposed under §37.271(2), would require a local government to place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. The disclosure would have to include the nature and source of closure requirements; the reported liability at the balance sheet date; the estimated total closure care cost remaining to be recognized, if applicable, the percentage of any landfill capacity used to date; and the estimated landfill life in years. For the first year the financial test is used to assure costs at a particular facility, the proposal allows the disclosure to be placed in the operating record until issuance of the next available CAFR if timing does not permit the disclosure to be incorporated into the most recently issued CAFR or budget. Finally, §37.271(2) states that for closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

The recordkeeping and reporting component, as proposed under §37.271(3) would require the following four items to be submitted to the executive director: a letter signed by the local government's chief financial officer (CFO) that is worded as specified in §37.371 and that lists all the current cost estimates covered by a financial test and provides evidence and certain certification statements; a copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" of the auditor; a special report from the independent certified public accountant (CPA) or the appropriate state agency to the local government; and a copy of the comprehensive annual financial report used to comply with paragraph (2) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

Section 37.271(4) proposes annual updates of the financial test documentation, to be submitted to the executive director within 180 days after the close of each succeeding fiscal year.

Section 37.271(5) contains proposed requirements for a local government to satisfy the requirements of the financial test at the close of each fiscal year, and if the local government no longer meets the requirements of the financial test, it would be required to send notice to the executive director of intent to establish alternate financial assurance, and to provide alternate financial assurance within 120 days after the end of such fiscal year.

Section 37.271(6) proposes that the local government would no longer be required to comply with the requirements of this section when the conditions as specified in §37.61 are met.

Proposed §37.271(7) states that the executive director, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the executive director then finds that the local government no longer meets the requirements of the financial test, the proposal would require the local government to provide alternate financial assurance as specified in Subchapter C within 30 days after notification of such a finding.

Proposed new §37.281 contains the allowance for an owner or operator to satisfy the requirements of financial assurance for closure by obtaining a local government guarantee provided by a local government. Under this proposal, the local government guarantee would have to meet the requirements of this section, in addition to the requirements of Subchapters A and B. It is also proposed that the local government guarantor would have to meet the requirements of the local government financial test as specified in §37.271 and must comply with certain terms to the local government guarantee proposed under §37.281(1)-(6).

Proposed §37.281(1) states that, if the owner or operator fails to perform closure of a facility covered by the guarantee, the local government guarantor will perform, or pay a third party to perform closure as required, or establish a fully funded trust fund as specified in §37.201 in the name of the owner or operator. Proposed §37.281(2) states that the guarantee will remain in force unless the local government guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director, provided, however, that cancellation may not occur for at least 120 days after the notice of cancellation. Proposed §37.281(3) states that if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice, obtain alternate financial assurance and submit evidence of that alternate financial assurance to the executive director. The proposal would require the local government guarantor to provide alternate financial assurance within 120 days following its notice of cancellation, if the owner or operator fails to provide it. Under proposed §37.281(4), the owner or operator must submit to the executive director the original local government guarantee worded as specified in §37.381. The proposal states that the guarantee must accompany the items sent to the executive director as specified in §37.271(3) and that it must be updated annually in accordance with the requirements of the local government financial test. Proposed §37.281(5) contains an allowance that the owner or operator is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 are met. Under proposed §37.281(6), if a local government guarantor no longer meets the requirements of §37.271, the owner or operator must, within 90 days, obtain alternate financial assurance, and submit such evidence of the alternate assurance to the executive director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternative assurance within the next 30 days.

Proposed new §37.371 contains the format for the letter from the CFO which, among other things, requires a listing of the current cost estimates covered by a financial test, along with certain evidence and certification statements.

Proposed new §37.381 contains the format for the local government guarantee for closure.

Proposed new §37.3001 is the applicability statement for proposed new Subchapter M, relating to Financial Assurance Requirements for Scrap Tire Sites, and states that Subchapter M applies to owners and operators of scrap tire sites required to provide evidence of financial assurance under Chapter 330, Subchapter R, relating to Management of Used or Scrap Tires. In concurrent rulemaking, proposed new §330.810(b), relating to Scrap Tire Storage Site Registration, requires applicants seeking registration or amended registration for a scrap tire storage site to submit evidence of financial responsibility.

Proposed new §37.3011 contains the financial assurance requirements and options for scrap tire storage sites, and states that an owner or operator of a scrap tire site subject to this subchapter shall establish financial assurance for the closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C and D.

Proposed §37.3011(1) specifies that the financial assurance for scrap tire sites shall be in the amount required under §330.821, relating to Closure Cost Estimate for Financial Assurance. Options for financial assurance mechanisms are proposed under §37.3011(2) as a fully-funded trust, surety bond guaranteeing payment, surety bond guaranteeing performance, irrevocable letter of credit, insurance, financial test, corporate guarantee, local government financial test, or local government guarantee. Under proposed §37.3011(2), the original mechanism would be required to be submitted to the executive director. Proposed §37.3011(3) states that quarterly valuation statements are required for a fully-funded trust, and delineates certain wording revisions needed for Section 10 of the Trust Agreement specified in §37.301(a), relating to Trust Agreement for Closure. Proposed §37.3011(4) states that §37.161, relating to Establishment of a Standby Trust, does not apply to an owner or operator who utilize either a surety bond or irrevocable standby letter of credit under Subchapter M. Finally, proposed §37.3011(5) requires an owner or operator who utilizes the insurance mechanism as specified in §37.241, relating to Insurance for Closure, to replace the wording specified in §37.241(b) to read as follows: At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas.

FISCAL NOTE Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The fiscal implications are related to the implementation of the financial assurance requirements for scrap tire storage sites. No significant costs to state government are anticipated as a specific result of adoption of the rules as proposed. The proposed rules will retain certain elements of the existing financial assurance requirements for used or scrap tires under more general authority for regulation of used or scrap tires and management of solid waste. However, the costs to the state of these activities as they are proposed will not vary significantly from the costs currently being incurred under existing regulations and statutory authority.

Costs to local governments are not anticipated to increase as a direct result of the proposed rules and may, in fact, be mitigated by the proposed provisions for the local government financial test. In addition, financial assurance provisions for certain used or scrap tire sites will reduce many of the potential costs to local governments of waste management and illegal dumping.

PUBLIC BENEFIT Mr. Minick has also determined that for each year of the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improved regulation and management of solid waste and used or scrap tires, enhanced protection of human health and safety, and reductions in the liabilities potentially imposed on the state and public funds for the control, management and remediation of scrap tire facilities for which operators lack the financial resources necessary for proper operation and closure. The economic costs related to these rules are those associated with the provisions for financial assurance for those facilities subject to the rules, primarily storage sites. The actual costs of compliance with proposed rules are not anticipated to be materially different for most affected operators from the costs associated with compliance with existing regulations. Some compliance costs could decrease, primarily due to the proposals for allowing local government financial tests and local government guarantees. Some compliance costs could increase for energy recovery and recycling facilities storing more than a 30-day supply of used or scrap tires due to the required demonstration of financial assurance. However, financial assurance costs for certain facilities may actually be reduced as a result of the use of proposed cost estimate procedures, rather than existing cost formulas. Although actual cost impacts to affected persons and facilities may be positive or negative, no substantial economic costs of these proposed rules are anticipated to occur. Some of the persons subject to these proposed rules are small businesses. The effects on small businesses will be directly related to the size and type of facility, the number of used or scrap tires (or equivalents) generated, stored, processed or disposed, and other site-specific conditions. There are no other economic costs anticipated for persons required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to adopt a set of regulations for the provision of financial assurance for closure of solid waste and used or scrap tire facilities. The rules will substantially advance this specific purpose by adopting by a set of standards establishing the financial assurance. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes do not limit or restrict a person's rights in private real property.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code Annotated, §2007.003(b) apply to these rules: an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state; and an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The staff has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will encourage safe and appropriate storage, transportation, treatment, and disposal of solid waste and used tires, scrap tires, and tire pieces that are classified as municipal solid wastes, which will result in an overall environmental benefit across the state, including in coastal areas. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission seeks public comment on the consistency of the proposed rules.

PUBLIC HEARING A public hearing on the proposal will be held in Austin on January 27, 1998 at 10:00 a.m. in Room 2210 of Building F of the commission's Park 35 Office Complex located at 12100, Part 35 Circle, North IH-35, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 97140-330-WS and may be submitted to Heather Evans, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, 12100 North IH-35, Park 35 Circle, Building F, Room 4101 or P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Written comments must be received by 5:00 p.m., February 2, 1998. For further information or questions concerning this proposal, please contact Debbie Bohl, Municipal Solid Waste Division, at (512) 239-0044.

Subchapter C. Financial Assurance Mechanisms for Closure

30 TAC §37.271, §37.281

STATUTORY AUTHORITY The new sections are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws

of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed new sections implement the Health and Safety Code, Chapter 361.

§37.271. Local Government Financial Test for Closure.

An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a local government financial test or a local government financial test and local government guarantee which conforms to the requirements of this subchapter, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure). In order to continue using the local government financial test, the test must be passed on an annual basis. This test consists of a financial component, a public notice component, and a record-keeping and reporting component. A local government must satisfy each of the three components to pass the test. The criteria for each component is as follows.

(1) In order to satisfy the financial component of the test, a local government must meet the criteria of either subparagraph (A) or (B) of this paragraph and in addition must meet certain general conditions outlined in subparagraph (C) of this paragraph.

(A) The local government must have:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05;

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20; and

(iii) a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total annual revenue less than or equal to 0.43. The local government must obtain an alternate financial assurance mechanism for those costs that exceed the 43% limit.

(B) The local government must have:

(i) outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee which have a current bond rating of Aaa, Aa, A, or Baa, issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; and

(ii) a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43.

(C) In addition to meeting the criteria listed under subparagraph (A) or (B) of this paragraph, the following general conditions must be met:

(i) the local government's financial statements shall be prepared in accordance with Generally Accepted Accounting Principles for local governments and have its financial statements audited by an independent certified public accountant (CPA) (or appropriate state agency);

(ii) a local government must not have operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years;

(iii) it must not currently be in default on any outstanding general obligation bonds;

(iv) it must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and

(v) it must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA (or appropriate state agency) auditing its financial statements as required under clause (i) of this subparagraph.

(D) Unless otherwise defined in this section, financial terms used in this section are to be interpreted consistently with generally accepted accounting principles for local governments. The following terms used in this section are defined as follows:

(i) *Deficit* equals total annual revenues minus total annual expenditures;

(ii) *Total revenues* include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(iii) *Total expenditures* include all expenditures excluding capital outlays and debt repayment;

(iv) *Cash plus marketable securities* is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(v) *Debt service* is the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) In order to satisfy the public notice component of the test, a local government must comply with this paragraph. The local government must place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure requirements; the reported liability at the balance sheet date; the estimated total closure care cost remaining to be recognized; if applicable, the percentage of any landfill capacity used to date; and the estimated landfill life in years. For the first year the financial test is used to assure costs at a particular facility, the disclosure may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the disclosure to be incorporated into the most recently issued CAFR or budget. For closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(3) In order to satisfy the recordkeeping and reporting component of the test, a local government must comply with this paragraph. To demonstrate that the local government meets the requirements of this test, the following four items must be submitted to the executive director:

(A) a letter signed by the local government's chief financial officer (CFO) and worded as specified in §37.371 of this title (relating to Local Government Financial Test for Closure) that:

(i) lists all the current cost estimates covered by a financial test;

(ii) provides evidence and certifies that the local government meets the conditions of either paragraph (1)(A) or (1)(B) of this section; and

(iii) certifies that the local government meets the conditions of paragraph (1)(A)(iii) or (1)(B)(ii) of this section, and paragraphs (1)(C) and (2) of this section;

(B) a copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" of the auditor. The auditor must be an independent CPA or an appropriate state agency that conducts equivalent comprehensive audits;

(C) a special report from the independent CPA or the appropriate state agency to the local government which:

(i) is based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (1)(A) of this section, if applicable, and the requirements of paragraphs (1)(C)(i), (1)(C)(ii) and (1)(C)(v) of this section; and

(ii) states the procedures performed and the CPA's or state agency's findings; and

(D) a copy of the CAFR used to comply with paragraph (1)(B) of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(4) Annual updates of the financial test documentation must be submitted to the executive director within 180 days after the close of each succeeding fiscal year. This information must consist of all the items as specified previously.

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government no longer meets the requirements of paragraphs (1), (2), and (3) of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data show that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(6) The local government is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this chapter (relating to Termination of Mechanisms) are met.

(7) The executive director, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the executive director finds on the basis of such reports or other information, that the local government no longer meets the requirements of the financial test, the local government must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

§37.281 .Local Government Guarantee for Closure.

An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a local government guarantee provided by a local government. The local government guarantee must meet the requirements of this section, in addition to the requirements as specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure). The local government guarantor must meet the requirements of the local government financial test as specified in §37.271 of this title (relating to Local Government Financial Test for Closure) and must comply with the following terms to the local government guarantee:

(1) If the owner or operator fails to perform closure of a facility covered by the guarantee, the guarantor will:

(A) perform, or pay a third party to perform closure as required; or

(B) establish a fully funded trust fund as specified in §37.201 of this title (relating to Trust Fund for Closure) in the name of the owner or operator.

(2) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of the receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(3) If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice, obtain alternate financial assurance and submit evidence of that alternate financial assurance to the executive director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation.

(4) The owner or operator must submit to the executive director the original local government guarantee worded as specified in §37.381 of this title (relating to Local Government Guarantee for Closure). The guarantee must accompany the items sent to the executive director as specified in §37.271(3) of this title and must be updated annually in accordance with the requirements of the local government financial test.

(5) The owner or operator is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this title (relating to Termination of Mechanisms) are met.

(6) If a local government guarantor no longer meets the requirements of §37.271 of this title, the owner or operator must, within 90 days, obtain alternate financial assurance, and submit such evidence of the alternative assurance to the executive director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternative assurance within the next 30 days.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716938
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1970

Subchapter D. Wording of the Mechanisms for Closure

30 TAC §37.371, §37.381

STATUTORY AUTHORITY The new sections are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed new sections implement the Health and Safety Code, Chapter 361.

§37.371. Local Government Financial Test for Closure.

A letter signed by the local government's chief financial officer, as specified in §37.271(3)(A) of this title (relating to Local Government Financial Test for Closure) must be worded as in the Local Government Financial Test for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.371

§37.381. Local Government Guarantee for Closure.

The original local government guarantee, as specified in §37.281 of this title (relating to Local Government Guarantee for Closure) must be submitted worded as in the Local Government Guarantee for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.381

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

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1970

Subchapter M. Financial Assurance Requirements for Scrap Tire Sites

30 TAC §37.3001, §37.3011

STATUTORY AUTHORITY The new sections are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed new sections implement the Health and Safety Code, Chapter 361.

§37.3001. Applicability.

This subchapter applies to owners and operators of scrap tire sites required to provide evidence of financial assurance under Chapter 330, Subchapter R of this title (relating to Management of Used or Scrap Tires).

§37.3011. Financial Assurance Requirements for Scrap Tire Sites.

An owner or operator of a scrap tire site subject to this subchapter shall establish financial assurance for the closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure; Financial Assurance Mechanisms for Closure; Wording of the Mechanisms for Closure).

(1) The financial assurance for a scrap tire site shall be in the amount required under §330.821 of this title (relating to Closure Cost Estimate for Financial Assurance).

(2) An owner or operator subject to this subchapter may utilize any of the mechanisms specified in subparagraphs (A)-(I) of this paragraph. The original mechanism is required to be submitted to the executive director.

(A) Fully-funded trust;

(B) Surety bond guaranteeing payment;

(C) Surety bond guaranteeing performance;

(D) Irrevocable letter of credit;

(E) Insurance;

(F) Financial test;

(G) Corporate guarantee;

(H) Local government financial test; or

(I) Local government guarantee.

(3) Quarterly valuation statements are required for a fully-funded trust. The wording to Section 10 of the Trust Agreement specified in §37.301(a) of this title (relating to Trust Agreement for Closure) will need to be revised as follows: Section 10. Quarterly Valuation. The trustee shall quarterly, within 15 days of quarter-end, furnish to the Grantor and the commission executive director a statement confirming the value of the Trust. Quarter-ends are designated as March 31, June 30, September 30, and December 31. Any securities in the Fund shall be valued at market value as of quarter-end. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the commission executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

(4) Section 37.161 of this title (relating to Establishment of a Standby Trust) does not apply to an owner or operator who utilizes either a surety bond or irrevocable standby letter of credit under this subchapter.

(5) An owner or operator who utilizes the insurance mechanism as specified in §37.241 of this title (relating to Insurance for Closure) shall replace the wording specified in §37.241(b) of this

title to read as follows: At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas.

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.

Issued in Austin, Texas, on December 19, 1997.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1970

Chapter 106. Exemptions from Permitting

Subchapter A. General Requirements

30 TAC §106.2

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §106.2, concerning Applicability, §106.224, concerning Aerospace Equipment and Parts Manufacturing, §106.321, concerning Metal Melting and Holding Furnaces, §106.373, concerning Refrigeration Systems, §106.418, concerning Printing Presses, and §106.454, concerning Degreasing Units. The commission also proposes the repeal of §106.222, concerning Woodworking Shops.

EXPLANATION OF PROPOSED RULES. The last two sentences in §106.2 would be deleted, as they contain references to §116.211, a section that has been repealed.

Section 106.224(1) would be amended to remove an incorrect reference to a standard exemption number that was valid prior to November 1996 and is still used as a cross-reference.

The amendment to §106.321 would expand the mechanism for authorizing construction or modification of insignificant sources of air emissions from foundries and correct an apparent typographical error in the exemption. The revised exemption will allow for the production of ductile iron, the use of a fluxing agent without chlorine for aluminum foundries, and the limited melting of brass and bronze, and will prohibit the use of "manganese" bronze rather than "magnesium" bronze, which is prohibited in the current exemption, and which does not exist. By adopting the proposed changes into §106.321, an estimated 40 foundries will be exempted from air permitting regulations consistent with advances in chemistry and process technology. The amount of chemicals used in these processes is minimal, as are the emissions from these sources.

The commission directed that the New Source Review Permitting (NSRP) Division evaluate the protectiveness of a significant portion of the exemptions from permitting (previously referred to as standard exemptions). The protectiveness evaluation for §106.373 revealed that in general, it was protective for most compounds. However, additional information was needed to assess protectiveness in all situations. Based on the technical evaluation of the exemption and comments received from affected industry and regional offices, NSRP staff has determined that the exemption needs minor clarifications to ensure its protectiveness through prohibitions of some compounds, and that additional requirements need to be included to address potential disaster situations associated with anhydrous ammonia as a refrigerant. The compounds listed for prohibition from use in this exemption are those that have a higher potential for off-property environmental and health effects and those compounds with disaster potential. The commission does not believe that these compounds are commonly used as refrigerants, and there will be minimal economic effect as a result of their prohibition.

Ammonia is considered a compound possessing disaster potential in the event of catastrophic failure of its containment system. However, it is a very common refrigerant used in systems that are well designed, constructed, and have an abundance of operating history. Claimants will be required to demonstrate that the system will be designed and operated in a manner that will reduce the potential for upsets, and that they have emergency procedures to manage releases and protect the public.

Distance limits and limits on the amount of refrigerant allowed on-site are not being recommended. Given that refrigeration systems are by design "tighter" than other types of units (i.e., less potential for leaking components) due to the high design pressures and the fact that in general, companies do not want frequent, expensive recharges, nor do they want to lose cooling power, any system leaks are likely fewer, of smaller volume, and repaired quickly. The incorporation of the effects screening level (ESL) limit on refrigerants serves to prevent highly toxic materials from being used in exempted systems, which serves to ensure protectiveness. The requirement for an audio, visual, and olfactory inspection program for ammonia systems further reduces the risk of leaks and potential for off-site effects or nuisances.

The proposed amendment to §106.373 would modify the existing standard exemption by prohibiting the use of compounds in refrigeration systems with an ESL less than 150 $\mu g/m^3$. The commission has determined that the use of substances with an ESL below that figure would result in a ground level concentration that would not be protective of human health in the event of a system upset. The health effects would vary on the type of substance involved and length of exposure, but systems using substances with an ESL below 150 $\mu g/m^3$ would require a more extensive engineering and toxicological review to assure their protectiveness and would not be suitable to qualify for a standard exemption.

The amendment also requires protective measures for systems using ammonia as a refrigerant. There are no additional or retroactive requirements being placed on existing systems.

Section 106.418 would be amended to correct a reference in the rule to 30 TAC Chapter 115, Subchapter D. The correct reference is Subchapter E.

Section 106.454 would be amended to correct a reference to the section designation of §115.415.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be a decrease in regulatory burden for foundries with insignificant emissions, an increase in the public health protectiveness of the exemption concerning refrigeration units, and the removal of incorrect or obsolete

language from existing exemptions. Through research by the staff, the commission believes that most businesses using ammonia as a refrigerant already protect their storage tanks. This amendment would require new businesses with systems using ammonia to erect a barrier around the ammonia tank. The commission estimates the cost of construction to be less than $1,000. The amendment is not retroactive.

REGULATORY IMPACT ANALYSIS. The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." The upper limit of costs to facilities affected by the amendments is $1,000. The amendments thus will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to expand the scope of the exemption from permitting concerning metal foundries, to improve the ability of the exemption concerning refrigeration units to protect public health, and to make nonsubstantive administrative corrections to other existing exemptions. This proposal does not constitute a taking of private, real property.

COASTAL MANAGEMENT PLAN. The commission has 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's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. Any increase in emissions that results from these amendments will not be significant. The specific amendments to §106.373 will reduce the potential for a catastrophic release of anhydrous ammonia.

PUBLIC HEARING. A public hearing on this proposal will be held January 26, 1998, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97179-106-AI. Comments must be received by 5:00 p.m., February 2, 1998. For further information, please contact Kerry Drake, New Source Review Division, (512) 239-1112 or Beecher Cameron, Office of Policy and Regulatory Development, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, and 382.057. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.017.

§106.2. Applicability.

This chapter applies to facilities or types of facilities listed in this chapter where construction is commenced on or after the effective date of the relevant exemption. [~~Facilities or types of facilities contained in this chapter must qualify for an exemption under this chapter and may not be qualified for an exemption listed in §116.211 of this title (relating to Standard Exemption List). Facilities or types of facilities not contained in this chapter may qualify for an exemption under §116.211 of this title.~~]

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

Issued in Austin, Texas, on December 17, 1997.

TRD-9716907
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1998
For further information, please call: (512) 239-1966

Subchapter I. Manufacturing

30 TAC §106.222

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal implements Health and Safety Code, §382.017.

§106.222. Woodworking Shops (Previously SE 105).

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.

Issued in Austin, Texas, on December 17, 1997.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1998
For further information, please call: (512) 239-1966

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30 TAC §106.224

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, and 382.057. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.017.

§106.224. Aerospace Equipment and Parts Manufacturing (Previously SE 123).

Any new aerospace equipment and parts manufacturing plant, or physical and operational change to an existing aerospace equipment and parts manufacturing plant are exempt, provided that the following conditions of this section are satisfied.

(1) For purposes of this section, aerospace equipment and parts manufacturing plant means the entire operation on the property which engages in the fabrication or assembly of parts, tools, or completed components of any aircraft, helicopter, dirigible, balloon, missile, drone, rocket, or space vehicle. This exemption will not include composite aerospace equipment and parts manufacturing plants. Composite plants are defined to be plants whose products are less than 50% metal, by weight, based on annual production figures. This definition excludes those operations specifically authorized by other exemptions. For example, a boiler would not be considered a part of the aerospace manufacturing plant, but could be authorized under §106.181 of this title (relating to Boilers, Heaters, and Other Combustion Devices [~~(Previously SE 7)~~]), if all pertinent requirements were met.

(2)-(8) (No change.)

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

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1998
For further information, please call: (512) 239-1966

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Subchapter M. Metallurgy

30 TAC §106.321

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, and 382.057. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.017.

§106.321. Metal Melting and Holding Furnaces [~~Furnace~~] (Previously SE 58).

Metal melting and holding furnaces as specified in this section are exempt.

(1) crucible furnaces, pot furnaces, or induction furnaces with a holding capacity of 1,000 pounds or less, with the following limitations:

(A) (No change.)

(B) in ferrous melting furnaces where gray iron or steel is melted:

(i) ductile iron is [~~not~~] produced only when emissions are captured by a vent hood and filtered or within a crucible with a lid which allows no visible emissions; and

(ii) (No change.)

(C) in nonferrous melting furnaces, only the following metals are melted, poured, or held in a molten state:

(i)-(iv) (No change.)

(v) copper , brass, or bronze; or

(vi) (No change.)

(D) no lead, leaded brass, leaded bronze, or manganese [~~magnesium~~] bronze is melted, poured, or held in a molten state;

(2) aluminum melting or holding furnaces with a holding capacity of 2,000 pounds or less that melt only clean aluminum ingots or pigs and in which no refining, smelting, metal separation, sweating, distilling, or fluxing with chlorine bearing gases is performed.

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.

Issued in Austin, Texas, on December 17, 1997.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: April 8, 1998
For further information, please call: (512) 239-1966

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Subchapter P. Plant Operations

30 TAC §106.373

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.011, 382.012,

382.017, and 382.057. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.017.

§106.373. Refrigeration Systems (Previously SE 103).

Refrigeration systems, including storage tanks used in refrigeration systems, that use one of the following categories of refrigerant are exempt:

(1) simple asphyxiants, freon, propane, or liquefied natural gas; or

(2) any other chemical, excluding anhydrous ammonia, with an Effects Screening Level greater than 150 $\mu g/m^3$;

(3) anhydrous ammonia (ammonia) under the following conditions.

(A) Registration using Form PI-7 must be provided before construction begins under this section.

(B) Concrete and steel post barriers or concrete retaining walls shall be erected around each ammonia storage unit located within ten feet of any traffic area to prevent accidental ruptures by vehicles.

(C) All ammonia facilities shall be equipped with warning signs clearly indicating that ammonia is in use, for example "Danger: Ammonia. Unauthorized entry prohibited."

(D) Audio, visual, and olfactory checks for any ammonia leaks shall be made every month. Records of the date and time of inspections, inspector identification, number of leaks detected, identification of the leaking component, and the date and time of leak repair shall be maintained for the most recent 24-month period.

(E) On-site personnel shall temporarily repair the leak within one day after detection of a leak.

(F) All leaks shall be repaired within 15 days of detection.

(G) An emergency response plan including notification of the appropriate civil authorities shall be maintained on-site which describes the course of action to be taken by personnel in the event of an upset or a leak which cannot be contained.

(H) Accidental releases of refrigerant must be recorded and reported in accordance with §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements).

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.

Issued in Austin, Texas, on December 17, 1997.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1966

Subchapter R. Service Industries

30 TAC §106.418

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, and 382.057. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.017.

§106.418. Printing Presses (Previously SE 13).

Printing operations (including, but not limited to, screen printers, inkjet printers, presses using electron beam or ultraviolet light curing, and labeling operations) and supporting equipment (including, but not limited to, corona treaters, curing lamps, preparation, and cleaning equipment) which directly supports the printing operation are exempt, provided that all the following conditions of this section are satisfied.

(1)-(6) (No change.)

(7) Facilities located in ozone nonattainment areas shall meet the requirements of Chapter 115, Subchapters B and E [~~D~~] of this chapter (relating to General Volatile Organic Compound Sources and Solvent-Using Processes [~~Petroleum Refining and Petrochemical Processes~~]).

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

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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Subchapter T. Surface Preparation

30 TAC §106.454

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, and 382.057. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.017.

§106.454. Degreasing Units (Previously SE 107).

Any degreasing unit that satisfies the following conditions of this section is exempt.

(1) The following general requirements are applicable to all degreasers unless specifically exempted by the conditions of this section.

(A)-(E) (No change.)

(F) Each unit, regardless of the county in which it is located, shall meet the requirements of §115.412 and §115.415 of this title (relating to Control Requirements and Testing Requirements [~~Alternate Control Requirements~~]).

(2)-(5) (No change.)

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

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §330.601, relating to Purpose and Applicability; the repeal of §§330.801-330.818, 330.820-330.836, 330.838, and 330.840-330.889; and new §§330.801-330.821 in Subchapter R, concerning Management of Used or Scrap Tires.

EXPLANATION OF PROPOSED RULES The purposes of the proposed amendments, repeals and new sections are to address the sunset provisions of Health and Safety Code Chapter 361, Subchapter P, address the requirements of existing statutory language which does not contain a sunset provision, and to streamline certain requirements of the existing rules. In most areas of the proposed new sections, rule language from the existing sections has simply been streamlined, clarified, and/or reformatted. In other areas, new requirements are proposed.

Due to the sunset provisions of Health and Safety Code Chapter 361, Subchapter P, all references to reimbursement, end-use requirements, and the Waste Tire Recycling Fund (WTRF) have been deleted in this proposal. The proposed new rules no longer contain the 90-day limit for generators to remove whole tires from storage. Other proposed changes concerning generator requirements include removal of the requirement to accept used tires, removal of the restriction from accepting money for tires, removal of the requirement to remove tires from rims, removal of the differentiation between large and regular volume generators, and removal of the restriction that generators can only store their own tires. For transporters, the registration fee is proposed to be removed, the exemption from registration is proposed to be expanded to include generators hauling their own tires and to include municipal solid waste vehicles, and the prohibition from charging a fee to haul tires is proposed to be deleted. For storage facilities, an exemption from registration as a storage site is proposed for generators who process and/or store 500 or fewer used or scrap tires on the ground or 2,000 or fewer in enclosed containers; the registration and design requirements for a scrap tire storage site have been reorganized but are essentially unchanged from the current rules; requirements are proposed to be added for land reclamation projects using tires (LRPUT); and the training requirements for employees transporting or handling tires and for transporters who deliver tires to the storage facility have been removed in the proposal. Concerning scrap tire facilities, the proposal includes processing, recycling, and energy recovery facilities under this designation, requires a scrap tire storage site registration for certain processors and for facilities storing more than a 30-day supply of tires, reduces the frequency of reporting to an annual report, and removes the $500 registration fee. Concerning the Special Authorization Priority Enforcement List (SAPEL) and the Priority Enforcement List (PEL) program, the proposal has removed the 2,500,000 tire "trigger" for issuing contracts to procure cleanups for the removal of tires from PEL sites, and has removed the rule language concerning assignment of PEL sites on an individual basis to waste tire facilities, in favor of the contract process done on a competitive basis. Concerning closure costs estimates and financial assurance, the per-tire formula is proposed to be deleted, the written estimate of closure costs is proposed to be calculated based on actual estimates for third-party closure, and financial assurance sections are being proposed under Chapter 37 of this title (relating to Financial Assurance).

Also due to the sunset provisions of Health and Safety Code Chapter 361, Subchapter P, the following sections are proposed for repeal and will not be streamlined, clarified, or reformatted in the proposed new sections: §330.804, concerning the use of tire shreds in landfills; §§330.820-330.829, concerning WTRF allocation method, model, notification, fiscal audits, overpayment from the WTRF, and WTRF program reviews; §330.838, concerning requirements for a Type VIII-W.T. waste tire storage facility; §330.842, concerning waste tire facility classification and operational requirements such as shredding; §330.848, concerning eligibility for the WTRF program; §330.850, concerning requirements for waste tire recycling facilities; §330.853 and §330.854, concerning requirements and funding for waste tire energy recovery facilities; §330.856 and §330.857, concerning requirements for waste tire transfer stations and collection centers; §330.864, concerning ranking of illegal waste tire sites; §330.871 and §330.872, concerning the WTRF; and §§330.874-330.884, concerning WTRF grants, confidentiality, WTRF reimbursement and transfer of funds, special authorization tires, community service, executive director's regional site directive and protests thereof, formal petitions and hearings, and end use credit system.

Section 330.601(a)(1) is amended to update the reference to new §330.807. Thus, the phrase "§330.817 of this title (relating to Transporter Fees)" is replaced by the phrase "§330.807 of this title (relating to Transporter Requirements)."

Proposed new §330.801 sets forth purpose, which is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

Proposed new §330.802 contains applicability statements. Section 330.802(a) states that the proposed rules are applicable to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials and are regulated by the commission under §330.3. Proposed §330.802(b) states that all used or scrap tires or tire pieces, except those collected incidentally by municipal solid waste collection vehicles, are subject to

manifesting by registered generators. Section 330.802(c) contains an exemption for scrap tires that are off-the-road tires from the requirement to be split, quartered or shredded at a storage site or a permitted landfill.

Proposed new §330.803 contains definitions for the following terms: "30-Day Supply;" "Alter;" "Authorized representative;" "Authorized scrap tire facility;" "Closure;" "Fleet operator;" "Generator;" "Good used tire;" "Land reclamation projects using tires;" "Manufacturer reject tire;" "Off-the-road tire;" "Operator;" "Owner;" "Processing;" "Professional engineer;" "Scrap tire;" "Scrap tire facility;" "Scrap tire storage site;" "Scrap tire transporter;" "Supersize pile;" "Tire monofill;" "Tire piece;" "Tire processor;" "Tire shredder;" and "Transportation facility."

Proposed new §330.804 contains general requirements relating to penalties, and requirements concerning commingling, registration, permitted municipal solid waste facilities, and collection and transportation. Under §330.804(a), the penalties for violation of applicable sections of this subchapter are proposed to be any actions authorized by law to secure compliance, including administrative or civil penalties, and the suspension or revocation of registration or permit. Under proposed §330.804(b), scrap tires are not allowed to be commingled with other types of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles. Section 330.804(c) proposes that any permitted municipal solid waste landfill may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only, with the requirement that such storage must be above-ground in controlled piles or lockable containers. Also, it is proposed that above ground storage of tires or tire pieces in quantities greater than 500 tires or the equivalent on the ground or 2,000 tires or the equivalent in enclosed or lockable containers at a permitted municipal solid waste landfill site shall not proceed until approval from the executive director or the commission is received. Approval is proposed to be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification and an amendment. Finally, §330.804(c) proposes to require that tire storage activity shall be conducted in a manner so as to not adversely affect operations at the site or to otherwise endanger human health or the environment. Proposed §330.804(d) contains standards for vehicles and equipment used for the collection or transportation of used or scrap tires or tire pieces, including basic requirements for construction, operation, maintenance, safety, and identification requirements. Under proposed §330.804(e), a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission may be granted an exemption from shredding, splitting, or quartering the scrap tires by the executive director upon request.

Proposed new §330.805 contains registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters, including application, record keeping, notice to the executive director of certain changes, reapplication, and procedures relating to the annulment, suspension, revocation, or denial of a registration. Under §330.805(1), an application for registration is proposed to be required on a form obtained from the executive director, with certain registration information listed. Section 330.805(2) requires the application to be signed by the authorized representative, and if applicable, the professional engineer who assisted in its preparation. Section 330.805(3) requires a copy of the registration notice to be kept at the site. Section 330.805(4) contains written notice to the executive director within 15 days if certain changes occur, such as changes in address, telephone number, applicant's registered name, or authorized representative. Section 330.805(5) contains the requirement to submit a new registration application if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or methods. It is proposed that the executive director may issue a new registration, cancel the old registration, or transfer the old registration to the new registrant, and that timeliness of required submittals may be a factor in the executive director's determination. Section 330.805(6) spells out proposed registration annulment, suspension, revocation, and denial procedures. Also proposed are procedures for appeal, including an opportunity for a formal hearing which shall be a contested case proceeding.

Proposed new §330.806 contains requirements for generators of used or scrap tires or tire pieces. Under §330.806(a), each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility. Under §330.806(b), it is proposed that generators who store more than 500 (or weight equivalent) used or scrap tires or tire pieces on the ground or 2,000 (or weight equivalent) in enclosed and lockable containers are required to obtain a scrap tire storage registration. Section 330.806(b) also proposes restrictions on retailers and wholesalers of good used tires, requiring them to be sorted, marked, classified, and arranged in an organized manner, or else the used tires would be considered as stockpiled scrap tires subject to registration as a scrap tire storage site, and that tires stored outside in an uncontrolled pile shall be monitored for vectors, with appropriate control measures used at least once every two weeks. Section 330.806(c) contains an allowance for generators to transport its scrap tires to an authorized facility, or between its own business locations, without a transporter registration.

Proposed new §330.807 relates to transporter requirements, and contains registration, record keeping, reporting, and interstate transportation requirements. Section 330.807(a) proposes that this section applies to transporters collecting and hauling used or scrap tires or tire pieces. Proposed §330.807(b) spells out certain exemptions. These exemptions include transporter registration exemptions, subject to certain specified requirements, for used or defective tires shipped back to the manufacturer or its representative; for persons registered as On-Site Sewage Facility Installers transporting scrap tire pieces for construction of an on-site sewage disposal system; for certain types of hauling by retreaders; for trucks engaged in municipal solid waste collection or commercial routes which handle incidental loads of used or scrap tires or tire pieces; and for transportation vehicles owned and operated by municipalities, counties, or other governmental entities or agencies used to transport used or scrap tires to an authorized facility. Section 330.807(c) pertains to proposed general requirements, and requires transporters to register prior to conducting business, to maintain records using the manifest system, and to be responsible for ensuring that scrap tires or tire pieces are transported to an authorized scrap tire facility. Section 330.807(d) proposes to require transporters to retain all manifests, work orders, and invoices showing the collection and disposition of all used or scrap tires and tire pieces, for a period of at least three years at the designated place of business and available to the executive director upon request. Section 330.807(d) also proposes de-

tailed requirements concerning any changes made to the face of an original record. Section 330.807(e) contains annual report requirements for transporters. Proposed §330.807(f) pertains to interstate transportation, and requires compliance with applicable requirements of this subchapter by persons who transport or otherwise manage used or scrap tires, including persons who transport from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport in Texas but have their place of business outside the state. There is a proposed conditional exemption for persons who transport tires from outside the state, and go through the state without leaving tires in the state (i.e., those which do not originate or end up in Texas).

Manifest system requirements are proposed in §330.808, including manifest requirements applicable to generators, transporters, and authorized facilities. It is proposed that generators be required to obtain the completed manifest within 60 days after the scrap tires or tire pieces were transported off-site by the transporter, and there are proposed requirements concerning uncompleted manifest and maintenance of records. Finally, proposed §330.808 states that if a transporter removes for beneficial use all tires from an individually manifested load, the transporter shall return the original manifest to the generator within 60 days of the date of collection.

Proposed new §330.809 contains standards for storage of used or scrap tires or tire pieces. Section 330.809(a) states that the standards are applicable to persons that store or intend to store used or scrap tires or tire pieces, with exemption from this subchapter provided for the use of tires in the storage, protection, or production of agricultural commodities, and that storage of used or scrap tires or tire pieces requires registration in accordance with this proposed subchapter. Under §330.809(b), registration and deed recordation is proposed to be required for any property intended for storage of used or scrap tires or tire pieces. Other general requirements of this proposed subsection include: deed recordation; ensuring that the received tires have been manifested; abiding by all state and local codes and permitting, licensing, and registration requirements; maintaining a copy of the mechanism for financial assurance on-site, which is to be made available for inspection purposes; and submitting an annual summary of activities through the end of each calendar year on a form provided by the executive director, to be submitted no later than March 1 of the following year, giving the number of used or scrap tires or tire pieces received and their disposition, and giving the number of used or scrap tires or tire pieces removed from the facility.

Proposed new §330.810 contains requirements for scrap tire storage site registration. This section contains proposed requirements for obtaining a registration from the executive director, and spells out proposed registration application requirements for scrap tire storage sites, including general application requirements, site and surrounding area information requirements, engineering information requirements, and evidence of financial assurance. Section 330.810(a) states that persons who store more than 500 used or scrap tires or tire pieces (or weight equivalent), or more than 2,000 used or scrap tires (or weight equivalent) shall be required to obtain a scrap tire storage registration from the executive director, pursuant to §330.805, with the proposed stipulation that storage activities shall not commence without an approved registration issued by the executive director. Section 330.810(b) sets out registration application requirements, including information concerning the number of copies, preparation, application drawings, maps, and applicant's statement. Site and surrounding area information requirements are proposed to include location maps, topographic maps, land ownership maps and lists, floodplain maps, legal description of the storage facility, property owner affidavit, and fire marshall approval of the fire protection system. Engineering information requirements are proposed to include site layout plan, drainage plan, fire plan, cost estimate for closure, and a detailed site operating plan. Finally, evidence of financial assurance is proposed to be required. Proposed §330.810(c) contains time frames for registration application processing, while §330.810(d) pertains to term limits, with an expiration 60 months from the date of issuance unless there is a change in ownership, and with renewal required prior to the expiration date.

Proposed new §330.811 contains the design requirements for scrap tire storage sites, which include safety standards, pile design specifications, processing standards, and requirements concerning aisle space, fire lane, buffer zone, fire protection, drainage, signs, flood protection, and compliance with all local building codes, fire codes, and other appropriate local codes. Section 330.811(a) sets out the proposed safety standard that scrap tire storage sites shall be designed so that the health, welfare, and safety of operators, transporters, and others who use the sites are maintained. Section 330.811(b) includes limitations on the size of tire piles, except where a variance has been authorized by the executive director upon request, and after public comments are considered, and requirements relating to tire storage in trailers, enclosed buildings, and other types of covered enclosures. Section 330.811(c) includes the proposed requirements that outdoor tire piles be provided with fire lanes and all-weather roads including access to public roads, and other design and operating requirements. Under §330.811(d), a minimum buffer zone of 40 feet is proposed for any supersize piles and 40 feet with an opportunity for a variance for other outdoor tire piles. Section 330.811(e) includes the requirement, with a variance, for scrap tires to be split, quartered, or shredded within 90 days from the date of delivery to the site. Off-the-road tires, not including truck tires, are exempt from this requirement under this proposal. Appropriate vector controls are also required under proposed §330.811(e). Proposed §330.811(f) contains the access control requirement of a fence completely around the facility with a gate that is locked when the facility is closed, and for a scrap tire storage site the fence must be a chain-link type security fence at least six feet high. Proposed §330.811(g)-(h) contain fire-protection requirements, including options for fire hydrants, a storage pond, or a tank at the facility, and including large capacity dry chemical fire extinguishers. Proposed §330.811(i) requires, where necessary, diversion of rainfall runoff or other uncontaminated surface water within the site to a location off-site. Section 330.811(j) contains proposed entrance sign requirements. Proposed §330.811(k) requires sites in the 100-year floodplain to be protected, and requires demonstration that the tire storage will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or result in washout of tires, tire pieces, or other material so as to pose a hazard to human health and the environment. Under proposed §330.811(l), the site shall be designed in accordance with all local building codes, fire codes, and other appropriate local codes.

Proposed new §330.812 contains record-keeping requirements applicable to scrap tire storage sites, which include general requirements and requirements relating to daily logs, manifests,

and annual reporting. Additionally, it is proposed that where local ordinances require controls or records more stringent than the requirements of this subchapter, the owner or operator shall use such criteria to satisfy the commission's requirements.

Proposed new §330.813 contains scrap tire facility requirements applicable to owners and/or operators of certain facilities at which used or scrap tires or tire pieces are processed or used for energy recovery or recycling. The proposed section states that an applicant for a scrap tire recycling facility who intends to have more than a 30-day supply or who intends to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers and who is solely a scrap tire processing facility with no recycling or energy recovery on-site must obtain a scrap tire storage site registration. The proposed section also includes scrap tire facility registration requirements, including the requirement to register prior to commencing operations and requirements relating to the application for registration. General requirements are included concerning local ordinances, vector control, fire protection, operation of vehicles and equipment, and annual reporting.

Proposed new §330.814 contains requirements for scrap tire transportation facilities storing tires for longer than 30 days to register, and to comply with all applicable requirements contained in §330.805, concerning registration.

Proposed new §330.815 sets forth tire monofill permit requirements. Section 330.815(a) states that, in accordance with §330.4(a), no person may cause, suffer, allow, or permit the underground disposal or placement of tires or tire pieces into a tire monofill unless such activity is authorized by a permit from the commission; and that no person may commence physical construction of a tire monofill without first having submitted a permit application in accordance with certain Chapter 330 permit procedures and having received a permit from the commission. Section 330.810(b) contains the allowance that a separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if such disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site, with the proposed stipulation that such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

Proposed new §330.816 contains requirements relating to LRPUT. Under proposed §330.816(a), notification to the executive director in writing and subsequent approval to proceed is required before the reclamation project may be initiated. It is proposed that the executive director may withhold such approval if the information submitted is not complete, that the executive director has 60 days to review the notification for completeness, and that additional information may be requested. Section 330.816(a) also spells out the notification requirements, including certain maps, legal description, property owner's affidavits, capacity, time frames for the project, and professional engineer's certification. Section 330.816(b) contains the proposed requirement that undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil, and that any borrow area, hole or other disturbed land area to be used for a LRPUT must have existed prior to the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces. Proposed §330.816(c) states that the LRPUT shall not result in a public nuisance. Proposed §330.816(d) states that the owner and/or operator of the LRPUT shall notify the local fire marshall or fire department serving the area of the tire placement or fill activity. Proposed §330.816(e) contains the requirement that all tires used to fill land shall be split, quartered or shredded. Proposed §330.816(f) states that the owner and/or operator of the LRPUT shall comply with all applicable local ordinances. Proposed §330.816(g) limits the volume percent of tire pieces below ground to 50% maximum, with the rest of the placement being natural, inert material acceptable for filling land, such as rubble, soil, or rocks. If greater than 50% tire pieces by volume are placed below the ground, it is proposed that the site is considered to be a tire monofill subject to §330.815. Proposed §330.816(h) requires at least an 18-inch soil cover. Proposed §330.816(i) states that the owner and/or operator shall register as a scrap tire facility if a shredding operation is conducted on site for the processing of tires. Proposed §330.816(j) states that a scrap tire storage site registration is required if storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers would qualify as a tire storage site subject to registration under §330.811, and a scrap tire storage site registration is required if the duration of the LRPUT extends beyond 90 days from the date of delivery of tires or tire pieces to the site. Finally, proposed §330.816(k) requires the executive director to issue an identifying number at the time the approval letter for the LRPUT is issued, and requires that this number be used in correspondence relating to the LRPUT.

Proposed new §330.817 contains requirements relating to the SAPEL, which consists of scrap tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate tire collection service and which pose a threat to public health and safety or the environment. Under §330.817(a)(1), the executive director may designate SAPEL collection entities and impose certain conditions on them, as necessary to minimize disruption of activities at generator locations. Section 330.817(a)(1) also states that implementation of this section is not intended to impair or reduce existing generator collection where this collection service is currently adequately provided. Section 330.817(a)(2) states that, unless otherwise provided by the executive director, the requirements in §330.817, relating to the PEL Program, do not apply to the SAPEL or SAPEL process. Section 330.817(a)(3) covers generator responsibilities relating to the SAPEL, stating that a generator wishing to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions and shall make his site available for access by designated collection entities. Finally, §330.817(a)(3) states that failure to comply may result in tires at that site being ineligible for listing on the SAPEL. Proposed §330.817(b) contains requirements relating to SAPEL contracts. Under §330.817(b)(1), the executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires. Section 330.817(b)(2) contains requirements that may apply to a designated collection entity, as part of the SAPEL contract.

Proposed new §330.818 contains provisions concerning the PEL program. Section 330.818(a)(1) states that this section establishes standards applicable to the creation and maintenance of the PEL, the identification of illegal scrap tire sites, and the

determination of a Potentially Responsible Party (PRP). Section 330.818(a)(2) would allow the executive director to issue contracts to procure clean-ups for the removal of tires from PEL sites through a competitive bid process, and states that if no reasonable bids are submitted, or at the executive director's discretion, the executive director may rebid the PEL sites. Section 330.818(b)(1) states that the PEL is a list maintained by the executive director of illegal scrap tire sites with over 500 scrap tires or tire pieces identified prior to December 31, 1997 and classified by the executive director; that the list shall be used by the executive director for the awarding of sites to successful contract bidders; and that scrap tires or tire pieces obtained from the PEL sites are eligible for payment according to contract guidelines. Section 330.818(b)(2) states that the executive director may, on an as-needed basis and with notice, recontract or execute additional contracts for any PEL site identified and contracted in the state. Section 330.818(b)(3) and (4) contain conditions relating to site access by commission members, employees, or agents, or authorized contractors or subcontractors. Section 330.818(b)(5) states that authorized contractors and their subcontractors are not considered agents of the state, and that they are solely responsible for their own actions and the actions of their agents. Under proposed §330.818(b)(6), property owners are not eligible for future tire cleanup assistance once their PEL site has been cleaned up. Section 330.818(c) states that authorized scrap tire facilities that intend to receive payment for the utilization of scrap tires or tire pieces must enter into a PEL scrap tire site clean-up contract as a guarantee of job performance, and that should the facility's registration be suspended or revoked, then the PEL sites remaining in the PEL Scrap Tire Site Clean-up Contract shall be rebid. Section 330.818(d) spells out the authority of commission personnel with regard to cleaning up PEL sites, including requirements for the contractor to report on the status of the clean-up activities to the executive director; that the executive director shall have the authority to suspend clean-up activities at a PEL site in order to ensure protection of public health and safety, or the environment; that the executive director may undertake immediate remediation of a site under certain situations; that the executive director may implement a remedial program for a site if a person ordered to eliminate an imminent and substantial endangerment has failed to do so within the specified time limits; that the commission or the executive director may bring suit against a potentially responsible party to recover reasonable expenses, with criteria listed for determining whether a person is a potentially responsible party; that the commission or executive director shall seek to file the suit no later than one year after the date removal or remedial measures are completed; and that the commission or the executive director, in lieu of bringing suit to recover costs, may seek to file a lien against the property on which the site is located.

Proposed new §330.819 relates to public notice of intent to operate. Section 330.819(a) contains requirements for registered scrap tire storage facilities to publish notice in a local area newspaper, and provides for a variance to the public notice requirement, which may be requested if similar notice has been published within the previous 12-month period and the notice was associated with activities under the jurisdiction of this subchapter. Section 330.819(b) contains the requirement for registered scrap tire facilities that have submitted an application amendment for a variance from the 8000 square feet pile size to publish notice of intent to increase the pile size. Section 330.819(c)-(e) spell out minimum requirements for notices of intent published by scrap tire storage site owners.

Proposed new §330.820 relates to motion for reconsideration by a person affected by an issued registration, and states that such a person may file such a motion pursuant to §50.39. The requirements of this new section are proposed to be added as new tire rule requirements, as opposed to requirements that have been streamlined, clarified, and/or reformatted from the existing tire rules.

Proposed new §330.821 contains requirements relating to closure cost estimates for financial assurance. Section 330.821(a) contains requirements for owners or operators of scrap tire storage sites to prepare, as part of the facility's registration application, a written cost estimate for the cost of hiring a third party to close the facility, which is to be determined by the sum of the estimated cost for a third party to undertake the closure and cleanup, with a minimum level of $3000 proposed. Section 330.821(b) states that the closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment on site; that the executive director shall evaluate and determine the amount of closure costs for which evidence of financial assurance is required, and may amend the closure cost estimate provided by the owner or operator; and that the owner or operator remains responsible for the entire costs to close the site in cases where the closure cost estimate was not sufficient. Section 330.821(c) contains the requirement that any amendment application include a recalculation of the closure cost estimate based on any requested volume increases; that facilities shall not increase the stored volume until the registration amendment has been approved by the executive director; and that only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining financial assurance requirements. Section 330.821(d) contains conversion factors concerning the calculation of closure costs estimates for financial assurance. Section 330.821(e) states that the capacity of a site, as calculated for closure costs, may not be exceeded without an approved amended registration, along with posting at the facility of the revised financial assurance. Section 330.821(f) states that a copy of the latest approved closure cost estimate and a copy of the financial assurance mechanism must be kept at the facility during its operating life. Section 330.821(g) states that financial assurance required under this section shall be provided in accordance with §37.3001 and §37.3011. Section 330.821(h) states when closure will begin. Section 330.821(i) states that following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so, or when closure begins under subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.

FISCAL NOTE Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five- year period these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The significant fiscal implications of requirements for the management of used or scrap tires are related to the repeal of the statutory authority for the tire program effective December 31, 1997. Revenue to the waste tire fund, approximately $29 million annually, will not be collected after December 31, 1997 and no statutory authority for payments from the fund for

processing or end use of used or scrap tires will exist beyond that date. For the period January 1, 1998 through August 31, 1999, additional funding for management of used or scrap tires has been provided through an emergency appropriation for the 1998-1999 biennium, however, no funding for the used or scrap tire program is currently authorized beyond August 31, 1999. The costs to the state of management of the used or scrap tire program will decrease as a result of the repeal of the specific statutory authority, however, no significant costs to state government are anticipated as a specific result of adoption of the rules as proposed. The proposed rules will retain certain elements of the existing regulatory program under more general authority for regulation of used or scrap tires and management of solid waste. The costs to the state of these activities as they are proposed will not vary significantly from the costs currently being incurred under existing regulations and statutory authority.

The repeal of the specific statutory provisions for management of used or scrap tires may result in increased costs to units of local government. These costs will relate to increased requirements for management of solid waste, litter abatement and removal of illegally discarded tires. Costs to local governments are not anticipated to increase as a direct result of the proposed rules and may, in fact, be mitigated by the provision of emergency appropriations beyond the sunset date of the waste tire program and the adoption of these sections in order to retain basic elements of the waste tire program. Continuing regulation of used or scrap tires, including cleanup of illegal tire disposal sites, regulation of used or scrap tire facilities, financial assurance provisions for storage sites and authorization for legal landfilling of used or scrap tires will reduce many of the potential costs to local governments of waste management and illegal dumping, at least for the period for which funding is available.

PUBLIC BENEFIT Mr. Minick has also determined that for each year of the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improved regulation and management of solid waste and used or scrap tires, enhanced protection of human health and safety, and increased conservation of energy and natural resources. The economic costs related to these rules are those associated with the operation of facilities subject to the rules - generators and transporters of used or scrap tires and operators of storage, processing or disposal facilities. The costs imposed by these sections may be considered to be significant only when compared to the costs of compliance in the absence of specific regulations for management of used or scrap tires with the repeal of the statutory authority for the waste tire program. The actual costs of compliance with proposed rules are not anticipated to be materially different for most affected operators from the costs associated with compliance with the sections that are proposed to be repealed. Some compliance costs for generators and handlers of used or scrap tires could decrease. These reductions will result from changes in requirements and allowable time periods for storage of used or scrap tires, reduced requirements and associated costs for transporters, and changes to registration and application requirements, including reductions in certain processing fees. Other operating requirements, including those for demonstration of financial assurance, may result in increased costs for energy recovery and recycling facilities storing more than a 30-day supply of used or scrap tires. However, financial assurance costs for certain facilities may actually be reduced as a result of the use of proposed cost estimate procedures, rather than formulas, and the authorization of landfilling of used tires, which will reduce the disposal costs required to be guaranteed. Although actual cost impacts to affected persons and facilities may be positive or negative, no substantial economic costs of these proposed rules, separate and distinct from the sunset of the waste tire program, are anticipated to occur. Many of the persons subject to these proposed rules are small businesses. The effects on small businesses will be directly related to the size and type of facility, the number of used or scrap tires (or equivalents) generated, stored, processed or disposed, and other site-specific conditions. Persons purchasing new or good used tires will not be required to pay a fee for the sale of tires after the sunset date for the waste tire authority. This future cost savings, equivalent to $2.00 for a new passenger car tire, will not be affected by the adoption of these rules. These are no other economic costs anticipated for persons required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to adopt a set of regulations for the sound and proper management of used or scrap tires or tire pieces that are classified as municipal solid waste. The rules will substantially advance this specific purpose by adopting a set of standards controlling the storage, transportation, treatment, and disposal of used tires, scrap tires, and tire pieces. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes provide for a streamlined set of regulatory management standards and do not limit or restrict a person's rights in private real property.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code Annotated §2007.003(b) apply to these rules: an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state; and an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The executive director has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will encourage safe and appropriate storage, transportation, treatment, and disposal of used tires, scrap tires, and tire pieces that are classified as municipal solid wastes, which will result in an overall environmental benefit across the state, including in coastal areas. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission seeks public comment on the consistency of the proposed rules.

PUBLIC HEARING A public hearing on the proposal will be held on January 27, 1998 at 10:00 a.m. in Room 2210 of Building F of the commission's Park 35 Office Complex located at 12100 North IH-35, Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 97140-330-WS and may be submitted to Heather Evans, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 201, 12100, Park 35 Circle, North Interstate 35, Building F, Room 4101 or P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Written comments must be received by 5:00 p.m., February 2, 1998. For further information or questions concerning this proposal, please contact Debbie Bohl, Municipal Solid Waste Division, at (512) 239-0044.

Subchapter P. Fees and Reporting

30 TAC §330.601

The amendment is proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements the Health and Safety Code, Chapter 361.

§330.601. Purpose and Applicability.

(a) Purpose.

(1) Fees. The commission is mandated by the Solid Waste Disposal Act, Health and Safety Code, Chapter 361, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Fee requirements for persons who collect and/or transport municipal wastewater treatment plant sludges, water supply treatment plant sludges, grit trap waste, grease trap waste, and septage are contained in §330.448 of this title (relating to Transporter Fees). [~~Transportation fee schedules for persons who engage in the collection and/or transportation of used or scrap tires are contained in §330.817 of this title (relating to Transporter Fees)~~]. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.32 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

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

(b) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9716935
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1970

Subchapter R. Management of Whole Used or Scrap Tires

30 TAC §§330.801–330.818. 330.820–330.836, 339.838, 330.840–330.889

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

The repeals are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state. These amendments and new sections are also proposed under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024, which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed repeals implement the Health and Safety Code, Chapter 361.

§330.801. Purpose.

§330.802. Applicability.

§330.803. Definitions.

§330.804. The Use of Tire Shreds in Landfills.

§330.805. Generators of Scrap Tires.

§330.806. Generator Registration.

§330.807. Generator Record Keeping.

§330.808. On Site Storage.

§330.809. Transportation Requirements.

§330.810. Penalties for Generators.

§330.811. Transporters of Whole Used or Scrap Tires.

§330.812. Transporter Registration.

§330.813. Delivery Requirement.

§330.814. Vehicle and Equipment Sanitation Standards.

§330.815. Transporter Record Keeping.

§330.816. Interstate Transportation.

§330.817. Transporter Fees.

§330.818. Penalties for Transporters.

§330.820. Processor's WTRF Allocation Method.

§330.821. Processor's WTRF Allocation Model Factors.

§330.822. Calculation of Factors for Processor's WTRF Allocation Model.

§330.823. Determination of the Weighing Factors for the Processor's Allocation Model.

§330.824. Notification of Allocation.

§330.825. Fiscal Audits.

§330.826. WTRF Fiscal Audits.

§330.827. Overpayment from the WTRF.

§330.828. WTRF Program Reviews, Applicability and Responsibility.

§330.829. WTRF Program Reviews.

§330.830. Penalties for Records Violations.

§330.831. Storage of Whole Used or Scrap Tires or Shredded Tire Pieces.

§330.832. Waste Tire Storage Facility Classification.

§330.833. Waste Tire Storage Facility Registration.

§330.834. Evidence of Financial Responsibility.

§330.835. Requirements for a Type VIII-R Waste Tire Storage Facility.

§330.836. Delivery Requirement.

§330.838. Requirements for a Type VIII-W.T. Waste Tire Storage Facility.

§330.840. Penalties for Owners or Operators of Waste Tire Storage Facilities.

§330.841. Waste Tire Facility Processors of Scrap Tires.

§330.842. Waste Tire Facility Classification and Operation.

§330.843. Waste Tire Facility Registration.

§330.844. Evidence of Financial Responsibility.

§330.845. Waste Tire Facility Record Keeping.

§330.846. Deliver Requirement.

§330.847. Operational Requirements for Waste Tire Facilities.

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§330.889. Special Conditions for Beneficial Use of Scrap Tires.

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.

Issued in Austin, Texas, on December 19, 1997.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1970

Subchapter R. Management of Used or Scrap Tires

30 TAC §§330.801–330.821

The new sections are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state. These amendments and new sections are also proposed under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, §361.112(b) which provides the commission with the authority to register a site to store more than 500 used or scrap tires, §361.112(e) which provides the commission with the authority to adopt forms and procedures for the registration and permitting, and §361.112(m) which provides the commission with the authority to adopt rules to regulate storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility.

The proposed new sections implement the Health and Safety Code, Chapter 361.

§330.801. Purpose.

The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

§330.802. Applicability.

(a) This subchapter applies to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials and that are regulated by the commission under §330.3 of this title (relating to Applicability).

(b) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by registered generators according to the requirements in §330.808 of this title (relating to Manifest System).

(c) Scrap tires that are off-the-road tires intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, or mining equipment are exempt from the requirements to be split, quartered or shredded at a storage site or a permitted landfill.

§330.803. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

30-Day supply - An amount equal to the highest documented monthly consumption of tires consumed for energy recovery or legitimately recycled in the six-month period preceding the month for which the supply is being calculated. A facility in operation for less than six months shall submit an estimate of a 30-day supply for commission review, evaluation and approval.

Alter - To modify any record or document kept or received by any entity subject to the requirements of this subchapter.

Authorized representative- A facility owner or a person designated in writing by a facility owner to sign documents, make commitments for the entity, and represent the entity in all matters related to the application for registration or permit.

Authorized scrap tire facility- A facility authorized to accept scrap tires including, but not limited to, a registered scrap tire storage site, scrap tire facility or permitted landfill.

Closure- The cessation of acceptance of used or scrap tires or tire pieces for processing and/or storage which results in taking the facility out of service.

Fleet operator - An entity that owns or operates more than 15 vehicles and generates 30 or more used or scrap tires per calendar quarter.

Generator - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that accepts used or scrap tires or tire pieces for temporary storage, is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

Good used tire- A used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

Land reclamation - The filling, rehabilitating, improving and restoring of excavated and/or deteriorated and/or disturbed land in order to reclaim and prepare it for reuse for a long-term beneficial purpose.

Land reclamation projects using tires (LRPUT) - A project to fill, rehabilitate, improve and/or restore already excavated, deteriorated and/or disturbed land, which uses no more than 50% by volume of tire pieces along with natural inert fill materials such as rock, soil and debris, for the purpose of restoring the land to its approximate natural grade and to prepare and/or reclaim the land for re-use. Projects for the use of used or scrap tires or tire pieces as a component of an On-Site Sewage Facility as defined in §285.50 of this title (relating to General Requirements for Registration and Certification) are not included in this definition.

Manufacturer reject tire - A tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

Off-the-road tire - A tire intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, agricultural machinery or mining equipment. Truck tires are not off-the-road tires.

Operator - The person responsible for the overall operation of the facility.

Owner - The person or company who owns the facility or part of a facility.

Processing - The extraction of materials from or the transfer, volume reduction, conversion to energy or separation and preparation of solid waste for reuse or disposal.

Professional engineer - A person licensed by The Texas Board of Professional Engineers to practice engineering in the State of Texas.

Scrap tire- A tire that can no longer be used for its original intended purpose. A used tire that can be salvaged and used for another purpose, retreaded or sold as a good used vehicle tire is not a scrap tire. A whole used tire that cannot be reused for or legally modified to be reused for its original intended purpose is a scrap tire.

Scrap tire facility - A facility which processes, conducts energy recovery or recycles used or scrap tires or tire pieces.

Scrap tire storage site - A registered facility where more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers. The term does not include a transportation facility.

Scrap tire transporter - A registered entity that collects and transports used or scrap tires or tire pieces for storage, processing, recycling or energy recovery.

Supersize pile- For the purpose of this subchapter, a supersize pile shall be any shredded tire pile in excess of 8,000 square feet up to a maximum of 24,000 square feet. All sites with piles designated as supersize shall be required to receive prior approval from the local fire marshal, publish public notice of intent in accordance with §330.819 of this title (relating to Public Notice of Intent to Operate), and maintain at least a 40-foot fire lane.

Tire monofill - A below-ground depository, landfill or landfill trench consisting of greater than 50% by volume of tires and/or tire pieces.

Tire piece - A particle of a scrap tire or scrap tire piece that has been split, quartered or shredded to a usable size such as two-inch minus, or other size required by an industry user or recycler.

Tire processor - A registered scrap tire facility where used or scrap tires or tire pieces are collected and shredded for delivery to a scrap tire storage site, or a facility that recycles, reuses or recovers the energy from the tire pieces. Mobile tire processing facilities shall be considered scrap tire facilities and required to comply with all applicable requirements contained in this subchapter relating to scrap tire facilities.

Tire shredder - A piece of equipment used to split, shred or quarter tires, whether stationary, or mounted on wheels or skid mounted.

Transportation facility - A facility such as a marine terminal, rail yard, or trucking facility where scrap tires or tire pieces may not be stored for periods longer than 30 consecutive calendar days.

§330.804. General Requirements.

(a) An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration or permit.

(b) Used or scrap tires may not be commingled with any other type of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles.

(c) Any permitted municipal solid waste landfill site may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only. Storage shall be above ground in controlled storage piles or in enclosed and lockable containers, pursuant to §330.811 of this title (relating to Design Requirements for Scrap Tire Storage Site). A permitted municipal solid waste landfill site shall not store tires or tire pieces in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers without prior written approval from the executive director or the commission. Approval of storage or processing shall be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) or an amendment under §305.62 of this title (relating to Amendment). The tire storage and/or processing activity shall not be conducted in a manner that will adversely affect operations of the municipal solid waste disposal site, or otherwise endanger human health or the environment.

(d) All vehicles and equipment used for the collection and transportation of used or scrap tires or tire pieces shall be constructed, operated, and maintained to prevent loss of used or scrap tires or tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to prevent odors and insect breeding. Any vehicle or trailer used to transport used or scrap tires or tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall. Trailers or trucks used to transport used or scrap tires shall either be fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting any amount of tire pieces shall be covered with a tarp during transit.

(e) A person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires in a designated recycling collection area at a permitted landfill may be granted an exemption from shredding, splitting or quartering the scrap tires by the executive director, upon request.

§330.805. Registration Requirements.

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(1) An application for a registration shall be made on a form obtained from the executive director, upon request. The applicant may deliver the completed application to any commission regional office or mail it to the following address: Texas Natural Resource Conservation Commission, P.O. Box 13087, Mail Code 125, Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

(A) the name, mailing address, county, and telephone and facsimile numbers of the applicant;

(B) the name, mailing address, and telephone number of the property owner where the scrap tire storage site, scrap tire facility, or transportation facility is located;

(C) the street location of the scrap tire storage site, scrap tire facility, or transportation facility, including county;

(D) the approximate number of used or scrap tires or tire pieces (in tons) that will be stored at the scrap tire storage site or the scrap tire facility;

(E) the existing land use surrounding the scrap tire storage site, scrap tire facility, or transportation facility; and

(F) the tax identification number.

(2) The application must be signed by the authorized representative and, if applicable, the professional engineer who assisted in its preparation.

(3) Entities that are registered by the executive director shall maintain a copy of their commission registration notice at their designated place of business.

(4) A registered entity shall provide written notice to the executive director, within 15 days, if:

(A) the mailing address or telephone number of the entity changes;

(B) the office or designated place of business is relocated;

(C) the applicant's registered name is changed; or

(D) the authorized representative has changed. If the authorized representative has changed, a registered entity shall provide a written, signed designation of the new authorized representative, including the representative's name, mailing address, and telephone and facsimile numbers.

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

(6) Annulment, suspension, revocation or denial of registration procedures are as follows:

(A) The executive director may annul, suspend or revoke a registration or deny an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this chapter;

(ii) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(iii) failure to maintain equipment in safe working order;

(iv) altering any record maintained or received by the registrant;

(v) delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration under §330.804(c) of this title (relating to General Requirements);

(vi) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(vii) failure to submit any applicable annual report;

(viii) failure to pay registration fees;

(ix) failure to maintain financial assurance as required;

(x) dumping of used or scrap tires or tire pieces illegally;

(xi) collection, storage, transportation or processing of used or scrap tires or tire pieces without registration, as required in this section;

(xii) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section.

(B) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, an entity shall not collect, store, transport or process used or scrap tires or tire pieces regulated under this subchapter.

(C) The holder of a registration that has been revoked by the executive director may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the executive director a second time, the revocation shall be permanent.

(D) Appeal of annulment, suspension, revocation or denial of initial or renewal registration procedures are as follows:

(i) An opportunity for a formal hearing on the annulment, suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant, as shown in the records of the agency.

(ii) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address. If the registration is denied, a person shall not collect, store, transport or process used or scrap tires or tire pieces.

(iii) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedures Act, Texas Government Code Annotated, §§2001 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 and the rules of the commission.

§330.806. Generator Requirements.

(a) Each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility.

(b) The following requirements apply to on-site storage by generators:

(1) Generators may store used or scrap tires or tire pieces at the location where they are generated, provided the number of

used or scrap tires does not exceed 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers;

(2) Generators who store used or scrap tires in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers shall be required to obtain a scrap tire storage registration pursuant to §330.805 of this title (relating to Registration Requirements);

(3) Retailers and wholesalers who sell good used tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, or has been designated on the manifest as removed for reuse by a registered transporter. Used tires that are to be resold as commodities, but are not sorted, marked, classified, and arranged in an organized manner for sale to the consumer, shall be considered as stockpiled scrap tires and the site shall be subject to registration as a scrap tire storage site; and

(4) Tires stored outside shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(c) A generator of used or scrap tires may transport its scrap tires between its own business locations or to an authorized facility without a transporter registration, but must still comply with all manifesting requirements in §330.808 of this title (relating to Manifest System) and record keeping requirements in §330.807(d) of this title (relating to Transporter Requirements).

§330.807. Transporter Requirements.

(a) Applicability. The regulations contained in these sections establish standards applicable to transporters collecting and hauling used or scrap tires or tire pieces.

(b) Exemptions.

(1) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment, destination and the number of tires in each shipment. These records shall be made available to the executive director upon request.

(2) Any person who is registered with the executive director as an On-Site Sewage Facility Installer under §285.50 of this title (relating to General Requirements for Registration and Certification) may transport used or scrap tires or tire pieces for construction of an on-site sewage disposal system without a transporter registration, but must still comply with all manifesting requirements under §330.808 of this title (relating to Manifest System) and record keeping requirements in subsection (d) of this section.

(3) Retreaders who haul tires from customers for the purpose of retreading or who return tires to customers after retreading or recapping, do not have to register as transporters; however, they must register as transporters if they haul tires to an authorized facility.

(4) Trucks engaged in municipal solid waste collection or commercial route collection which handle incidental loads of used or scrap tires or tire pieces as part of their normal household or commercial collection activities, may transport such incidental small quantities of scrap tires to a landfill, transfer station or other collection point for proper handling without a transporter registration.

(5) Transport vehicles owned and operated by municipalities, counties, or other governmental entities or agencies which are used to transport used or scrap tires to an authorized facility shall be exempt from registration under this section; however, each load of used or scrap tires shall be manifested in accordance with §330.808 of this title.

(c) General Requirements.

(1) Transporters shall register their operations with the executive director before conducting business, according to the registration procedures outlined in §330.805 of this title (relating to Registration Requirements).

(2) Transporters shall maintain records using a manifest system, as required in §330.808 of this title.

(3) Each transporter shall be responsible for ensuring that used or scrap tires or tire pieces are transported to an authorized scrap tire facility.

(d) Maintenance of records. The transporter shall retain all manifests, work orders and invoices showing the collection and disposition of all used or scrap tires and tire pieces. Records shall be retained by the transporter at the designated place of business for a period of at least three years and made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of the change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(e) Annual report. Transporters shall submit to the executive director an annual report of their activities from January 1 through December 31 of each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of such tires, and the number of whole used or scrap tires delivered to each facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(f) Interstate transportation. Persons who engage in the transportation of used or scrap tires or tire pieces from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport used or scrap tires or tire pieces in Texas but have their place of business in another state or country, shall comply with all of the requirements for transporters contained in this subchapter. If such persons also engage in any activity of managing used or scrap tires or tire pieces in Texas by storage, processing or disposal, they shall follow the applicable requirements for operators of such activities. Persons who engage in the transportation of used or scrap tires or tire pieces which do not originate or terminate in Texas, are exempt from these regulations, except for §330.804(d) of this title (relating to General Requirements).

§330.808. Manifest System.

(a) Generators shall obtain from the transporter collecting tires from their place of business and maintain, a record of each individual load of used or scrap tires or tire pieces hauled off from their business location. The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the information pertaining to generator name, address, and telephone number, and number of tires removed on the manifest. The generator shall indicate the destination of all used or scrap tires or tire pieces removed from the business location. A representative of the generator shall sign the manifest acknowledging that the information on the manifest is true and correct.

(b) The transporter shall complete the information on the manifest pertaining to transporter identification and number of tires removed for beneficial reuse. Transporters shall maintain a manifest record of each individual collection and delivery. The transporter shall sign the manifest, acknowledging that the information on the manifest form is true and correct. If the transporter removes, for beneficial reuse, all tires from an individually manifested load, the transporter shall return the original manifest to the generator within 60 days of the date of collection.

(c) The authorized facility accepting delivery of the used or scrap tires or tire pieces shall complete the information on the manifest pertaining to the authorized facility identification and number or weight of tires or tire pieces accepted for delivery. A representative of the authorized facility shall sign the manifest, acknowledging that the information on the manifest form is true and correct. The authorized facility shall ensure that the top original of the five-part manifest is completely filled out and returned to the generator within 60 days of the date and time of collection as indicated in Section 1 of the manifest.

(d) A generator shall obtain the completed manifest within 60 days after the scrap tires or tire pieces were transported off-site by the transporter.

(e) The generator shall notify the appropriate commission regional office of any transporter or authorized scrap tire facility that fails to complete the manifest, alters the generator portion of the manifest, or fails to return the manifest within three months after the off-site transportation of the used or scrap tires or tire pieces.

(f) Originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces shall be retained by the generator for a period of three years. All such records shall be made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his or her initials with the date of such change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(3) Should the executive director identify discrepancies/errors in records, an opportunity will be given to justify, in writing, any such errors or discrepancies.

§330.809. Storage of Used or Scrap Tires or Tire Pieces.

(a) Applicability. This section establishes standards applicable to persons that store or intend to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers on any public or privately owned property. Persons that store used or scrap tires or tire pieces shall register in accordance with this subchapter. This subchapter does not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) General requirements.

(1) All owners and/or operators shall properly register their property with the executive director if the intended use of the property is for the storage of used or scrap tires or tire pieces, pursuant to §330.805 of this title (relating to Registration Requirements).

(2) At such time as a properly registered storage site begins operations, the owner and/or operator shall file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility.

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver scrap tires or tire pieces to their registered scrap tire storage site have manifested the used or scrap tires or tire pieces, pursuant to §330.808 of this title (relating to Manifest System).

(4) Owners and/or operators of waste tire storage facilities shall obtain all required necessary and appropriate state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(5) Owners and/or operators shall maintain a copy of the mechanism for financial assurance on-site as specified in Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Storage Facilities) which shall be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility.

(6) Owners and/or operators shall submit to the executive director an annual summary of their activities from January 1 through December 31 of each calendar year, showing the number and disposition of used or scrap tires or tire pieces received, and the number of used or scrap tires or tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

§330.810. Scrap Tire Storage Site Registration.

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers shall be required to obtain a scrap tire storage site registration from the executive director pursuant to §330.805 of this title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

(b) Application requirements.

(1) The application for a scrap tire storage site registration or amended registration shall consist of: the application form; site and surrounding area information; engineering information, including a site layout plan; and a site operating plan; and evidence of financial assurance as required under this section.

(2) Applications shall be submitted in triplicate.

(3) Preparation of the application shall be in accordance with the requirements of the Texas Engineering Practice Act, Article 3271a, Vernon's Annotated Texas Statutes. Each sheet of engineering plans, drawings, maps, calculations, computer models, cost estimates, and the title or contents page of the application shall be signed and sealed by a professional engineer in accordance with the Rules of the Texas Board of Professional Engineers.

(4) Drawings shall be legible and include a dated title block, scale, and responsible engineer's seal, if required. If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines. Drawings shall be submitted using a standard engineering scale.

(5) Each map or plan drawing shall have a north arrow, a legend and a reference to the base map source and date if the map is based upon another map. The latest revision of all maps shall be used. Maps shall show the following:

(A) all structures and inhabitable buildings within 500 feet of proposed site;

(B) location of all roads within one mile of the site that will normally be used to access the site;

(C) latitudes and longitudes;

(D) area streams;

(E) the property boundary of the site; and

(F) drainage, pipeline, and utility easements within or adjacent to the site.

(6) The applicant or an authorized representative shall provide a signed statement representing that he or she: is familiar with the application and all supporting data; is aware of all commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the scrap tire storage site in accordance with the application, the regulations, and any special provisions that may be imposed by the executive director.

(7) Site and surrounding area information includes the following.

(A) Maps.

(i) Location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation. At least one general location map shall be at a scale of one-half inch equals one mile. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P. O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(ii) Topographic maps. These maps shall be United States Geological Survey 7 1/2-minute quadrangle sheets or equivalent, marked to show the storage site boundaries and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey, Federal Center, Denver, Colorado 80225;

(iii) Land ownership map and list. This map shall locate the property owned by potentially affected landowners. The map shall show all property ownership within 500 feet of the site. A list shall be provided that gives each property owner's and easement holder's name and mailing address. The list shall be keyed to the Land Ownership Map.

(iv) Floodplain maps. These maps shall be the appropriate Federal Emergency Management Agency maps or other demonstration acceptable to the executive director indicating the location of any 100-year flood plain which may exist within the property boundary or surrounding area.

(B) Legal description. A legal description of the storage facility and the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application.

(C) Property owner affidavit. A statement from the property owner shall be submitted on a form provided by the executive director; and shall be witnessed and notarized. The form shall include:

(i) the legal description of the site;

(ii) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the site;

(iii) acknowledgment that the owner has a responsibility to file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility, at the time as the site actually begins operating; and

(iv) acknowledgment that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than five years after closure for the purpose of inspection and maintenance.

(D) Fire marshal approval. The fire marshal with jurisdiction over the facility location shall approve the fire protection system. A letter from the fire marshal shall be included in the application stating that the fire marshal has reviewed and approved the fire protection aspects of the application as well as the design of the all-weather roads to accommodate fire fighting vehicles. The fire marshal shall sign and date the Site Layout Plan.

(8) Engineering information includes the following.

(A) Site layout plan. The site layout plan shall include:

(i) location of storage areas;

(ii) location of fire lanes and fire control facilities;

(iii) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with §330.811(c) and (d) of this title (relating to Design Requirements for Scrap Tire Storage Site);

(iv) location of buildings; and

(v) location and description of processing equipment.

(B) Drainage plan. A drainage plan showing drainage flow throughout the scrap tire storage site area, locations of streams and any other important drainage feature of the facility. Calculations shall be presented to show that normal drainage patterns will not be significantly altered. If the executive director determines that

significant alteration will occur, the owner/operator shall design and provide additional surface drainage controls shall be designed and provided to mitigate the effects of the altered watershed, as required by the executive director.

(C) Fire plan. The fire plan and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

(i) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(ii) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and state and local emergency response teams. In this regard, a letter from each of these entities shall be included in the fire plan, which letters shall acknowledge receipt of a copy of the fire plan, and agreement to participate as stated in the fire plan.

(iii) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are to be included in the plan. The fire plan must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.). The plan shall also include the best route for these emergency response teams to take from their location to the site location.

(iv) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(v) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes, shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the fire plan) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(vi) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(vii) information about any insurance held by the company that would cover fire damage, loss, and cleanup.

(D) Cost estimate for closure. The applicant shall submit a cost estimate for closure costs in accordance with §330.821 of this title (relating to Closure Cost Estimate for Financial Assurance).

(E) Site operating plan. The Site Operating Plan shall include information to provide specific guidance and instructions for the management and operation of a scrap tire storage site and should include:

(i) information on security, facility access control, the hours and days during which tire-hauling vehicles will be admitted, traffic control and safety;

(ii) sequence of the development of the scrap tire storage site such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(iii) information on control of loading and unloading of used or scrap tires or tire pieces within designated areas, so as to minimize operational problems at the storage facility;

(iv) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(v) vector control procedures for any type of vector that may be found at the scrap tire storage site;

(vi) a procedure for removal of any waste material that is not a used or scrap tire or tire piece to a disposal facility permitted by the commission. This procedure must include the means to remove this illegally deposited waste material. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins, or shall be returned to the transporter's vehicle and removed from the scrap tire storage site. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(vii) the name of the facility employee who is designated by the owner or operator to inspect each load of used or scrap tires or tire pieces that is delivered to the scrap tire storage site. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel;

(viii) a procedure whereby the required transporter manifest, the daily log and other required documents shall be maintained at the scrap tire storage site for a period of three years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(ix) dust and mud control measures for access roads, fire lanes, and storage areas within the scrap tire storage site;

(x) posting of signs and enforcement of scrap tire storage site rules;

(xi) procedures for wet-weather operations;

(xii) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the scrap tire storage site in use during the active operating period of the scrap tire storage site. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(xiii) incorporation of other instructions as necessary to ensure that the scrap tire storage site personnel comply with all of the operational standards for the facility.

(9) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §330.821 of this title.

(c) Application processing. If an application for registration or amended registration of a scrap tire storage site is received that is not administratively or technically complete, the executive director shall notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant, which shall result in forfeiture of the application review fee. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant within 60 days of the receipt of the deficiency note that an adequate response cannot be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application or sufficient proof of inability within the time frames indicated, the application may be considered withdrawn without prejudice.

(d) Registration expiration. A scrap tire storage site registration shall expire 60 months from the date of issuance. A scrap tire storage site registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the scrap tire storage site registration. Failure to timely file an application for renewal shall result in automatic expiration of the registration.

§330.811. Design Requirements for Scrap Tire Storage Site.

(a) A scrap tire storage site shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the site are maintained.

(b) A registered scrap tire storage site may store scrap tires or tire pieces using outdoor or indoor tire piles or enclosed and lockable containers, or a combination of any of the aforementioned methods. Registered scrap tire storage sites shall be limited to a maximum of three piles of whole used or scrap tires on the ground.

(1) Tire piles consisting of scrap tires or tire pieces shall be no greater than 15 feet in height, nor shall the pile cover an area greater than 8,000 square feet. The executive director may grant a variance from the 8,000 square feet pile size requirement if the applicant can demonstrate to the executive director that the requested increased size of the piles is within the fire fighting capabilities of the local area and meets the other applicable requirements of this subchapter. The variance request shall include: the fire marshal's current dated signature on the site layout plan; and a letter from the fire marshal stating that fire protection is adequate for the increased pile size, and that the on-site roads are sufficient to accommodate fire fighting vehicles. If an existing facility requests a variance to increase pile size, the applicant must comply with public notice requirements contained in §330.819 of this title (relating to Public Notice of Intent to Operate). The executive director will receive public comments in consideration of the applicant's variance request.

(2) Scrap tires or tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Indoor storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(3) Scrap tires or tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable.

(c) There shall be a minimum separation of 40 feet between outdoor piles consisting of scrap tires or tire pieces. This 40-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be an all-weather road. Provisions shall be made for all-weather access from publicly-owned roadways to the scrap tire storage site, and from the entrance of the site to unloading and storage areas used during wet weather. The design (a cross-section), location, maintenance, and all-weather serviceability of interior access roads/fire lanes shall be addressed in the overall facility design and in the Site Operating Plan, and shall be indicated on the Site Layout Plan with appropriate design notes. At a minimum, these roadways shall have minimum 25-foot turning radii, shall be capable of accommodating firefighting vehicles during wet weather, and shall meet applicable local requirements and specifications. An estimate shall be provided of the number, size, and maximum weight of vehicles expected to use the site daily. The open space between buildings and outdoor tire piles consisting of scrap tires or tire pieces shall be a minimum of 40 feet; kept open at all times and maintained free of rubbish, equipment, tires, or other materials. In the event that a variance for supersize piles is approved by the executive director, the minimum fire lane separation shall be at least 40 feet. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety.

(d) Outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces shall not be within 40 feet of the property line or easements of the scrap tire storage site. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 40-foot property line or easement if the setback line meets the other applicable requirements of this subchapter and the applicant provides a written statement to the executive director from the local fire marshal that the distance that is the subject of the variance is adequate for fire fighting purposes. In the event that a variance for supersize piles is approved by the executive director, the minimum setback from property lines or easements will be 40 feet.

(e) Scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the scrap tire storage site. The executive director may grant a variance from this requirement if the executive director finds that circumstances warrant the exception. Off-the-road tires that are used on heavy machinery, including earthmovers, loader/dozers, graders, agricultural machinery and mining equipment are exempt from this requirement. Truck tires shall not be classified as off-the-road tires and thus are not exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(f) Access to the facility shall be controlled to prevent unauthorized activities. The facility shall be completely fenced with a gate that is locked when the facility is closed. A scrap tire storage site shall be enclosed by a chain-link type security fence at least six feet in height.

(g) The scrap tire storage site shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements.

(h) The scrap tire storage site shall have large capacity dry chemical fire extinguishers located in strategically-placed enclosures throughout the entire site, equally spaced within the facility to provide quick access from any location within the facility. The minimum number of fire extinguishers or fire hydrants for each scrap tire storage site shall be one per acre.

(i) If necessary, suitable drainage structures or features shall be provided to divert the flow of rainfall runoff or other

uncontaminated surface water within the scrap tire storage site to a location off-site.

(j) Each site shall conspicuously display at the entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using the words "scrap tire site," the commission registration number, and operating hours.

(k) A scrap tire storage site located within a designated 100-year floodplain area shall be designed with adequate environmental protection. The owner/operator shall demonstrate that the tire storage area will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or result in a washout of tires, tire pieces or other material so as to pose a hazard to human health and the environment.

(l) The scrap tire storage site shall be designed in accordance with all local building codes, fire codes, and other appropriate local codes.

§330.812. Scrap Tire Storage Site Record Keeping.

(a) General requirements.

(1) The owner/operator shall maintain on site at all times: a copy of the registration application with all supporting data, including the approved scrap tire storage site layout plan; the approved scrap tire storage site engineering information; a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism, as filed with the commission; and a copy of the commission's current rules. The facility supervisor shall be knowledgeable of current commission rules; the contents of the approved scrap tire storage site application; and the approved scrap tire storage site in relation to the operational requirements.

(2) All drawings or other sheets prepared for revisions to a scrap tire storage site layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Daily log. Persons that store used or scrap tires or tire pieces under this subchapter shall maintain a record of each individual delivery and removal. Such record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

(1) name and commission registration number of the scrap tire storage site;

(2) physical address of the scrap tire storage site;

(3) number of used or scrap tires or tire pieces received at the scrap tire storage site;

(4) number of used or scrap tires or tire pieces, removed from the scrap tire storage site (for disposal, resale, recycling, reuse or energy recovery);

(5) specific location in the scrap tire storage site (i.e., tire pile number, bin number, building number, etc.) where used or scrap tires or tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);

(6) description of specific events or occurrences at the scrap tire storage site relating to routine maintenance, spraying for vectors, observations of vectors, evidence of vectors, and fire or theft or other similar events or occurrences;

(7) number of used or scrap tires being held for resale, adjustments or other purposes;

(8) name and signature of facility representative acknowledging truth and accuracy of the daily log; and

(9) the name, address, telephone number, and date of the individual or company delivering or removing the used or scrap tires or tire pieces to or from the scrap tire storage site.

(c) Manifests. The scrap tire storage site operator shall retain all manifests received from a scrap tire facility or scrap tire transporter for used or scrap tires or tire pieces delivered to or removed from the scrap tire storage site. The scrap tire storage site shall ensure that the top original of the five-part manifest is returned to the generator completely filled out within 60 days of the date and time of collection as indicated in Section 1 of the manifest form. The scrap tire storage site shall follow the requirement in §330.808 of this title (relating to Manifest System).

(d) Annual report. Scrap tire storage site owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the scrap tire storage site;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a list of facilities where the scrap tire storage site owners or operators currently deliver used or scrap tires or tire pieces. Each scrap tire recycling or energy recovery facility listed shall include the following information:

(A) phone number of company and responsible person;

(B) physical address and mailing address of the scrap tire facility;

(C) detailed description of process to recycle, reuse or recover the energy from the used or scrap tires or tire pieces;

(D) exact quantities, by month, (in number of tires or weight of scrap tires or tire pieces) that the scrap tire storage site owner or operator delivered to the scrap tire facility.

(e) Local ordinances. Where local ordinances require controls or records more stringent than the requirements of this subchapter, the scrap tire storage site owner or operator shall use such criteria to satisfy the commission's requirements.

§330.813. Scrap Tire Facility Requirements.

(a) Applicability. The regulations contained in this section apply to owners or operators of facilities which process, conduct energy recovery or recycle used or scrap tires or tire pieces.

(b) Storage site registration requirement. If the applicant seeking registration for a scrap tire facility intends to have more than a 30 calendar day supply of tires at the facility site or intends to store in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers and is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site, then the applicant shall obtain a scrap tire storage site registration in accordance with §330.810 of this title (relating to Scrap Tire Storage Site Registration).

(c) Scrap tire facility registration requirements. Scrap tire facilities shall register their operation with the executive director

in accordance with §330.805 of this title (relating to Registration Requirements) prior to starting operations. An application for registration shall be made on a form provided by the executive director upon request. In addition to the General Registration requirements, the following registration information must be provided to the executive director:

(1) Persons that process, conduct energy recovery or recycle used or scrap tires or tire pieces shall submit an application for a registration number from the executive director for the operation of the scrap tire facility.

(2) The application for registration shall be prepared and signed by the applicant. The application shall identify the use of the tires (e.g., the product to be made and the end use market), and shall include information necessary for the executive director to make an evaluation of the proposed operation.

(3) The application for registration of a scrap tire recycling facility shall be submitted as one original and two copies to the executive director with all supporting data also submitted in triplicate unless otherwise directed by the executive director.

(4) Data presented in support of an initial or renewal application for a scrap tire facility shall consist of the following information:

(A) an application form provided by the executive director and location map(s) pursuant to §330.810 of this title;

(B) the maximum amount of tires (in pounds) that will be on the scrap tire recycling facility at any given time;

(C) the amount of tires necessary to provide a 30 calendar day raw material supply for the proposed recycling process;

(D) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(E) the product to be manufactured and the end use market;

(F) a property owner affidavit on a form provided by the executive director pursuant to §330.810 of this title; and .

(G) a list of all other applicable federal, state, and local permits and/or registrations with the associated numbers;

(5) Persons that conduct energy recovery shall obtain all other applicable authorizations (i.e., permits and/or registrations) necessary for conducting tire related activities prior to submittal of an application for registration as a scrap tire facility.

(d) General requirements.

(1) Where local ordinances require controls and records more stringent than the requirements of this subchapter, scrap tire facility operators shall use such criteria to satisfy commission requirements under this section.

(2) Stockpiles of used or scrap tires or tire pieces at the processing location that are awaiting splitting, quartering, shredding, processing or recycling shall be monitored for vector control and appropriate vector control measures shall be applied when needed, but in no event less than once every two weeks.

(3) If a scrap tire facility does not intend to provide its own fire fighting personnel or system, the facility shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. In addition, the scrap tire energy recovery facility shall provide a letter from the fire marshal within whose jurisdiction the scrap tire energy recovery facility is located stating that the fire marshal has reviewed and approved the fire protection system.

(4) The owner or operator of the scrap tire facility shall operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners.

(5) A scrap tire facility operator shall submit to the executive director an annual summary of facility activities from January 1 through December 31 of each calendar year, showing the number and type of scrap tires received, amount by weight of tires shredded, processed, burned for energy recovery or recycled, and the amount by weight of tire pieces removed from the facility. If the tire pieces were delivered to an end user, the annual report shall include the name of the end user, type of end user and the date of delivery to the end user. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

§330.814. Requirements for a Scrap Tire Transportation Facility.

Any person storing tires for periods longer than 30 calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities, shall register the facility with the executive director on a form provided by the executive director and comply with all applicable requirements contained in §330.805 of this title (relating to Registration Requirements).

§330.815. Tire Monofill Permit Required.

(a) In accordance with §330.4(a) of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the underground disposal or placement of tires or tire pieces into a tire monofill unless such activity is authorized by a permit from the commission. No person may commence physical construction of a tire monofill without first having submitted a permit application in accordance with §§330.50-330.65 of this title (relating to Permit Procedures) and received a permit from the commission.

(b) A separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if the underground disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site. Such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

§330.816. Land Reclamation Projects Using Tires (LRPUT).

(a) Any person or entity intending to initiate a LRPUT shall notify the executive director in writing of the intent to fill land by means of a LRPUT. Owners/operators of LRPUTs are required to provide information to the executive director as part of the notification document as described in paragraph (1) of this subsection. Approval in writing by the executive director (authorization to proceed) is required before the reclamation project may be initiated. The executive director may withhold authorization to proceed if the information submitted is not deemed to be complete. The executive director shall have 60 days to review the notification documents for completeness. The executive director may request additional information if the executive director determines that the notification submittal does not address all requirements of this rule. The following information shall be submitted in the notification document or attachments thereto:

(1) The owner/operator of the LRPUT shall disclose in the notification the location of the project on a state highway map, United States Geological Survey map or similar, and provide a legal description of the property. The general location on the site where

fill activities will take place shall be shown on one or more of these maps;

(2) A property owner's affidavit shall be submitted at the time of notification of intent to initiate a LRPUT and shall include the following:

(A) Legal description of the property on which the LRPUT will occur; and

(B) Acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that a reclamation project utilizing tire pieces exists on the site, and providing details about the location of the filled area within the property boundaries, areal extent of the fill project, coordinates or survey data, and the approximate volume or weight of tires which were used as fill, at such time as the fill project has been completed;

(3) The approximate volume of tire pieces proposed to be placed below ground, or the equivalent number of whole tires, and the approximate size and depth of the depression or borrow area to be filled shall be disclosed in the notification document;

(4) The approximate period of time during which the project will be conducted shall be disclosed, with estimated start and finish dates;

(5) A statement signed and sealed by a professional engineer licensed to practice in Texas shall be submitted in the notification to the executive director to certify that the LRPUT is designed in a manner that will comply the following standards:

(A) The LRPUT shall not cause a discharge of solid waste or pollutants adjacent to or into the waters of the state, including ground water, that is in violation of the requirements of the Texas Water Code, §26.121;

(B) The LRPUT shall not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is complete; and

(C) Tire or tire pieces shall not be placed below ground for the purpose of disposal as defined in Health and Safety Code §361.003(7);

(6) An affidavit signed by the property owner shall be submitted certifying that:

(A) the borrow area, whole or disturbed land area existed prior to the project; was excavated for another purpose; and was not excavated for the burial of tire pieces;

(B) the LRPUT will be completed in a manner that will comply with all regulations set forth in this subchapter and any other rules of the commission or any other local, state or federal agency which apply; and

(C) the local fire marshal has been notified of the tire placement or fill activity.

(b) Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a LRPUT must have existed prior to the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

(c) The LRPUT shall not result in a public nuisance.

(d) The owner/operator of the LRPUT shall notify the local fire marshal or fire department serving the area of the tire placement or fill activity.

(e) All tires used to fill land shall be split, quartered or shredded. Whole tires shall not be placed below ground.

(f) The owner/operator of the LRPUT shall comply with all applicable local ordinances, including any public safety or zoning/land use laws which may be in effect.

(g) Shredded, split or quartered tires placed below ground shall be mixed in a proportion no greater than approximately 50% by volume with natural, inert material acceptable for filling land, such as rubble, soil, or rocks. If greater than 50% of tire pieces by volume are placed below ground, the site is considered a tire monofill and is subject to §330.815 of this title (relating to Tire Monofill Permit Required). .

(h) Tire pieces shall be placed no closer than 18 inches to the final grade or ground surface. A soil cover unadulterated with tire pieces shall make up at least the upper 18 inches of the reclamation project.

(i) The owner/operator of the LRPUT shall register as a scrap tire facility if a shredding operation is conducted on site for the processing of tires.

(j) The owner/operator of the LRPUT shall register as a scrap tire storage site if:

(1) operations requiring storage of more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers would qualify the site as a registered tire storage site under §330.810 of this title (relating to Scrap Tire Storage Site Registration); or

(2) the LRPUT extends beyond 90 days from the date of delivery of tires or tire pieces to the site.

(k) The executive director shall issue an identifying number at the time the approval letter for the LRPUT is issued. This identifying number shall be referenced in any correspondence relating to a particular LRPUT for which such a number is issued.

§330.817. Special Authorization Priority Enforcement List (SAPEL).

(a) SAPEL.

(1) General. The SAPEL consists of scrap tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate collection service and which pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(2) Relationship to priority enforcement list (PEL). Unless otherwise provided by the executive director, the requirements in §330.818 of this title (relating to Priority Enforcement List (PEL) Program) do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL contract.

(1) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:

(A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;

(B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;

(C) special manifesting and reporting requirements;

(D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and

(E) any other requirements as necessary which are consistent with this section, and which will facilitate cleanup of SAPEL tires and protect human health, safety, and the environment.

§330.818. Priority Enforcement List (PEL) Program.

(a) PEL program.

(1) Applicability. This section applies to the creation and maintenance of the PEL and the identification of illegal scrap tire sites, and the determination of a Potentially Responsible Party (PRP).

(2) PEL procurement. The executive director may issue contracts to procure cleanups for the removal of tires from such sites through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Civil Texas Statutes) applicable to contract for services. The executive director may elect not to enter into contracts under this section. If no reasonable bids are submitted under the procurement process for the cleanup of PEL sites, or at the executive director's discretion, the executive director may rebid the PEL sites.

(b) PEL.

(1) The PEL shall be a list maintained by the executive director containing piles of scrap tires or tire pieces in excess of 500 and defined as illegal scrap tire sites identified prior to December 31, 1997 and classified by the executive director. This list shall be used by the executive director for the awarding of sites to successful contract bidders. The scrap tires or tire pieces obtained from the PEL sites are eligible for payment according to contract guidelines.

(2) The executive director may, on an as needed basis, and with notice, recontract or execute additional contracts for any PEL site identified and contracted in the state.

(3) Members of the commission, employees or agents of the commission, and authorized scrap tire facilities or their subcontractors are entitled to enter any public or private property at any reasonable time for the purpose of inspecting, investigating or remediating any condition related to illegal dumping of scrap tires.

(4) An authorized contractor or subcontractor is entitled to enter property only at the executive director's direction. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least ten days before a commission member, commission employee or agent or authorized contractor or subcontractor enters the property. A commission member, commission employee or agent or authorized contractor or subcontractor who, acting under this subsection, enters private property shall:

(A) observe the establishment's rules concerning safety, internal security, and fire protection; and

(B) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(5) Authorized contractors and their subcontractors shall not be considered agents of the state and are solely responsible for their own actions and actions of their agents.

(6) Once a PEL site has been cleaned up, property owners shall not be eligible for future cleanup assistance as a result of further tire deposition on the owners' property.

(c) PEL scrap tire site cleanup contract.

(1) Authorized scrap tire facilities that intend to receive payment shall enter into a PEL scrap tire site cleanup contract as a guarantee of job performance.

(2) Should the authorized facility's registration to utilize scrap tires or tire pieces be suspended or revoked by the executive director pursuant to §330.805 of this title (relating to Registration Requirements), then the PEL sites remaining in the PEL Scrap Tire Site Cleanup Contract shall be rebid.

(d) Authority of commission personnel.

(1) The contractor shall report on the status of the cleanup activities at the PEL site to the executive director in the time frame and manner requested.

(2) The executive director shall have the authority to suspend cleanup activities at a PEL site following a determination of whether the conditions and/or activities at the PEL site or other circumstances warrant the temporary suspension of cleanup activities to ensure the protection of public health and safety or the environment.

(3) The executive director may undertake immediate remediation of a site if, after investigation, the executive director finds:

(A) that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(B) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to PRPs or until a judgment can be entered in an appeal of an administrative order.

(4) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the executive director, the executive director may implement a remedial program for the site.

(5) The commission or executive director may seek to bring suit against a PRP to recover reasonable expenses incurred in

undertaking immediate removal of tires or in implementing a remedial action order. For purposes of this subchapter, the following three criteria shall be used to determine whether a person is a PRP:

(A) the person must be the property owner of record, the site operator or the depositor of the scrap tires on the site;

(B) the person must have benefitted financially from the disposition of the scrap tires on the site; and

(C) the person must be financially capable of paying all or part of the costs of the cleanup as determined by the commission.

(6) The commission or executive director shall seek to file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(7) The commission or executive director, in lieu of bringing suit to recover costs incurred under this subchapter, may seek to file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders of the property.

§330.819. Public Notice of Intent to Operate.

(a) Scrap tire storage sites that are registered with the executive director shall publish notice in the county where they intend to store used or scrap tires or tire pieces prior to commencement of operation. Subject to executive director approval, a variance to the public notice requirement may be requested provided that similar notice has been published within the previous 12-month period and that the notice was associated with activities under the jurisdiction of this subchapter.

(b) Scrap tire facilities that are registered with the executive director and have submitted an application amendment to request a variance from the 8,000 square feet pile size shall publish notice of intent to increase the pile size in accordance with this section.

(c) The notice of intent published by the scrap tire storage site owner shall contain at a minimum the following information:

(1) the facility registration number;

(2) the name under which the facility registration number was issued;

(3) the permanent street address and telephone number of the facility;

(4) a brief statement explaining the utilization activities the facility intends to perform at the location;

(5) where the tires intended for utilization or already utilized will be stored, if different from the actual facility site; and

(6) the number of tire piles planned for the storage facility and the square footage of the largest pile planned.

(d) The public notice of intent to operate shall identify the Texas Natural Resource Conservation Commission as the state agency regulating this activity.

(e) The public notice of intent shall be published at least 30 days prior to commencing activities. The public notice of intent shall be published for a period of 10 days continuously. In counties where no daily newspaper is published, the notice shall be published at least once each week for three consecutive weeks.

§330.820. Motion for Reconsideration.

A person effected by a registration under this chapter may file a Motion for Reconsideration pursuant to §50.39 of this title (relating to Motion for Reconsideration), notwithstanding §50.31 of this title (relating to Purpose and Applicability).

§330.821. Closure Cost Estimate for Financial Assurance.

(a) As part of a facility's registration application, an owner or operator of a scrap tire storage site must prepare a written estimate, certified by a professional engineer, in current dollars, of the cost of hiring a third party to close the facility(ies). The closure cost for scrap tire storage sites is determined by the sum of paragraphs (1) and (2) of this subsection:

(1) The estimated cost for a third party to transport and dispose of the maximum site capacity of used or scrap tires and tire pieces as depicted by the site layout plan. The estimate shall include equipment and operator time for loading tires and disposal costs.

(2) The estimated cost for a third party to complete cleanup of the site of any and all debris, as well as dismantling any equipment used in the processing of whole tires into shreds or used to recycle whole tires or shredded tires into manufactured products, securing the site, and preventing access to the equipment or removing it from the site to a location acceptable to the executive director; or the amount of $3,000, whichever is greater.

(b) The closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment as disclosed in the facility's registration application. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required. The closure cost estimate provided by the owner or operator may be amended by the executive director. In some cases, the closure cost estimate may not be sufficient which means that the owner or operator remains responsible for the entire costs to close the site.

(c) Any amendment application shall include a recalculation of the closure cost estimate based on any requested volume increases. Facilities shall not increase the volume of whole tires or tire pieces generated from out of state and stored at the facility until the registration amendment has been approved by the executive director. Only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining the amount of financial assurance required.

(d) The quantities of scrap tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator and shall be considered to weigh 20 pounds; and

(2) a cubic yard of tire shreds or pieces shall be considered to weigh no more than 950 pounds; however, other verifiable data may be used if accepted and approved by the executive director.

(e) The calculated capacity of a site as calculated for closure may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited to, new site layout plans to substantiate the revised capacity and new closure calculations based upon the depicted volumetric capacity converted to weights, posting of the revised financial assurance and written approval for the amended registration.

The owner or operator is also responsible for submitting a registration amendment to revise the closure cost estimate whenever requested to do so by the executive director. Registration amendments with revised closure cost estimates shall be submitted to the executive director within 15 days of the executive director's written request to revise the closure cost estimate.

(f) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism.

(g) Financial assurance required under this section shall be provided in accordance with §37.3001 of this title (relating to Applicability) and §37.3011 of this title (relating to Financial Assurance Requirements for Scrap Tire Sites).

(h) Closure will begin when:

(1) the executive director deems the facility abandoned; or

(2) the registration expires, is terminated, or revoked or a new or renewal registration is denied; or

(3) closure is ordered by the Texas Natural Resource Conservation Commission or a United States District Court or other court of competent jurisdiction.

(i) Following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so or when closure begins under the circumstances outlined in subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716937
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1970

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 19. Oil Spill Prevention and Response

Subchapter E. Vessels

31 TAC §19.61

The General Land Office (GLO) proposes amendments to §19.61 (relating to Response Plans). The current §19.61(c) (relating to IMO vessels) is being renumbered as §19.61(b). The current §19.61(b) (relating to OSPRA vessels) is being renumbered as §19.61(c). This amendment is being proposed pursuant to the statutory requirements for contingency plans for vessels under the Oil Spill Prevention and Response Act (OSPRA), Tex. Nat. Resources Code §40.114. Section 40.114 requires that any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo and that operates in coastal waters or waters adjoining and accessible from coastal waters shall maintain a written vessel-specific discharge prevention and response plan. The proposed amendment applies to all vessels that carry 10,000 gallons or more of oil as fuel or cargo and that operate in coastal waters and that are not currently required to have an OPA plan, described in §19.61(a), or an IMO plan, described in renumbered §19.61(b). Thus, the proposed amendment applies to, for example, tugboats, offshore supply vessels, larger Gulf shrimping vessels, commercial fishing vessels, recreational vessels and public vessels among others. Pursuant to Tex. Nat. Res. Code §40.114, dedicated response vessels or any other vessel used for activities within state waters related solely to the containment and cleanup of oil, including response-related training or drills, are not subject to the contingency plan requirement. Any vessel which has an existing discharge prevention and response plan that meets the intent of the proposed amendment may be deemed to be in compliance with it. If a vessel owner or operator with an existing plan is unsure whether that plan satisfies this proposed amendment, the GLO will, upon request, conduct a review of its existing plan.

The proposed amendment does not require submission of information to the GLO; rather it requires affected vessels to maintain certain information onboard the vessel. The information should be in an easily accessible location onboard the vessel. The format for organizing the information is at the vessel owner and operator's discretion; however, the GLO is providing a form, OS-100, for use in complying with the proposed amendment. The basic purpose of the proposed amendment is to ensure that vessel crew members or shoreside personnel have access to the information needed to make proper notifications and promptly initiate spill response actions which will ensure protection of Texas' coastal natural resources.

The proposed §19.61(c)(1) contains definitions applicable to OSPRA vessels. All of the definitions applicable to the rule amendments are located in §19.61(c)(1) for ease of use, even though some of them are defined elsewhere in 31 TAC Chapter 19. The definition of "Person in Charge" in proposed subsection 19.61(c)(1) has been abbreviated, but contains the essential elements of the definition found in §19.16 of this title (relating to Person in charge). The GLO has decided to adopt best management practices, defined in §19.61(c)(1), to encourage voluntary adoption of oil spill prevention measures. Best management practices is a term generally used to refer to operational procedures that can prevent spills or minimize environmental impacts. In the context of the proposed amendment, best management practices refer to measures that vessel owners and operators can implement in an effort to reduce the risk of an oil spill. Proposed §19.61(c)(2) contains requirements for information about the vessel, such as the vessel name and number, oil storage capacity and name of owner and operator. The vessel information must be onboard the vessel at all times and must be presented, upon request, to the GLO personnel who respond to spills, conduct harbor patrols, and otherwise act to enforce the proposed amendment. The proposed §19.61(c)(3) requires vessels to maintain onboard spill response information. The required spill response information describes the steps for proper notification and prompt response to unauthorized discharges of oil. Section 19.61(c)(3)(A) lists the initial steps that should be taken by vessel crew upon discovery of an unauthorized discharge of oil. The information listed in §19.61(c)(3)(A) may be adapted,

as appropriate, for the particular OSPRA vessel; however, the adapted information should contain actions that address the items listed in §19.61(c)(3)(A). Section 19.61(c)(3)(B) contains required notification information such as names and phone numbers of persons whom the vessel crew must contact in the event of an unauthorized discharge of oil. The prompt notification of governmental and private response entities can minimize the costs of cleaning up an oil spill and lessen the environmental impact. The mandatory requirements of the proposed amendment are in §19.61(c)(2) (relating to vessel information) and §19.61(c)(3)(A) and (B) (relating to notification and response actions). The notification and response action information must be onboard the vessel at all times and must be presented, upon request, to the GLO personnel who respond to spills, conduct harbor patrols, and otherwise act to enforce the proposed amendment.

Section 19.61(c)(4) contains a list of best management practices for preventing oil spills. The GLO has determined, through an analysis of oil spill data, that a significant percentage of oil spills from vessels are preventable. GLO spill data shows that in 1996, 48.7% and in 1997 through November 1, 1997, 47.5% of the spills from vessels were caused by human factors. Spills from OSPRA vessels during the same time period accounted for 26.5% and 27.7%, for each respective year, of spills caused by human factors reported to the GLO. These spills could be prevented by introduction of best management practices, such as monitoring fuel transfers, following maintenance schedules, proper disposal of oily bilge water, regularly checking valves, plugging scupper holes, monitoring fueling, using drip pans, and training crew members in safe practices. The GLO has determined that the most cost effective measure for small vessel owners and operators is prevention of oil spills. The list of best management practices in §19.61(c)(4) is illustrative and completely voluntary.

Section 19.61(c)(4) is designed to encourage vessel owners and operators to explore appropriate prevention measures based upon the particular vessel's operational practices. In the event of a spill, GLO personnel will determine whether the vessel owners and operators have voluntarily adopted spill prevention measures and whether those measures, if properly implemented, could have prevented or did, in fact, minimize the spill's impact.

Section 19.61(c)(5) provides a description of the enforcement policy related to OSPRA vessels. OSPRA vessels will be required to have vessel information, §19.61(c)(2)(A) through (D), and spill response information, §19.61(c)(3), onboard the vessel. Failure to have the information onboard may result in the assessment of a penalty. The GLO will not penalize vessel owners and operators who do not adopt best management practices for spill prevention, nor will spill response actions by those persons be deemed inadequate because of the lack of such practices. However, vessel owners and operators are strongly encouraged to consider the benefits of best management practices. If the best management practices were implemented, then the GLO will consider that fact in deciding whether to assess a penalty as the result of any particular incident.

Section 19.61(c)(6) provides for a one time exception in complying with §19.61(c)(2) and §19.61(c)(3). The proposed subsection emphasizes the educational purpose of the rule by allowing vessels a one time exception to compliance. The GLO will have a phase-in implementation period for the rule. The one time exception in §19.61(c)(6) is in addition to the phase-in period prior to full enforcement. The rule will not be enforced until September 1, 1998. After September 1, 1998, the GLO will enforce the rule through its routine spill response, harbor patrol and other enforcement programs. During a spill response, GLO personnel will determine whether the OSPRA vessel has the required documentation onboard and whether the notification and initial spill response measures have been followed.

The GLO is aware of the competitive economic environment affecting some small vessel owners and operators. Therefore the proposed amendment requires only essential information for initiating spill response and notification and places an emphasis on prevention and voluntary measures. Through this simplified rule, the GLO minimizes the costs and burdens associated with complying with the law. The cost to the regulated community is the time required to compile information in an accessible format (as an option, GLO form OS-100 may be used), put the information onboard the vessel, advise the vessel crew of its existence, and provide explanations of the minimal steps required for notification and emergency response. The GLO will assist vessel owners and operators, upon request, in compiling the information. The GLO will also assist vessel owners and operators by discussing effective methods of educating vessel crew on how to comply with the proposed amendment.

The GLOþs Division of Oil Spill Prevention and Response (Division) has undertaken several initiatives to assist owners and operators of OSPRA vessels. The purpose of these actions is to reduce oil spills into coastal waters without increasing the economic burden on the regulated community. One example is the small spill education program which has participated in the financing and construction of an oily bilge water reclamation facility in Port Isabel. Plans are underway to construct more of these facilities along the Texas coast. After fourteen months of operation, 14,000 gallons of oil have been recovered from the Port Isabel oily bilge water reclamation facility. This oil would otherwise have been discharged into Texas coastal waters. There are also environmental benefits in properly disposing of oily bilge water. Shrimp larvae, juvenile fish and seagrasses are particularly sensitive to oil. The cost of oil spill cleanup, even for a relatively small oil spill, far exceeds the cost of educating crew members about their legal responsibilities and initial spill response measures. Prompt notification of an oil spill to the GLO, the National Response Center, and to private spill response contractors minimizes the impacts of the spill incident because abatement, containment and removal can occur before the spill spreads and becomes uncontrollable or impacts a sensitive environment.

The GLO plans to conduct an extensive education program for OSPRA vessel owners and operators subject to this rule. During the public comment period on the proposed amendment, the GLO will conduct public hearings which will be informal so that vessel owners and operators may fully understand the proposed amendment. Persons fluent in Spanish and Vietnamese will be present at the hearings to assist vessel owners and operators. The hearings will be advertised in local newspapers and trade publications. The GLO specifically solicits suggestions about effective methods of reaching affected owners and operators. There will be a phase-in period for compliance with the rule. After the rule is adopted, the GLO proposes to allow vessel owners and operators until September 1, 1998 to fully comply. GLO oil spill prevention and response personnel will work with vessel owners and operators by explaining the rule requirements, providing a form for use onboard vessels and

offering assistance in compiling the information required to be onboard.

The GLO has analyzed this amendment pursuant to Government Code, Chapter 2007 relating to governmental action affecting private property rights. Pursuant to Government Code §2007.003(b)(9), the chapter does not apply to an action taken under a state mandate to prevent pollution related to oil and gas activities. This rule is promulgated pursuant to the state law mandate of Tex. Nat. Res. Code §40.114 which requires vessels to have a written discharge prevention and response plan. Therefore, in the opinion of legal counsel of the GLO, the promulgation of this rule is exempt from Government Code, Chapter 2007.

Pursuant to Nat. Res. Code §33.2051, the GLO shall comply with Nat. Res. Code §33.205(a) and (b) when adopting or amending a rule governing the prevention of, response to, or remediation of a coastal oil spill. Sections 33.205(a) and (b) require a state agency that takes an action that may adversely affect a coastal natural resource area to comply with the goals and policies of the Texas coastal management plan, and to determine whether rules applicable in coastal areas are consistent with the coastal management program goals and policies. The Division has reviewed these proposed amendments to determine whether they are consistent with the goals and policies of the coastal management program. The Texas coastal management program is designed to ensure that coastal natural resource areas are not adversely impacted by state agency actions. The Division has determined that the proposed amendments are consistent with the goals and policies of the coastal management program because they are designed to protect coastal natural resources from oil spills. In addition, the rule encourages voluntary prevention measures that will minimize the adverse impact to coastal natural resources that may occur in the event of an unauthorized discharge of oil.

Russel Lutz, Deputy Commissioner for the Division has determined that for the first five years the rule will be in effect, there will not be any additional costs to state and local governments. Local governments are not impacted by the proposed amendment because they are not required to perform any functions or expend any resources as a result of the rule. The proposed amendment will not result in any cost reductions to local governments because they are not presently expending any resources on vessel discharge prevention and response plans. The state will not incur additional costs as the result of this rule because the implementation, administration and enforcement of the rule will be performed using existing GLO staff and resources. State government may benefit from reduced spills from OSPRA vessels. The Coastal Protection Fund is used to pay for the cleanup of oil spills when a responsible person cannot be identified or when a responsible person is unable or unwilling to pay for oil spill cleanup. To the extent that this proposed amendment causes a more prompt response to oil spills from OSPRA vessels, the cost of cleaning up oil spills may be reduced. This may result in a cost benefit for OSPRA vessel owners. To the extent that the proposed amendment prevents an oil spill, there will be a savings to the state because state personnel and equipment will not be called to respond to an oil spill, no natural resources will be injured, and there will be no attendant administrative expenses.

Mr. Lutz also has determined that the public benefits of the rule will be enhanced protection of Texas coastal waters and the natural resources therein and adjacent to those waters. The public benefits are expected because the adoption of the proposed amendment will be accompanied by a public education and outreach program to inform OSPRA vessel owners and operators about ways to prevent oil spills and minimize their impact through prompt response. Further, training of vessel crew about prevention measures will benefit vessel owners and operators because they will not be burdened by the costs of cleaning up an oil spill. Finally, there is benefit to the general public when oil spills are prevented or responded to quickly. The impact on natural resources not only affects the resources themselves, but also adversely impacts persons whose livelihood depends on those resources. Texas is becoming a popular destination for birdwatchers and other ecotourists. Many small communities derive significant revenue from these tourists. Similarly, Texas beaches and commercial and recreational fishing attract persons who contribute to the local economies. Fewer oil spills and more prompt response to oil spills minimize the economic costs to the public. The probable economic cost to vessel owners and operators required to comply with this rule is an investment of time. The rule does not require submission of documentation to the GLO, or to any other governmental entity; nor does it require particular expertise since the GLO is supplying a form that can be used by vessel owners and operators. Furthermore, the GLO will, upon request, assist vessel owners and operators in complying with the proposed amendment. The investment of time represents some cost to the vessel owner and operator, but it is minimal and should not present an economic cost that represents a serious impact.

This rule has been reviewed by legal counsel and found to be within the legal authority of the GLO to adopt. Section 40.007 authorizes the commissioner of the GLO to promulgate rules necessary and convenient to the administration of the Oil Spill Prevention and Response Act. Section 40.114(a) requires vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operate in coastal waters to maintain a written vessel-specific discharge prevention and response plan that satisfies rules promulgated under §40.007.

The GLO invites comments on the substance of the proposed amendments, on the proposed outreach, education, implementation processes and on the economic impact of the proposed amendment. Interested parties may submit their comments to Carol Milner, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495. Comments must be received by 5:00 p.m. on March 3, 1998.

Tex. Nat. Res. Code §40.007, relating to general powers and duties, and §40.114, relating to contingency plans for vessels, provide the legal authority for the GLO to propose this rule and these sections are affected by this proposed amendment.

§19.61. Response Plans.

(a) (No Change)

(b) [~~c~~] IMO Vessels.

(1) Compliance with Regulation 26 of Annex I of MARPOL. IMO vessels that enter Texas coastal waters must have onboard a shipboard oil pollution emergency plan pursuant to Regulation 26 of Annex I of MARPOL 73/78. The IMO vessel must be operating in compliance with the approved plan to gain entry into a Texas port, pursuant to §19.63 of this title (relating to Entry into Port). Vessels subject to OPA and to IMO are only required to submit their OPA plan to the GLO.

(2) Submission of Information to GLO. The plan prepared pursuant to Regulation 26 of Annex I of MARPOL is not required to be submitted to the GLO. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall submit to the GLO, 60 days after this rule becomes final:

(A) a copy of its flag state or authorized organization approval of the IMO Regulation 26 Shipboard oil pollution emergency plan; and

(B) IMO Vessel Form. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall submit to the GLO the information listed in this subsection. This information is required by Regulation 26, §2.5.4. The information must be submitted on IMO Vessel Form.
Figure 1: 31 TAC 19.61(b)(2)(B)

(i) Vessel Information. The registered name, flag state, port of registry of the vessel, international call sign, official number and issuer of the number, IMO number, gross tonnage, overall length, breadth and summer draught. Any previous registered names of the vessel shall also be provided and if the vessel has not previously been registered under another name, such fact shall be affirmatively stated. The owner, operator or manager of an IMO vessel shall also submit a general arrangement plan showing the location and tank capacities for those tanks which carry oil.

(ii) Notification Information. The name, address, telephone number, and facsimile number of the owner, operator and manager of the vessel. The telephone number provided shall be a 24-hour contact number for the person named as owner, operator and manager.

(iii) Vessel Personnel Information. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall designate a:

(I) Authorized Person: who is responsible for and in control of all oil spill response operations on behalf of the vessel. This person must be available 24 hours a day to ensure prompt response to oil spills in Texas coastal waters. This person need not be onboard the vessel but must have independent authority to deploy response equipment and to expend funds necessary for response actions. This information is required pursuant to Regulation 26, §2.2.4. Further responsibilities of the person in charge are delineated at §19.16 of this title (relating to Person in Charge).

(II) Preparedness Manager: who is responsible for ensuring that personnel aboard an IMO vessel are properly trained in mitigation and control of an unauthorized discharge of oil. This information is required pursuant to Regulation 26, §2.5.1.

(iv) Vessel Response Organization. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall maintain onboard the name and telephone numbers of two oil spill response organizations identified as capable of providing a timely response to an unauthorized discharge of oil from the vessel, at her intended port of call and at any portion of the route of said vessel to and from the port of call.

(C) [~~D~~] Changes in IMO Vessel Form. Any change in any information required pursuant to this section shall be submitted to the GLO as soon as possible when the vessel is entering Texas waters. Vessels not entering Texas waters shall report such changes to the GLO within 30 days of the change.

(D) [~~E~~] DCO List. The GLO shall provide, upon request, a list of DCOs certified in Texas.

(c) [~~b~~]OSPRA Vessels. OSPRA vessels are those vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operate in coastal waters and are not required to have a response plan pursuant to 33 U.S.C. § 2701 et seq. or Regulation 26 of Annex 1 of MARPOL 73/78. [~~OSPRA vessels are those vessels capable of carrying oil as fuel or cargo in excess of 10,000 United States gallons. OSPRA vessels will be required to meet the vessel response plan requirements of the Texas Natural Resources Code, §40.114, when rules are adopted thereunder~~]

(1) Definitions. The following words, terms and phrases, when used in this subsection only, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Best management practices -practices that, when used consistently, help to prevent discharges of oil

(B) Official number - the vessel number as it appears on the vessel's Certificate of Documentation issued by the United States Coast Guard, pursuant to 46 CFR Part 67, or the vessel number issued by the flag state with which the vessel is registered

(C) Oil - "oil" of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Natural Resource Conservation Commission

(D) Person in charge – the person designated by name and job title for purposes of ensuring that the General Land Office is notified of unauthorized discharges of oil from the vessel, who can initiate and direct the emergency actions to be taken in response to an actual or threatened unauthorized discharge of oil and who has independent authority to deploy response equipment and personnel and to expend funds for response actions

(E) State registration number –the vessel number as it appears on the Certificate of Number issued by the Texas Parks and Wildlife Department, pursuant to Texas Parks and Wildlife Code, Title 4 §31.024 or the vessel number as issued by any other state with which the vessel is registered

(F) Total oil storage capacity–the total capacity, in gallons, of all tanks onboard the vessel designed to carry oil as fuel or cargo

(G) Vessel name – the name of the vessel as it appears on the vessel's Certificate of Documentation issued by the United States Coast Guard pursuant to 46 CFR Part 67 or the common name of the vessel

(H) Vessel owner/operator –any person owning, operating, or chartering by demise a vessel

(2) Vessel Information. OSPRA vessels must maintain vessel information onboard that is readily accessible to the vessel crew; the information shall include, at a minimum, the information listed on OSPRA vessel form OS-100 and as described in subparagraphs (A) - (D) of this paragraph; however, any format may be used to include the information listed herein:
Figure 2: 31 TAC 19.61 (c)(2)

(A) the name, address, and 24 hour contact number of the vessel owner/operator

(B) the vessel name

(C) the official number or state registration number

(D) the total oil storage capacity of the vessel

(3) Spill Response Information. OSPRA vessels must maintain onboard spill response information that is readily accessible to the vessel crew; the information shall contain, at a minimum, the information listed on OSPRA vessel form OS-100 and as described in subparagraphs (A) and (B) of this paragraph; however, any format may be used to include the information listed herein:

(A) Emergency Action Information. OSPRA vessels must maintain information outlining initial steps that must be taken by vessel personnel to respond to an unauthorized discharge of oil. Vessel owners/operators should prescribe, if necessary, more specificity for this information in order to conform to the particular operations of the vessel and its crew. The emergency action information shall include, at a minimum, instructions for:

(i) shutting down operations

(ii) securing the source of the spill

(iii) assessing the spill situation and evaluating for potential safety hazards to vessel personnel

(iv) taking immediate action for reducing the potential for future spillage

(v) assessing the condition of the vessel and taking action to prevent further vessel damage

(vi) making notifications as described in subparagraph (B) of this paragraph and taking reasonable steps to abate, contain, and remove the unauthorized discharge of oil

(B) Notification Information. The person in charge shall notify the GLO at 1-800-832-8224 of an unauthorized discharge of oil and shall include the information required under §19.32 relating to reporting an unauthorized discharge of oil. OSPRA vessels must maintain 24-hour contact numbers for each geographic area in which the vessel operates for each of the following:

(i) person in charge

(ii) vessel owner/operator

(iii) cleanup contractors

(iv) vessel salvage contractors

(v) government agencies

(4) Spill Prevention Information. OSPRA vessels are encouraged to maintain best management practices for spill prevention onboard the vessel. In the event of an oil spill, the GLO will consider whether the vessel owners/operators had spill prevention measures in place and whether vessel personnel were familiar with and executed those measures. The following categories are suggested for use by vessel owners/operators in the development of spill prevention measures:

(A) best management practices to prevent discharges of oily bilge water

(B) best management practices to prevent discharges from oil transfer operations

(C) best management practices to prevent discharges from hydraulic system failures

(D) best management practices to prevent discharges of oil due to improper vessel maintenance

(E) best management practices to prevent discharges of oil due to improper handling and disposal of petroleum products

(5) Enforcement. The information required under paragraphs (2) and (3) of this subsection must be presented to (GLO) personnel upon request. Any vessel owner/operator who violates this subsection is liable to the GLO for civil penalties in accordance with the provisions of OSPRA §40.251. In the event of an unauthorized discharge of oil, use of spill prevention best management practices by the vessel owner/operator prior to and during the time of the spill will be considered by GLO personnel in determining whether to assess penalties. Penalties may be reduced or waived if appropriate spill prevention measures were in practice prior to and at the time of the spill.

(6) Exception to Compliance With This Subsection. A one time only exception from the requirements of this subsection shall be granted by GLO personnel to a vessel owner/operator who is found to have violated the requirements of this subsection. Any vessel owner/operator using this exception shall comply with the requirements of this subsection within 30 days of the date the exception is granted by GLO personnel. Any vessel owner/operator shall be subject to penalties for any violation of this subsection, after being granted the one time exception by GLO personnel.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717068
Garry Mauro
Commissioner
General Land Office
Proposed date of adoption: March 3, 1998
For further information, please call: (512) 305–9139

Part Edwards Aquifer Authority

Chapter 709. Critical Period Management Rules

31 TAC §§709.1, 709.3, 709.5, 709.7, 709.9, 709.11, 709.13, 709.15, 709.17, 709.19, 709.21, 709.23, 709.25, 709.27, 709.29, 709.31, 709.33, 709.35, 709.37, 709.39, 709.41, 709.43, 709.45

The Edwards Aquifer Authority (EAA) proposes new §§709.1, 709.3, 709.5, 709.7, 709.9, 709.11, 709.13, 709.15, 709.17, 709.19, 709.21, 709.23, 709.25, 709.27, 709.29, 709.31, 709.33, 709.35, 709.37, 709.39, 709.41, 709.43, and 709.45, concerning the critical period management rules.

Senate Bill 1477, §1.25 requires that the EAA implement a critical period management plan. The original plan was adopted on February 18, 1997 on an interim basis.

The adoption of Chapter 709 is part of the Authority's rules reorganization initiative.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for the period the sections will be in effect there will be no additional costs for the State or local governments related to the administration of these rules. Mr.

Ellis has determined there will be no estimated reductions in costs for the State or local governments related to the administration of these rules. Mr. Ellis has determined there will be no loss or increase in revenues to the State or local governments related to the enforcement of these rules. Mr. Ellis has determined there could be a loss in revenue to local governments related to the enforcement of these rules. Municipal suppliers are subject to critical period management fees, and possibly other governmental users of water may be subject to administrative penalties ($100 to $1,000 per day per violation) and civil penalties ($100 to $10,000 per day per violation). It is not possible to estimate what fees or penalties may be levied against local governments at this time.

Mr. Ellis also has determined that for the period the sections will be in effect the public benefit anticipated as a result of enforcing the rules will be the Authority's reorganization initiative of implementing new Chapter 709.

Comments on the proposal may be submitted to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P. O. Box 16830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030.

The new sections are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed new sections: §1.26.

§709.1. Applicability.

This chapter applies to all applicants for regular permits, the customers of all applicants who are retail public utilities, and owners of exempt wells.

§709.3. Nondiscretionary Uses.

Unless required under §709.27 of this title (relative to Stage V Restrictions), no applicant is required to reduce any amount of groundwater withdrawn from the aquifer for a nondiscretionary use.

§709.5. Critical Period Stages-East Area.

These critical period stages listed in paragraphs (1)-(5) of this section apply within the boundaries of the Authority that are in the counties of Bexar, Comal, Hays, Caldwell, and Guadalupe.

(1) Stage I. Stage I applies on any day following a day when the J-17 level is at or below 650 ft. m.s.l. and above 642 ft. m.s.l.

(2) Stage II. Stage II applies on any day following a day when the J-17 level is at or below 642 ft. m.s.l. and above 636 ft. m.s.l.

(3) Stage III. Stage III applies on any day following a day when the J-17 level is at or below 636 ft. m.s.l. and above 632 ft. m.s.l.

(4) Stage IV. Stage IV applies on any day following a day when the J-17 level is at or below 632 ft. m.s.l. and above 628 ft. m.s.l.

(5) Stage V. Stage V applies on any day following a day when the J-17 level is at or below 628 ft. m.s.l.

§709.7. Critical Period Stages-Medina Area.

These critical period stages listed in paragraphs (1)-(3) of this section apply within the boundaries of the Authority that are in the counties of Medina and Atascosa, when the Medina well level reaches the following levels.

(1) Stage I. Stage I applies on any day following a day when the Medina well level is at or below 670 ft. m.s.l. and above 660 ft. m.s.l.

(2) Stage II. Stage II applies on any day following a day when the Medina well level is at or below 660 ft. m.s.l. and above 655 ft. m.s.l.

(3) Stage III. Stage III applies on any day following a day when the Medina well level is at or below 655 ft. m.s.l.

§709.9. Critical Period Stages-Uvalde Area.

These critical period stages listed in paragraphs (1)-(2) of this section apply within the boundaries of the Authority that are in the County of Uvalde, when the J-27 level reaches the following levels.

(1) Stage I. Stage I applies on any day following a day when the J-27 level is at or below 845 ft. m.s.l. and above 840 ft. m.s.l.

(2) Stage II. Stage II applies on any day following a day when the J-27 level is at or below 840 ft. m.s.l.

§709.11. Beginning and End of Critical Period Stages.

(a) The general manager will post by 10:00 a.m. every business day the most recently available index well levels, the ten-day rolling average of those levels, and the applicable critical period stage as established by §§709.5, 709.7, and 709.9 of this title (relating to Critical Period Stages-East Area; Critical Period Stages-Medina Area; Critical Period Stages-Uvalde Area).

(b) If a well index is not available on a particular day, the stage in effect in the applicable area will continue to the next day.

(c) A critical period stage will remain in effect for at least ten days unless a more restrictive stage is implemented and will not be rescinded until the ten-day rolling average of the applicable well index triggers a less restrictive stage. (For example, if Stage III is in effect in the East area of the Authority, Stage II cannot be triggered in that area until the ten-day rolling average of the J-17 level rises above 636 ft. m.s.l.).

(d) The reduction multipliers for each stage are as follows: Stage I: 1.7; Stage II: 1.6; Stage III: 1.4; and Stage IV: 1.3, or 1.4, Stage V: to be determined by the board.

(1) In the event the Authority implements an WSP, the maximum allowable withdrawals in Stage IV for WSP participants shall be 1.4 times base withdrawals. The maximum allowable withdrawals for applicants who are retail public utilities with residential water use at or below 125 gallons per person per day who do not participate in an WSP shall be 1.3 times base withdrawals.

(2) In the event the Authority does not implement an WSP, the maximum allowable withdrawals for applicants who are retail public utilities shall be 1.4 times base withdrawals for retail public utilities with residential water use at or below 125 gallons per person per day, and 1.3 times base withdrawals for all others.

(e) Transfer Multiplier - The transfer multiplier for each stage is as follows: Stage I: none; Stage II: .95, Stage III: .90, Stage VI: .85, Stage V: to be determined by the Authority. The total amount of water that can be withdrawn monthly is the product of the transfer multiplier times the estimated monthly withdrawals indicated on the transfer schedule.

(f) The well levels which trigger stages as described in this section and the applicable reduction multipliers are stated in the

following table, which is incorporated herein. Stages are triggered independently in each of the three areas and will be in effect from March 1 to October 31. From November 1 to February 28 applicant will operate at base withdrawals.
Figure: 31 TAC §709.11 (f).

§709.13. Enforcement.

(a) All enforcement measures in this section are for a one month period.

(b) Subject to §709.3 of this title (relating to Nondiscretionary Uses), applicants are prohibited from withdrawing more than the applicable maximum allowable withdrawals during each critical period stage.

(c) The Authority will base an enforcement action for exceedances of a applicant's maximum allowable withdrawals on metered sales rather than the amount of water supplied if it is demonstrated that:

(1) the exceedance is due to non-preventable water main breaks that are caused by weather conditions during the critical period;

(2) the applicant's unaccounted-for water is less than 20% of total water withdrawn;

(3) the applicant's implements and maintains an aggressive leak detection program; and

(4) the applicant exercises reasonable diligence in detecting, repairing, and preventing breaks.

(d) An applicant that violates these rules is subject to enforcement as provided for in the Edwards Aquifer Act.

§709.15. Determination of Base Withdrawals and Maximum Allowable Withdrawals.

(a) The general manager will initially determine the base withdrawals and maximum allowable withdrawals, maximum transfer withdrawals and total withdrawals for each applicant, other than an irrigation user, based on the base withdrawal report and other data available to the Authority. The general manager will notify applicants of the determinations in writing.

(b) The general manager, with the approval of the board, may calculate base or maximum allowable withdrawal and maximum transfer withdrawals on different criteria than is otherwise required by these rules in particular cases, in order to better approximate the minimum amount of groundwater the applicant needs for nondiscretionary uses or to avoid penalizing the applicant for development of alternative water supplies.

(c) Notwithstanding subsection (a) of this section, applicants have the duty to self-determine their base withdrawals and maximum allowable withdrawals and maximum transfer withdrawals regardless of whether the general manager has determined such amounts or notified the applicant of such determinations.

§709.17. Reduction Efforts for Discretionary Uses.

(a) Applicants shall achieve the maximum allowable withdrawals level at each critical period stage by conserving groundwater, minimizing waste, reducing discretionary uses of groundwater to the maximum extent feasible, and taking any other necessary steps to reduce withdrawals of groundwater from the aquifer.

(b) Retail water utilities shall adopt and enforce inverted rate structures, conservation charges, critical period surcharges, and other programs to conserve groundwater, minimize waste, comply with specific restrictions, utilize high-efficiency water systems such as low-flow toilets and shower heads, and reduce discretionary uses by customers of groundwater from the aquifer to the maximum extent feasible. By February 1, 1998, all retail water utilities shall file with the Authority their water service pricing orders or ordinances adopting rates, charges, and other critical period programs.

(c) A retail water utility shall adopt and enforce a Critical Period Management Ordinance (or other appropriate legal instrument) containing the elements in Appendix A, Critical Period Management Model Ordinance as shown in this subsection.
Figure: 31 TAC §709.17(c)

(d) All proposed ordinances (or appropriate legal instruments) will be submitted to the general manager for review and approval prior to adoption to ensure compliance with this chapter.

(e) If a retail water utility believes that it does not have the authority to pass an ordinance (or appropriate legal instrument), then it shall provide an opinion of counsel supporting this proposition for the review and consideration by the general counsel of the Authority. If the general counsel of the Authority concludes that the applicant has the requisite legal authority to pass ordinances (or other appropriate legal instruments), then the applicant shall proceed to adopt and enforce the ordinance in accordance with subsection (c) of this section.

(f) During all time in which an ordinance is not in effect, the provisions of this chapter shall apply.

(g) The Critical Period Management Ordinance shall be approved or disapproved by the general manager, with 30 days of receipt, unless the general manager requests additional information from the applicant within 30 days of filing. The ordinance shall be subject to at least an annual review by the general manager.

§709.19. Stage I Restrictions.

When Stage I is in effect, the following restrictions listed in paragraphs (1)-(8) of this section apply to all persons throughout the applicable area of the Authority.

(1) No person may waste groundwater.

(2) No person may use groundwater for landscape watering between the hours of 10:00 a.m. and 8:00 p.m. This paragraph does not apply to non-potable water.

(3) No person may use groundwater to wash an impervious outdoor ground covering such as a parking lot, driveway, street, or sidewalk unless for health or safety reasons.

(4) No person may allow irrigation tailwater to escape from that person's land.

(5) Restaurants and other eating establishments are prohibited from serving groundwater to customers except upon request of the customer.

(6) Every person who owns or has possession of a swimming pool must cover the pool with an effective evaporation cover or screen, or evaporation shields covering at least 25% of the surface of the pool, when the pool is not in active use. Active use includes necessary maintenance that requires removal of the cover, screen, or shields. Active use of public, commercial and apartment pools is whenever the pool is not officially closed.

(7) No person may wash an automobile at a residence except on a watering day during water times as designated by these rules or by a retail public utility pursuant to these rules, and in no event may a person allow groundwater from automobile washing at a residence escape into the street or otherwise off the person's property.

(8) Charity car washes are prohibited except at a commercial car wash that recycles at least 75% of the groundwater it uses or that is certified as a conservation car wash by a retail public utility.

§709.21. Stage II Restrictions.

When Stage II is in effect, the following restrictions listed in paragraphs (1)-(5) of this section apply to all persons throughout the applicable area of the Authority.

(1) All of the prohibitions applicable in Stage I.

(2) No person may use groundwater for landscape watering on more than two watering days in any calendar week, except that landscape watering is permitted on any day before 10:00 a.m. and after 8:00 p.m. by means of a bucket (not to exceed 5 gallons in capacity), hand-held or soaker hose, or properly-installed drip irrigation system. This paragraph does not apply to non-potable water.

(3) Retail public utility must designate specific watering days on which persons within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section. Retail public utilities are encouraged to stagger such days so as to reduce peaks of demand.

(4) For all persons whose property is not served by a retail public utility, the watering days are Saturday and Wednesday.

(5) No person may use groundwater for an ornamental outdoor fountain or similar feature, unless the water is recycled and the only additional groundwater used for the feature is to compensate for evaporative losses.

§709.23. Stage III Restrictions.

When Stage III is in effect, the following restrictions listed in paragraphs (1)-(5) of this section apply to all persons throughout the applicable area of the Authority.

(1) All of the prohibitions applicable in Stage I apply in Stage III.

(2) No person may use groundwater for landscape watering on more than one watering day in any calendar week, except that landscape watering is permitted to maintain shrubs, trees, and other ornamental plants, but not grass or turf, on any day before 10:00 a.m. and after 8:00 p.m. by means of a bucket (not to exceed 5 gallons in capacity), hand-held or soaker hose, or properly-installed drip irrigation system. This paragraph does not apply to non-potable water.

(3) Retail public utility must designate a specific day or days of the calendar week on which persons within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section. Retail public utility are encouraged to stagger such days so as to reduce peaks of demand.

(4) For all persons whose property is not served by a retail public utility, the watering day is Saturday.

(5) No person may use groundwater for an ornamental outdoor fountain or similar feature.

§709.25. Stage IV Restrictions.

When Stage IV is in effect, the following restrictions listed in paragraphs (1)-(5) of this section apply to all persons throughout the applicable area of the Authority.

(1) All of the prohibitions applicable in Stage I and §709.23(5) of this title (relating to Stage III Restrictions) apply.

(2) No person may use groundwater for landscape watering on more than one watering day in any calendar week. For purposes of this paragraph, "watering day" is limited to the morning hours of 3:00 a.m. to 7:00 a.m., and the evening hours of 8:00 p.m. to 11:00 p.m. However, landscape watering by means of a bucket (not to exceed 5 gallons in capacity), hand-held or soaker hose, or properly-installed drip irrigation system is permitted to maintain trees, shrubs, and other ornamental plants, but not grass or turf, on any day of the week during the morning hours of 7:00 a.m. to 11:00 a.m. Persons utilizing irrigation systems requiring more than 7 hours to complete one weekly watering cycle may request a variance in accordance with §709.37 of this title (relating to Variance Applications). Such a request must be accompanied by a conservation and reuse plan for the irrigation system. This paragraph does not apply to non-potable water.

(3) Retail public utilities must designate a specific day or days of the calendar week on which persons within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section. Retail public utilities are encouraged to stagger such days so as to reduce peaks of demand.

(4) For all persons whose property is not served by a retail public utility, the watering day is Saturday.

(5) Filling of all new and existing swimming pools is prohibited, unless at least 30% of the water is obtained from a source other than the aquifer. Groundwater may be used to replenish swimming pools to maintenance level. Drainage of swimming pools is permitted only onto a pervious surface, or onto a pool deck where the water is transmitted directly to a pervious surface, only if necessary to:

(A) remove excess water from the pool due to rain in order to lower the water to the maintenance level;

(B) repair, maintain, or replace a pool component which has become hazardous; or

(C) repair a pool leak.

§709.27. Stage V Restrictions.

When Stage V takes effect, an emergency condition exists, and the board shall, within 48 hours of reaching Stage V levels, convene an emergency session to consider and adopt, as may be appropriate, emergency rules restricting nondiscretionary and discretionary uses in accordance with the Edwards Aquifer Act, §1.26(4). No later than June 30, 1998, proposed emergency rules to take effect during Stage V shall be prepared by the general manager and presented to the board for its consideration and action. Any other provision of this chapter notwithstanding, groundwater may be used when and to the extent it is necessary to prevent danger to public health, safety, or welfare, or to the extent required by state or federal law.

§709.29. Golf Courses.

(a) Water Use Reduction Plan Requirements. An owner or operator a golf course shall file a water use reduction plan with the general manager within 30 days of the effective date of these rules and, at a minimum, comply with the following as shown in paragraphs (1)-(2) of this subsection:

(1) contain a plan with projected implementation dates to convert to an alternate water supply to reduce and eliminate consumption of groundwater to the maximum extent feasible. This conversion may incorporate the use of reclaimed, reused, or recycled water, and/or the golf course must participate in an WSP; and

(2) provide methods of achieving enhanced conservation by utilizing a computer controlled irrigation system ("CCIS"), comprised of a computer controller (digital operating system), software, interface modules, satellite, field controller, soil sensors, weather sta-

tion, or similar devices, which is capable of achieving maximum efficiency and conservation in the application of water to the golf course. A CCIS, at a minimum, should be designed to prevent over-watering, flooding, pooling, evaporation and run-off; and prohibit sprinkler heads from applying water at an intake rate exceeding the soil holding capacity. The plan must require the user to accomplish the following reductions listed in subparagraphs (A)-(D) of this paragraph:

(A) Stage I - 10% reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil holding capacity;

(B) Stage II - 20% reduction in the replacement of daily ET rate or daily soil holding capacity;

(C) Stage III - 30% reduction in the replacement of daily ET rate or daily soil holding capacity; provided that if the user has executed a letter of intent for reclaimed, reused, or recycled water, or is an WSP participant, the required reduction shall be 20%;

(D) Stage IV - 30% reduction in the replacement of daily ET rate or daily soil holding capacity; provided that if the user has executed a letter of intent for reclaimed, reused, or recycled water, or is an WSP participant, the required reduction shall be 20%.

(b) Until a non-conforming golf course becomes a conforming golf course it shall comply with the following reduction measures listed in paragraphs (1)-(4) of this subsection:

(1) Stage I - 10% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 1.7 times the base withdrawal for golf courses that are not equipped with a CCIS;

(2) Stage II - 20% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 1.6 times the base withdrawals for golf courses that are not equipped with a CCIS;

(3) Stage III - 30% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 1.4 times the base withdrawals for golf courses that are not equipped with a CCIS; and

(4) Stage IV - 40% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 1.3 times the base withdrawals for golf courses that are not equipped with a CCIS.

(c) The general manager shall either approve or disapprove the water use reduction plan or request additional information within 30 days of the date of filing. The owner or operation of a golf course may apply groundwater from the aquifer to the course if the general manager approves the plan.

(d) The general manager shall approve the water use reduction plan if the general manager is satisfied that the plan meets the following criteria listed in paragraphs (1)-(4) of this subsection:

(1) it contains all necessary information and documentation;

(2) the plan provides for a critical period watering regimen that uses only the amount of groundwater necessary to maintain the viability of the course and maintain the course in a safe condition;

(3) the plan provides that groundwater will only be applied to areas that are essential to the use of the course in accordance with the applicable maximum allowable withdrawals and specific restrictions imposed by this chapter; and

(4) if non-potable water is available, or may be available to the course within five years, the owner or operator is committed to making use of such non-potable water for watering of the golf course as soon as practicable.

(e) The general manager may require the revision of a water use reduction plan or require the owner or operator to provide additional or updated information, and may disapprove a plan previously approved if it appears that the plan no longer meets the criteria set forth in subsection (d) of this section.

(f) The owner or operator of a golf course must comply with all Stage V rules issued by the board under §709.27 of this title (relating to Stage V Restrictions).

§709.31. Athletic Fields.

(a) Conservation and reuse plan. An owner or operator of an athletic field shall file a conservation and reuse plan with the general manager within 30 days of the effective date of these rules.

(b) A conservation and reuse plan for athletic fields must contain the following information listed in paragraphs (1)-(13) of this subsection:

(1) the name, title, address, and telephone number of the owner or operator of the athletic field;

(2) the name, title, address, and telephone number of the person(s) responsible for the watering of the field;

(3) whether the field is public or private, and the populations served by the field;

(4) the location, dimensions, type of athletic field, and type of turf;

(5) a description of the water-delivery system used and how and when it is used;

(6) a description of management practices relating to watering the field that are employed to control the amount of water applied to the field;

(7) a description of any turf areas that are not essential to the functioning of the field that are or could be watered in accordance with the specific restrictions on landscape watering contained in this chapter;

(8) a statement of what the owner or operator believes is a minimum amount of water and a minimum watering regimen during critical periods that applies only the amount of water necessary to maintain the viability of the turf without creating a safety hazard to users of the field;

(9) a statement of any actions or plans to obtain alternative water supplies such as reclaimed, reuse, or recycled water, and a copy of any letter of commitment from a retail public utility regarding supplying such water to the field;

(10) a statement that the conservation and reuse plan is also in compliance with any local conservation plans;

(11) contain a plan with projected implementation dates to convert to an alternate water supply to reduce and eliminate consumption of groundwater to the maximum extent feasible. This conversion may incorporate the use of reclaimed, reused, or recycled water, and/or the athletic field must participate in an WSP;

(12) provide, where cost effective, methods of achieving enhanced conservation by utilizing a computer controlled irrigation system ("CCIS"), comprised of a computer controller (digital operating system), software, interface modules, satellite, field controller, soil sensors, weather station, or similar devices, which is capable of achieving maximum efficiency and conservation in the application of water to the athletic field. A CCIS, at a minimum, should be designed to prevent over-watering, flooding, pooling, evaporation and run-off; and prohibit sprinkler heads from applying water at an intake rate exceeding the soil holding capacity. The plan shall provide an analysis of the cost effectiveness of utilizing a CCIS. The plan must require the user to accomplish the following reductions listed in subparagraphs (A)-(D) of this paragraph:

(A) Stage I - 10% reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil holding capacity;

(B) Stage II - 20% reduction in the replacement of daily ET rate or daily soil holding capacity;

(C) Stage III - 30% reduction in the replacement of daily ET rate or daily soil holding capacity; provided that if the user has executed a letter of intent for reclaimed, reused, or recycled water, or is an WSP participant, the required reduction shall be 20%;

(D) Stage IV - 30% reduction in the replacement of daily ET rate or daily soil holding capacity; provided that if the user has executed a letter of intent for reclaimed, reused, or recycled water, or is an WSP participant, the required reduction shall be 20%; and

(13) any other information required by the general manager.

(c) The general manager shall either approve or disapprove the conservation and reuse plan or request additional information within 30 days of the date of filing. The owner or operation of an athletic field may apply groundwater from the aquifer to the field if the general manager approves the plan.

(d) The general manager shall approve the conservation and reuse plan if the general manager is satisfied that the plan meets the following criteria listed in paragraphs (1)-(4) of this subsection:

(1) it contains all necessary information and documentation;

(2) the plan provides for a critical period watering regimen that uses only the amount of groundwater necessary to maintain the viability of the turf and maintain the turf in a safe condition;

(3) the plan provides that groundwater will not be applied to areas that are not essential to the use of the field in accordance with the applicable maximum allowable withdrawals and specific restrictions imposed by this chapter; and

(4) if non-potable water is available, or may be available to the field within five years, the owner or operator is committed to making use of such non-potable water for watering of athletic fields as soon as practicable.

(e) The general manager may require the revision of a conservation and reuse plan or require the owner or operator to provide additional or updated information, and may disapprove a plan previously approved if it appears that the plan no longer meets the criteria set forth in subsection (d) of this section.

(f) The owner or operator of an athletic field must comply with all Stage V rules issued by the board under §709.27 of this title (relating to Stage V Restrictions).

(g) Until a non-conforming athletic field becomes a conforming athletic field, it shall comply with the following reduction measures listed in paragraphs (1)-(4) of this subsection:

(1) Stage I - 10% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 1.7 times the base withdrawal for athletic fields that are not equipped with a CCIS;

(2) Stage II - 20% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 1.6 times the base withdrawals for athletic fields that are not equipped with a CCIS;

(3) Stage III - 30% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 1.4 times the base withdrawals for athletic fields that are not equipped with a CCIS; and

(4) Stage IV - 40% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 1.3 times the base withdrawals for athletic fields that are not equipped with a CCIS.

§709.33. Base Withdrawal Reports.

(a) Every applicant other than an irrigation user, must file a base withdrawal report with the Authority which contains the following information listed in paragraphs (1)-(9) of this subsection:

(1) the person's name, address, and telephone number;

(2) contact person and title;

(3) the location and name or number of all wells from which groundwater is withdrawn (attach map);

(4) the monthly amount of groundwater withdrawn during the months of November and December of 1995 and January and February of 1996, or for conjunctive users, the monthly amount of groundwater withdrawn during the months of November and December and the following January and February during each of the three consecutive 12-month periods preceding the commencement of the applicant's use of the non-aquifer groundwater which qualifies the applicant as a conjunctive user;

(5) the total amount of groundwater withdrawn each month during the 12 months prior to the date of the report, and the total amount of groundwater withdrawn for such months;

(6) the estimated amount of groundwater actually beneficially applied without waste to nondiscretionary uses, and the nature of such uses;

(7) a summary of the applicant's past efforts to conserve water and reduce the amount of water required, and the efficacy of such efforts;

(8) a summary of any actions the applicant intends to take to conserve water and reduce the amount of water required in order to comply with these rules; and

(9) any other information requested by the general manager.

(b) A applicant must file its base withdrawal report with the Authority within 30 days after the effective date of these rules.

(c) A person who, based on a transfer, becomes a applicant after the effective date of these rules must file a base withdrawal report within seven days of the first day the person becomes a applicant.

(d) A applicant who, without good cause, fails to timely file a completed base withdrawal report, is not entitled to exclude groundwater water under §709.3 of this title (relating to Nondiscretionary Uses) from mandatory reductions until a base withdrawal report is filed with the Authority.

(e) The base withdrawal report shall be filed and term prescribed by the Authority.

§709.35. Monthly Withdrawal Reports.

(a) Each applicant must file monthly withdrawal reports with the Authority for any month during which a stage is in effect for the particular area where the applicant is located. These reports must contain the following information listed in paragraphs (1)-(6) of this subsection to the extent the information is available:

(1) the person's name, address, and telephone number;

(2) contact person and title;

(3) the reporting month;

(4) total amount of groundwater withdrawn during the reporting month;

(5) the estimated amount of groundwater applied to nondiscretionary use during the reporting month, and the nature of such use; and

(6) any other information requested by the general manager.

(b) Monthly withdrawal reports must be filed with the Authority no later than the fifth business day of the month following the reporting month.

(c) A applicant who fails to timely file a monthly withdrawal report in accordance with this section is not entitled to exclude groundwater under §709.3 of this title (relating to Nondiscretionary Uses) from mandatory reductions for the reporting month.

(d) The general manager may in special cases arrange for different reporting requirements under this section, including less frequent reporting.

(e) The monthly withdrawal report shall be filed on a form prescribed by the Authority.

§709.37. Variance Applications.

(a) A person may file with the Authority an application for a variance from this chapter on a form prescribed by the Authority. The application must contain the following information listed in paragraphs (1)-(4) of this subsection:

(1) the specific nature of the variance requested;

(2) a detailed explanation of why the person believes it should be granted the variance, including any supporting documentation;

(3) a statement that the facts contained in the request are true and within the person's personal knowledge; and

(4) any other information requested by the general manager.

(b) Variance applications shall be processed in accordance with Chapter 707, Subchapter L of this title (relating to Applications Processing).

§709.39. Granting of Variances.

A variance may be granted by the board if it finds that:

(1) the variance is necessary to avoid an unusual, direct, and substantial hardship;

(2) there are no other reasonably available means for avoiding the hardship or elimination without a variance;

(3) granting the variance is consistent with the goals of the Edwards Aquifer Act and these rules; and

(4) granting the variance will not cause significant harm to any other person or group of persons.

§709.41. Variance Conditions.

(a) The board may grant a variance for a term and with any conditions the board deems appropriate.

(b) The board may require a person granted a variance to file reports with the Authority containing such information as is relevant to monitoring the continuing appropriateness of the variance and compliance with the terms and conditions of the variance.

§709.43. Rescission of Variance.

The board may rescind a variance at any time due to changed circumstances, new information, or failure of the holder of the variance to abide by the terms and conditions of the variance, the Edwards Aquifer Act, the rules of the Authority, or any order of the board.

§709.45. Review of General Manager's Actions.

The general manager's actions under this chapter are subject to review according to §707.290 and §707.293 of this title (relating to Motion for Reconsideration of Actions Taken by the General Manager and Review of General Manager's Actions, respectively).

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717091
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: February 2, 1998
For further information, please call: (210) 222–2204

Chapter 721. Interim Critical Period Management Rules

The Edwards Aquifer Authority (EAA) proposes the repeal of §§721.1-721.8, 721.11, 721.12, 721.21-721.24, 721.31–721.33, 721.41-721.48, 721.51, 721.52, 721.61-721.65, 721.71, and 721.72, concerning the interim critical period management rules.

Senate Bill 1477, §1.25 requires that the EAA implement a critical period management plan. The original plan was adopted on February 18, 1997 on an interim basis.

The repeal of Chapter 721 and the adoption of Chapter 709 is part of the Authority's rules reorganization initiative.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for the period the repeals will be in

effect there will be no additional costs for the State or local governments related to the administration of these rules. Mr. Ellis has determined there will be no estimated reductions in costs for the State or local governments related to the administration of these rules. Mr. Ellis has determined there will be no loss or increase in revenues to the State or local governments related to the enforcement of these rules. Mr. Ellis has determined there could be a loss in revenue to local governments related to the enforcement of these rules. Municipal suppliers are subject to critical period management fees, and possibly other governmental users of water may be subject to administrative penalties ($100 to $1,000 per day per violation) and civil penalties ($100 to $10,000 per day per violation). It is not possible to estimate what fees or penalties may be levied against local governments at this time.

Mr. Ellis also has determined that for the period the repeals will be in effect the public benefit anticipated as a result of enforcing the rules will be the Authority's reorganization initiative of existing Chapter 721 under new Chapter 709.

Comments on the proposal may be submitted to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P. O. Box 16830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030.

Subchapter A. General Provisions

31 TAC §§721.1–721.8

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.1. Purposes.

§721.2. Authority.

§721.3. Findings.

§721.4. Effect on Demand Management Rules.

§721.5. Definitions and Abbreviations.

§721.6. Filing.

§721.7. Change of Address.

§721.8. Severability.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717083
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

Subchapter B. Applicability of Rules

31 TAC §721.11, §721.12

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.11. Primary Users.

§721.12. Exempt Wells and Essential Uses.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717084
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

Subchapter C. Critical Period Stages

31 TAC §§721.21–721.24

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.21. Critical Period Stages–East Area.

§721.22. Critical Period Stages–Medina Area.

§721.23. Critical Period Stages–Uvalde Area.

§721.24. Beginning and End of Critical Period Stages.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717085
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

Subchapter D. Maximum Allowable Usage and Enforcement

31 TAC §§721.31–721.33

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.31. Maximum Allowable Usage.

§721.32. Enforcement.

§721.33. Determination of Base and Maximum Allowable Usage.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717086
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: February 2, 1998
For further information, please call: (210) 222–2204

Subchapter E. Restrictions on Specific Uses

31 TAC §§721.41–721.48

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.41. Reduction Efforts.

§721.42. Stage I Restrictions.

§721.43. Stage II Restrictions.

§721.44. Stage III Restrictions.

§721.45. Stage IV Restrictions.

§721.46. Use Necessary for Public Health or Safety.

§721.47. Golf Courses.

§721.48. Athletic Fields.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717087
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

Subchapter F. Reports

31 TAC §721.51, §721.52

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.51. Base Usage Reports.

§721.52. Monthly Usage Reports.

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.

Issued in Austin, Texas, on December 22, 1997.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

Subchapter G. Variances

31 TAC §§721.61–721.65

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.61. Request for Variance.

§721.62. When Variances May Be Granted.

§721.63. Terms and Conditions of Variance.

§721.64. Rescission of Variance.

§721.65. Review of Decision.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717089
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

Subchapter H. Review and Reconsideration

31 TAC §721.71, §721.72

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

The repeals are proposed under Senate Bill 1477, §1.11(a), which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including interim critical period management rules.

The following section of Senate Bill 1477 is affected by the proposed repeals: §1.26.

§721.71. Request for Review.

§721.72. Reconsideration by the Board.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717090
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: February 2, 1998
For further information, please call: (210) 222–2204

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuels Tax

34 TAC §3.176

The Comptroller of Public Accounts proposes an amendment to §3.176, concerning fuel used by power take-off and auxiliary power units. The name of this section is being amended to more clearly describe the information provided in this section.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements the Tax Code, §153.119 and §153.222.

§3.176. Metering Devices Used to Claim Refund of Tax on Fuel Used in Power Take-Off and Auxiliary Power Units [~~Fuel Used by Power-Take-Off and Auxiliary Power Units~~].

(a) Metering devices. The comptroller will accept the use of metering devices as a basis for determining the quantity of gasoline or diesel fuel consumed in the operation of auxiliary power units or power take-off [~~power-take-off~~] equipment mounted on a motor vehicle.

(b) Design specifications. The meters shall be designed to separately measure the fuel used to propel the motor vehicle from the fuel used in the power take-off [~~power-take-off~~] or auxiliary power unit.

(1) (No change.)

(2) The metering device must be designed so that the gasoline or diesel fuel will flow through and be recorded by the metering device only when the motor vehicle's spring-loaded air-parking brake or other approved air-parking brake, or hydraulic parking brake is engaged, or when any hydraulic power take-off [~~power-take-off~~] unit which can be operated only when the motor vehicle is stationary and is engaged, and providing that said gasoline or diesel fuel will at all times by-pass the metering device and flow through a by-pass line when the air brakes, hydraulic brakes, or hydraulic power take-off [~~power-take-off~~] units described above are disengaged, or when such motor vehicle is propelled in any manner by such fuels; and

(3) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9716925
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–4062

34 TAC §3.193

The Comptroller of Public Accounts proposes an amendment to §3.193, concerning bad debt deductions. The 75th Legislature, 1997, in Senate Bill 862, amended Chapter 153 of the Tax Code to clarify the manner by which a permitted gasoline distributor or diesel fuel supplier may claim a bad debt deduction. Any reference to the word refund has been eliminated to conform

with current reporting procedures. A grammatical correction has been made to subsection (2)(e) adding after the semicolon the word "and."

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements the Tax Code, §§153.1195, 153.2225, and 153.409.

§3.193. Bad Debt Deductions.

(a) Bad debt [~~refund or~~] credit.

(1) A permitted gasoline distributor or diesel fuel supplier may take credit against taxes to be remitted to the comptroller [~~or claim a refund on taxes paid to the comptroller~~] for bad debt on sales.

(2) To establish bad debt credit [~~or refund~~], a distributor's or supplier's records must show:

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

(E) all payments or credits applied to the account of the purchaser; and

(F) (No change.)

(3) (No change.)

(4) The following information must be submitted with the distributor's or supplier's report [~~or refund claim form~~] on which the credit is claimed:

(A)-(E) (No change.)

(b) Credit card sales.

(1) (No change.)

(2) Sales of fuel into the supply tank of a motor vehicle or motorboat when payment is made through the use and acceptance of a credit card may not be taken as a bad debt credit [~~or refund~~].

(3) All credit sales to commercial or agricultural customers at locations not open to the general public are subject to the bad debt credit [~~or refund~~].

(c) Penalty and interest.

(1) If an account is collected which has been written off as a bad debt, interest will accrue from the date the credit was taken [~~or refund granted~~].

(2) (No change.)

(d) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9716926
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–4062

Subchapter O. State Sales and Use Tax

34 TAC §3.364

The Comptroller of Public Accounts proposes an amendment to §3.364, concerning staff leasing services. The amendment in subsection (a)(5) reflects changes made by House Bill 1465, 75th Legislature, 1997, to the Labor Code, which regulates the staff leasing industry. The changes, effective September 1, 1997, delete reference to exceptions from license requirements for entities listed on the New York Stock Exchange with assets that exceed one billion dollars.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements House Bill 1465, 75th Legislature, 1997.

§3.364. Staff Leasing Services.

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

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

(5) Staff leasing company - A business that offers staff leasing services and is licensed under the Labor Code, Chapter 91[~~, or a business that offers staff leasing services but is exempt from licensing requirements by the Labor Code, §91.001, Subsections (10) and (11)(C), as an entity listed on the New York Stock Exchange with assets that exceed one billion dollars~~].

(6) (No change.)

(b)-(d) (No change.)

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

Issued in Austin, Texas, on December 19, 1997.

TRD-9716924
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–4062

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XX. Texas Workforce Commission

Chapter 800. General Administration

Subchapter F. Interagency Matters

40 TAC §§800.201–800.204

The Texas Workforce Commission proposes new §§ 800.201-800.204, concerning Interagency Matters. The rule will be concurrent with a repeal of §§ 819.1-819.3 being published.

The new rules proposed concurrently with the repeal of Chapter 819 will include much of the language from the existing §§ 819.1-819.3, but will also include additional language which the Commission deems appropriate in order to implement the purpose under its enabling legislation. The repeals and new sections result in a rearrangement of the rules into a new format incorporating technical and clarity changes.

New Subchapter F of Chapter 800 General Administration is proposed as the location of new §§800.201-800.204 Interagency Matters.

Randy Townsend, Director of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications as a result of enforcing or administering the rules. There will be no additional costs to the state as a result of enforcing the rules. There will be no reduction in costs to the state. There will be no costs to local governments. There is no net effect in revenues as a result of enforcing and administering the rules, and no foreseeable implications relating to costs or revenues to the state or to local governments. We do not anticipate that there would be significant costs to small business, nor that there would be significant economic costs to persons who are required to comply with the sections as proposed or significant costs associated with implementing these sections.

J. Ferris Duhon, Acting Deputy Director of Legal Services, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section will be a greater degree of interaction and cooperation among the agencies affected by the proposed rules. There is no anticipated effect on small businesses and there are no anticipated costs to persons who are required to comply with the rule as proposed.

All official comments submitted to J. Ferris Duhon will be considered before the final rules are adopted. Comments on the proposed rule may be submitted to J. Ferris Duhon, Acting Deputy Director of Legal Services, Texas Workforce Commission Building, 101 East 15th Street, Room 264, Austin, Texas 78778, fax (512) 463-1426, or e-mailed to: ferris.duhon@twc.state.tx.us. Comments must be received by the Commission by 5:00 p.m. on February 3, 1998 for consideration.

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with the Texas Labor Code.

The proposed rules affect the Texas Labor Code, Title 4. § Subchapter F. Interagency Matters

§800.201. Title and Purpose.

(a) These rules may be cited as Interagency Matters.

(b) The purpose of these rules is to implement and interpret the provisions of the Texas Administrative Code, Chapter 40, Interagency Matters, and to provide notice to the public of the contents of the Memorandums of Understanding.

§800.202. Memorandum of Understanding with Texas Commission for the Deaf and Hard of Hearing.

The Texas Workforce Commission hereby adopts by reference the terms of a memorandum of understanding entered into with the Texas Commission for the Deaf set out in 40 TAC §181.912(a) and (b) and 40 TAC §181.915 of this title (relating to the Texas Department of Correction and the Texas Workforce Commission). Copies of the memorandum of understanding are available at the Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

§800.203. Memorandum of Understanding with Texas Education Agency.

The Texas Workforce Commission hereby adopts by reference the terms of a memorandum of understanding on transition planning for students enrolled in special education. Said memorandum of understanding is set out at 19 TAC §89.1110. Copies are available at the Texas Workforce Commission, 101 East 15th, Room 614, Austin, Texas 78778.

§800.204. Memorandum of Understanding with Texas Department of Economic Development.

The Texas Workforce Commission hereby adopts by reference the terms of a memorandum of understanding on program planning and budgeting relating to workforce development programs. Said memorandum of understanding is set out at 10 TAC §195.10. Copies are available at the Texas Workforce Commission, 101 East 15th, Room 614, Austin, Texas 78778.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717094
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–8812

Chapter 811. Job Opportunities and Basic Skills

The Texas Workforce Commission proposes the repeal of §§811.1-811.5, 811.10-811.23, and 811.60 relating to the Job Opportunities and Basic Skills and new §§811.1, 811.2, 811.11-811.20, 811.31-811.34, 811.41-811.45, 811.61-811.65, 811.81-811.87 and 811.101, relating to the Choices services and the participation requirements for persons receiving temporary cash assistance from the Texas Department of Human Services.

Section 811.1 explains the goal and purpose of Choices services, which replace the Job Opportunities and Basic Skills program.

Section 811.2 provides definitions of terms used in the rules.

Section 811.11 sets forth the eligibility requirements for Choices services.

Section 811.12 explains the participation requirements for the Choices services.

Section 811.13 provides for good cause for noncompliance by the participant.

Section 811.14 explains that there are penalties for failure to participate as specified in DHS' rules.

Section 811.15 describes how clients may access the Choices services.

Section 811.16 sets forth the assessment requirements.

Section 811.17 describes the strategies used in Choices services.

Section 811.18 sets forth the monitoring requirements applicable to Choices participants enrolled in employment services activities.

Section 811.19 governs the administration of individual development accounts.

Section 811.20 provides for employment retention and re-employment services to Choices participants.

Sections 811.31-811.34 provide for job search related activities.

Sections 811.41-811.45 govern the development of work-based programs that are legislatively authorized. These programs include the work skills training program (from the 74th Regular Session House Bill 1863), the subsidized employment program (House Bill 1863 and the 75th Regular Session House Concurrent Resolution 204), the Texans Work program (House Bill 1863 and 75th Regular Session Senate Bill 781), and the self-employment assistance program (House Bill 1863 and 75th Regular Session, Appropriations Act, Rider 27(c)).

Sections 811.61-811.65 provide for education and other training activities.

Sections 811.81-811.87 describe the support services available to applicants or recipients of temporary cash assistance, including the Wheels for Work initiative. The Wheels for Work program is legislatively authorized by 75th Regular Session, Senate Bill 1114.

Section 811.101 sets forth the appeals process for the Choices services.

Rules of the Texas Department of Human Services relating to employment services include the following: requirements of applicants and recipients of temporary cash assistance to attend workforce orientation sessions and to participate in employment services; the exemptions from participation requirements; determination of good cause for failure to participate; and financial penalties applied to benefits resulting from noncompliance. The Commission, where applicable, cross references those rules for the purposes of continuity or clarity. Although these rules govern services available through the Temporary Assistance for Needy Families block grant funds, participants are eligible for and receive services funded through other resources, including the Job Training Partnership Act (JTPA), Wagner-Peyser's Employment Services, and the Adult Education Act, as amended by the National Literacy Act.

Local workforce development boards have the jurisdiction and the authority to set local policy and determine service delivery practices and procedures, the services and activities available in each local workforce development area, and the locations where services are available and delivered consistent with federal and state regulations, rules, and policies.

Eligibility requirements for receipt of temporary cash assistance benefits under the jurisdiction of the Texas Department of Human Services (DHS) include the requirement to work or participate in the state's employment services program which replaces the JOBS Program. Failure of an applicant or a recipient of temporary cash assistance to fulfill this requirement results in denial of the application or a financial penalty (sanction) placed on the cash assistance grant each month of noncompliance. The current financial penalty for failure to participate in employment services is a maximum of $78 per month for one parent. In two parent households, if both parents do not comply, the penalty is a maximum of $125 per month.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the sections as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mike Sheridan, Executive Director of the Commission, has determined that the public benefit anticipated as a result of the sections as proposed will be the creation of a state and local partnership in policy making and service delivery that will ensure that recipients of temporary cash assistance receive services to aid them in assuming their responsibility to move quickly into work or work activities leading to self sufficiency. There is no cost to small businesses of compliance with the new sections as proposed. There is no economic cost to persons required to comply with the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of these proposed rule changes.

Comments on the proposed sections may be submitted to Larry Temple, Director of Welfare Reform, Texas Workforce Commission, 101 East 15th Street, Room 458-T, Austin, Texas 78778; Fax Number 512-463-2209; E-mail to larry.temple@twc.state.tx.us.

Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

40 TAC §§811.1-811.5, 811.10–811.23, 811.60

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The repeals of old sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The repeals affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.1. Who Is Required To Participate.

§811.2. Who May Volunteer.

§811.3. Reporting Change in Status.

§811.4. Employment Services.

§811.5. Volunteering for Jobs.

§811.10. Target Population.

§811.11. Levels of Service.

§811.12. Participant Extended Eligibility for Case Management Services.

§811.13. Support Services for Participants in Job Opportunities and Basic Skills Training (JOBS) Program.

§811.14. Case Management Services for Job Opportunities and Basic Skills (JOBS) Participants.

§811.15. Client Participation Requirements.

§811.16. Penalties for Failure to Participate.

§811.17. Good Cause for Failure to Participate.

§811.18. Conciliation and Fair Hearings.

§811.19. Payments for General Educational Development (GED) Testing and Texas Certificates of High School Equivalency for Job Opportunities and Basic Skills Training (JOBS) Program Participants.

§811.20. Work Experience.

§811.21. Administrative Requirements for the Employment Services Programs.

§811.22. Audits of Employment Services Contractors.

§811.23. Basis of Payment for Employment Services Program.

§811.60. Memorandum of Understanding with the Department of Commerce Regarding Economic Development.

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.

Issued in Austin, Texas, on December 22, 1997.

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J. Randel (Jerry) Hill
General Counsel
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Chapter 811. Choices

Subchapter A. General Provisions

40 TAC §811.1, §811.2

The new sections are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new sections affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.1. Goal and Purpose.

(a) Goal. All applicants and recipients of temporary cash assistance will obtain employment that leads to self-sufficiency at the earliest opportunity.

(b) Purpose. Choices services provide work-related activities and support to assist eligible participants to prepare for and retain employment and avoid becoming or remaining dependent on public assistance.

§811.2. Definitions.

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

Commission – The Texas Workforce Commission (TWC).

DHS – The Texas Department of Human Services.

Employability plan – A plan developed by Choices staff and a participant that is based on an individual and family assessment, that delineates the goal of self-sufficiency through employment, and sets out the steps necessary to achieve the goal. The plan, signed by the participant, is the participation agreement for compliance purposes.

Employment entry – Entry of a participant into an unsubsidized, paid job or when a participant begins a personal business, a farm, or other self-employment enterprise.

Exempt – The status of a recipient of temporary cash assistance who is not required to participate in employment services activities, as determined by DHS staff.

Exemptions – Criteria established by DHS that permanently or temporarily excuse a recipient of temporary cash assistance from the employment services participation requirements.

GED – Abbreviation for General Educational Development, a trademark for a series of tests measuring skill in writing, social studies, science, reading, and math at the high school level; the initials sometimes refer to the equivalency certificate (formal name in Texas: Certificate of High School Equivalency).

Good cause determination – A decision by Choices staff that a nonexempt participant is not able at the current time to participate in employment services or in ancillary services required as part of the employability plan.

Individual development account (IDA) – A state-established account for deposits by a recipient of temporary cash assistance and any matching funds from employers or other community organizations to be used for specific purposes.

JTPA – The Job Training Partnership Act and the programs established under such laws to prepare youth and adults facing barriers to employment for participation in the labor force by providing job training and other job services.

Local workforce development board – An entity formed under Texas Government Code, Title 10, Subchapter F and as detailed in 40 Texas Administrative Code, §8.801(b) relating to Requirements for Formation of Local Workforce Development Boards.

Nonexempt – The status of a recipient of temporary cash assistance who is required to participate in employment services activities, as determined by DHS staff.

Participant – A person who is enrolled in Choices services.

Choices – The program formerly known as the Job Opportunities and Basic Skills Training (JOBS) program.

Choices staff – Any personnel assigned to functions responsible for providing direct employment services or support services for applicants and recipients of temporary cash assistance. This term applies to TWC staff, to staff of Local Workforce Development Boards, and to contracted service providers.

Penalty – A reduction in a family's temporary cash assistance grant applied by DHS staff when a nonexempt recipient is sanctioned. The financial penalty is equal to the needs amount for one parent each month of the sanction period. In two parent families, if both parents are sanctioned, the penalty is equal to the needs amount for both parents. See definition of sanction.

Sanction – Action taken by DHS staff when a nonexempt recipient of temporary cash assistance does not comply with employment services requirements. See definition of penalty.

Subsidized employment – A time-limited training position that meets suitability and non-displacement requirements of the Federal Unemployment Tax Act and other federal laws.

TAC – Texas Administrative Code.

Temporary cash assistance – A cash grant provided through DHS to persons who meet certain residency, income, and resource criteria as provided for under the federal Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance for Needy Families block grant statutes and regulations. The acronym used for this assistance is TANF. The former name was Aid to Families with Dependent Children or AFDC.

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

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Subchapter B. Eligibility and Participation

40 TAC §§811.11–811.20

The new sections are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new sections affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.11. Eligibility.

Applicants for and recipients of temporary cash assistance benefits who are at least 13 years of age are eligible for Choices services funded through the TANF block grant funds. Former recipients of temporary cash assistance who participated in Choices services also are eligible for employment retention and re-employment services as stipulated in §811.20 of this title (relating to Employment Retention and Re-Employment Services).

§811.12. Participation Requirements.

(a) To be certified and to remain eligible for temporary cash assistance benefits, applicants and recipients must comply with employment services requirements unless they are exempt as specified in DHS' rules located at 40 TAC §§3.301 of this title (relating to Responsibilities of Clients and the Texas Department of Human Services), 3.7301 of this title (relating to Career Opportunity Orientation Requirements), 3.7302 of this title (relating to Exceptions to the Career Opportunity Orientation Appointments), 3.1101 of this title (relating to Who is Required to Participate), and 3.3907 of this title (relating to Employment Services) or have good cause as stipulated in §811.13 of this title (relating to Good Cause).

(b) Compliance with employment services requirements includes each of the following:

(1) Applicants of temporary cash assistance must attend a scheduled workforce orientation.

(2) Recipients of temporary cash assistance must participate in assessment and employment planning appointments and assigned employment and training activities for the required number of hours per week as stipulated in 42 U.S.C.A. §607 or as designated in an individual employability plan. Compliance shall be based on the assigned number of hours designated in the employability plan, even if greater than the federal minimum expectation.

(3) Recipients must attend scheduled appointments.

(4) Recipients must participate in or receive ancillary services required to remove barriers to employment or participation in employment-related activities. These services include, but are not limited to, counseling, treatment, vocational or physical rehabilitation, and medical or health services.

(5) Recipients must accept a job offer.

§811.13. Good Cause.

A recipient of temporary cash assistance who fails to comply with employment services requirements may have good cause if verified or otherwise demonstrated by the recipient to the satisfaction of Choices staff. Each of the following may constitute good cause.

(1) The person is temporarily ill or incapacitated.

(2) The person is incarcerated or has a court appearance.

(3) The person is the parent or caretaker personally providing care for a child under the age of six and shall not be required to participate more than 20 hours per week. This good cause situation shall not apply to custodial parents who have not completed high school or its equivalent or to two parent families where one parent is able to care for the child.

(4) The person is the caretaker of a physically or mentally disabled child who requires the caretaker's presence in the home.

(5) The person demonstrates that there is no available transportation or there is a breakdown in transportation arrangements.

(6) The person demonstrates that there is no available child care or there is a breakdown in child care arrangements.

(7) There is a lack of other necessary support services and participation is not deemed possible without such services.

(8) The person receives a job referral that results in an offer below the minimum wage, except for certain work-related, on-the-job training activities such as work skills training.

(9) There are no available jobs within reasonable commuting distance, which means that travel from home to the job or training would require commuting time of more than two hours round trip, or the distance prohibits walking and transportation is not available.

(10) A family crisis or family circumstances preclude participation, including being a victim of domestic violence. The recipient shall be expected to engage in problem resolution through appropriate referrals for counseling and supportive services, and the situation shall be reevaluated within three months. Good cause shall not be extended beyond six months for domestic violence purposes.

§811.14. Penalties for Failure to Participate.

Applicants for or recipients of temporary cash assistance are subject to actions and penalties as specified in DHS' rules at 40 TAC §3.7303 of this title (relating to Failure to Comply) and §3.1104 of this title (relating to Failure to Comply with Title IVA Employment Programs).

§811.15. Access to Choices Services.

Applicants and recipients of temporary cash assistance access the Choices services through the following methods:

(1) direct referrals from DHS eligibility staff;

(2) outreach methods; or

(3) requesting services through DHS eligibility, Choices staff, or education and training providers.

§811.16. Assessment.

(a) Choices participants shall have an initial assessment to determine the participant's employability and needs. At a minimum, the assessment shall cover information about the participant's employment and educational history; vocational and educational skills, experiences, and needs; support services needs; and family circumstances that may affect participation. The existence of family violence shall be one of the factors considered in evaluating a participant's employability.

(b) The need for family violence services, or other services to address severe family crisis situations, must be considered when establishing the participant's employability plan and in assigning hours of work or work-related activities. Participation in counseling or other services to address family violence and other crisis situations may be included in the participant's employability plan.

(c) As part of the initial assessment, a literacy assessment shall be conducted for Choices participants using a statewide standard literacy assessment instrument. The grade level results of the literacy assessment shall be compared by DHS to the participant's stated grade completion to determine the appropriateness of the initial time limit designation for cash assistance as stipulated in the Texas Human Resources Code, §31.0065, relating to Time-Limited Benefits.

§811.17. Choices Service Strategies.

(a) Workforce Orientation for Applicants. As a condition of eligibility, applicants for temporary cash assistance are required to attend a workforce orientation that includes information on choices available to allow them to enter the Texas workforce. Applicants are informed about the impact of time-limited benefits, the advantages of working, individual and parental responsibilities, the services available through Choices, and consequences for noncompliance. Following the orientation, applicants are provided an appointment for employment planning which they are required to attend if they are subsequently certified as eligible for temporary cash assistance.

(b) Work First. Services available through Choices are consistent with a Work First service delivery approach which ensures that participants access the labor market before or immediately after certification for temporary cash assistance benefits. A period of assisted job search and job readiness activities is established through written policy guidelines by Local Workforce Development Boards, consistent with state established guidelines. Participants who do not obtain employment during this timeframe are placed in work, education, or training activities as identified in the participant's employability plan. Planned services shall consider the individual assessment and the participant's time limits for temporary cash assistance.

(c) Adults. Services for adults focus on activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(d) Teens. Services for teenage participants focus on completion of school, graduating or obtaining a high school equivalency certificate, and making the transition from school to work.

(e) Local Contracting. Local Workforce Development Boards may contract for services on a pay-for-performance basis.

(f) Local Flexibility. Local Workforce Development Boards are encouraged to develop additional service strategies that are consistent with Goal and Purpose as set out in §811.1 of this chapter.

§811.18. Monitoring of Participation.

Choices staff shall monitor the activities of participants on a weekly basis, unless less frequent monitoring is approved under written guidelines by the Commission. Monitoring shall consist of tracking and reporting hours of participation, evaluation of the participant's progress in the assigned activity, and determining and arranging for any intervention needed to assist the participant in complying with program requirements.

§811.19. Individual Development Accounts.

(a) Subject to available resources, individual development accounts (IDA) shall be established and administered by the Commission or by contract with a nonprofit private or public entity.

(b) The account shall be administered to assist a recipient of temporary cash assistance participating in a work-related activity, including but not limited to the Subsidized Employment Program.

(c) Use of funds in a participant's IDA is limited to expenses related to:

(1) home ownership;

(2) medical expenses;

(3) education and training expenses such as tuition, books, and costs for qualifying examinations;

(4) small business start-up; or

(5) other types of asset accumulation.

(d) The Commission reserves the right to place more restrictive limits for use of the individual development accounts through written guidelines.

(e) Deposits made in an IDA may be matched by an employer, a community group, or a financial institution. Match is not considered as income.

§811.20. Employment Retention and Re-employment Services.

(a) Monitoring of employment retention and the reporting of hours of employment is required for at least the length of time the participant remains eligible for temporary cash assistance.

(b) Participant follow-up methods and timeframes shall be established through local policy and procedures, but shall occur no less often than monthly.

(c) Employment retention and re-employment services may be made available to participants beyond denial of temporary cash assistance benefits. These services include but are not limited to the following:

(1) assistance and support for the transition into employment through direct services or referrals to resources available in the area;

(2) child care, if needed;

(3) work-related expenses, including those identified in §811.35 of this title (relating to Work- Related Expenses);

(4) transportation necessary for a period of time to allow a participant who loses employment to engage in short-term, supported job search or related activities;

(5) job readiness services and assisted intensive job search to help a participant who loses employment find another job as quickly as possible;

(6) job placement and job development services to help a participant who loses employment find another job as quickly as possible; or

(7) referrals to available education and training resources, as needed, to increase an employed participant's skills or to help the participant qualify for advancement and longer-term employment goals.

(d) Employment retention and re-employment services may be provided by Commission staff, local workforce development boards, or contracted service providers.

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

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Subchapter C. Job Search-Related Activities

40 TAC §§811.31–811.34

The new sections are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new sections affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.31. Job Search-Related Activities.

The Commission or Local Workforce Development Boards shall provide for activities and services to assist participants find employment as early as possible as described in Subchapter C of this title (relating to Job Search-Related Activities).

§811.32. Job Readiness.

Job readiness activities are individual assistance or coordinated, planned, and supervised classes for participants to prepare them for seeking employment. Activities include, but are not limited to, the following:

(1) occupational exploration;

(2) job skills assessment;

(3) assistance with applications and resumes;

(4) job fairs;

(5) interviewing skills and practice interviews;

(6) life skills; or

(7) guidance and motivation for development of positive work attitudes and behaviors necessary for the labor market.

§811.33. Job Search.

Job search services are individual and group activities in which participants actively seek employment under the guidance of Choices staff. Job search services include, but are not limited to, the following:

(1) counseling;

(2) job search skills training; or

(3) information on available jobs.

§811.34. Job Development and Job Placement Services.

Choices staff may provide job development and job placement services to assist participants in finding employment. These services include recruiting employers with job openings, recruiting employers with positions for subsidized employment and other work-related activities, or matching participant's skills and abilities with employer's needs.

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

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Subchapter D. Work-Based Programs

40 TAC §§811.41–811.45

The new sections are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new sections affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.41. Work-Based Programs.

(a) The Commission or Local Workforce Development Boards may provide for the development of work and work-based training activities as specified in Texas Human Resources Code, §31.0126 (relating to Employment Programs) and as described in Subchapter D of this title (relating to Work-Based Programs).

(b) A participant who has good cause as described in §811.13 of this title (relating to Good Cause) or who is incapable of performing a particular job shall not be required to participate in that activity or may cease to participate in that activity.

(c) When requested, the Commission may provide technical assistance to Local Workforce Development Boards on the work activities described in Subchapter D of this title (relating to Work-Based Programs).

§811.42. Subsidized Employment.

(a) Enrollment.

(1) Participants who, after an objective assessment of their skills, are determined by Choices staff to have the basic skills and attitudes necessary to succeed in the workplace may be placed in subsidized employment positions.

(2) Participants, age 18 and older, who are unemployed after completing an initial job readiness and job search period may be required to enter into a subsidized employment position based on available resources and the participant's skills, interests, and employability plan.

(3) Other participants may volunteer for a subsidized employment position.

(b) Duration of the Activity. Participants in a subsidized employment position are encouraged to work between 35 and 40 hours per week for no more than four full months. Overtime is allowed by mutual agreement between the participant and the employer.

(c) Wages.

(1) Wages shall be at least minimum wage.

(2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

(3) If overtime is earned, the employer is responsible for all wages in excess of 40 hours per week.

(4) Upon submission of a monthly voucher supported by weekly time and attendance documentation, employers will be subsidized a portion of wages paid, as determined by contract. The subsidy is derived from the participant's temporary cash assistance and food stamp benefits which are diverted to the Commission to be distributed to the employer.

(d) Status of Enrollment at Denial of Benefits. If a participant's temporary cash assistance benefits are denied while enrolled in a subsidized employment position, the employment subsidy ends with the effective date of denial. Employers may decide whether or not to retain the participant in an unsubsidized employment position.

§811.43. Work Skills Training.

Choices participants may be placed in unsalaried, work-based, training positions in either the private, for profit or nonprofit sector or the public sector to improve the employability of participants who have been unable to find employment. The placements are time-limited, and individual positions must be designed to move participants quickly into regular employment. Additional requirements relating to work skills training include the following:

(1) each training position must have designated hours, tasks, skill attainment objectives, and staff supervision;

(2) training must not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements;

(3) entities that enter into nonfinancial agreements with the Commission or Local Workforce Development Boards shall identify training positions and provide job training and work skills training within their organization that will enable participants to gain the skills necessary to compete in the labor market; and

(4) all non-exempt participants who are unemployed after completing job search activities must be evaluated on an individual basis to determine if enrollment in work skills training will be required, based on available resources and the local labor market.

§811.44. Texans Work Program.

(a) Description. The Texans Work Program is on-the-job training for Choices participants.

(b) Participating Employers. Employers or employer alliances or consortia may participate in the program upon approval by the Commission or by the Local Workforce Development Boards.

(c) Approval of the Employer's Training Program. An employer's training program must be approved by the Commission in collaboration with the Texas Skills Standards Board following written guidelines to be developed by the Commission.

(d) Employer Responsibilities. Employers, other approved organizations as stipulated in subsection (b) of this section, or subcontracted training providers are responsible for the following:

(1) designing the training curriculum and providing the training;

(2) providing one or more training positions for Choices participants;

(3) contributing $300 per month, to the Commission, for each trainee for the duration of the training program; and

(4) reporting the trainee's attendance and other necessary information as established in written guidelines by the Commission or the Local Workforce Development Boards.

(e) Participants in the Texans Work Program.

(1) Participants who are unemployed after completing job search activities may be required to participate in a Texans Work assignment.

(2) Choices staff shall make arrangements with the employers to provide candidates for the training positions. Employers

may conduct interviews or use other objective means to select appropriate trainees for the available positions.

(3) Excessive, unexcused absences by a participant, as defined by the employer and based on the participant's employability plan, shall be subject to a pro-rata reduction in the amount of the training stipend received under subsection (g) of this section.

(f) Duration of the Placement. The length of a training course shall be in compliance with the Texas Labor Code, Subtitle B, Title 4, Chapter 308.

(g) Exception to Duration. The workforce development division may approve an exception to subsection (f) of this section. The workforce development division will consider the specific training needs in granting an exception.

(h) Training Stipend. Each participant making satisfactory progress in the training program as set forth in the course curriculum shall receive a monthly training stipend of $600 in addition to the temporary cash assistance and other financial assistance authorized by DHS staff.

§811.45. Self-Employment Assistance.

(a) Subject to available resources, the Commission shall, or Local Workforce Development Boards may, provide for self-employment assistance services for appropriate Choices participants to enable them to begin or continue a small business. For the purpose of this subsection, a small business has five or fewer employees.

(b) Self-employment assistance may include a microenterprise development program, centrally administered by the Commission. The Commission may contract with credit organizations to provide individual loans and business counseling services to eligible participants for authorized services. These loans must be repaid.

(c) Participants shall be selected for self-employment assistance through an objective assessment process that will identify participants that are likely to succeed as a business owner.

(d) Self-employment assistance may include, but is not limited to:

(1) entrepreneurial training;

(2) business counseling;

(3) financial assistance; or

(4) technical assistance.

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

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Subchapter E. Education and Other Training Activities

40 TAC §§811.61–811.65

The new sections are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new sections affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.61. Education and Training Activities.

The education and training activities specified in this subchapter may be included in a participant's employability plan, if needed, to support the participant's movement toward employment. Consideration shall be given to the participant's employability assessment, the local labor market, and the participant's time-limited benefits when authorizing or arranging these activities.

§811.62. Educational Activities.

Choices staff may authorize, arrange, or refer participants for the following educational activities if deemed necessary for finding employment:

(1) secondary school leading to a high school diploma;

(2) a course of study leading to a certificate of high school equivalency;

(3) basic skills and literacy;

(4) English proficiency; or

(5) post-secondary vocational education, for up to 12 months, that prepares participants for employment in current and emerging occupations that do not require a baccalaureate or advanced degree.

§811.63. Vocational and Job Skills Training.

Choices staff may authorize, arrange, or refer participants for training in vocational job skills or knowledge in specific occupational areas. The training must be related to the types of jobs available in the labor market. When possible, the training should be consistent with employment goals identified in the participant's employability plan.

§811.64. On-the-Job Training.

Choices staff may authorize subsidized, time-limited training activities, such as JTPA on-the-job training programs, where a participant obtains knowledge and skills which are essential to the workplace while in a job setting.

§811.65. Parenting Skills Training.

Parenting skills training shall be incorporated in the participant's employability plan as needed or required in the Texas Human Resources Code, §31.0135(b).

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717102
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–8812

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Subchapter F. Support Services

40 TAC §§811.81–811.87

The new sections are proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new sections affect the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.81. Support Services.

Support services identified in this subchapter shall be provided, if needed, to an applicant or recipient of temporary cash assistance to remove barriers to employment or participation in Choices services, subject to availability of resources and funding.

§811.82. Child Care.

(a) Child care shall be provided, if needed, to an applicant or recipient of temporary cash assistance to enable the person to accept employment and remain employed.

(b) For recipients of temporary cash assistance, child care shall be available for participants only, when needed, to participate in authorized Choices services.

(c) Child care services are governed by rules contained in Chapter 809 of this title (relating to Child Care and Development Rules).

(d) Child care may be subject to a parent fee as set by rule by the Commission.

§811.83. Transitional Child Care.

Transitional child care shall be provided, if needed, to participants who lose eligibility for temporary cash assistance due to earnings from employment or expiration of time-limited benefits as follows.

(1) Nonexempt, employed participants may receive transitional child care for a period of 12 months following denial of temporary cash assistance if they remain employed.

(2) Employed participants may receive transitional child care for 18 months if they were exempt from employment services due to child-related needs (caring for a child under age four or needed at home due to illness or incapacity of a child) but they voluntarily participated.

(3) Transitional child care may be provided for unemployed participants who lose eligibility due to the expiration of their time-limited benefits. Transitional child care for unemployed participants is available for up to eight weeks following the end of the participant's time limits if needed to complete an education or training program and for up to four weeks if needed to seek employment.

(4) Eligibility for transitional child care is subject to an income limit as specified in §809.67 of this title (relating to Income Limits for Child Care Services).

(5) Transitional child care is subject to parent fees based on income as specified in §809.89 of this title (relating to Assessing Required Parent Fees).

§811.84. Transportation.

(a) Transportation assistance shall be provided if needed to enable an applicant or a recipient of temporary cash assistance to attend and participate in required Choices employment services activities if alternative transportation resources are not available to the participant.

(b) The methods and amounts used to provide transportation assistance shall be determined by each Local Workforce Development Board, consistent with state policy which requires use of the most economical means of transportation that meets the participant's needs.

§811.85. Work-related Expenses.

(a) If other resources are not available, work-related expenses necessary for an applicant or a recipient to accept or retain a specific and verified job offer paying at least the federal minimum wage may be provided or reimbursed.

(b) Local Workforce Development Boards shall develop written policy related to the methods and limitations for provision of work-related expenses.

(c) Work-related expenses may include, but are not limited to, tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

§811.86. Wheels for Work.

(a) The Commission may provide for development of a Wheels for Work Program in which local non-profit organizations provide low cost automobiles for Choices participants who have secured employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) The Commission or Local Workforce Development Boards may assist participants who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) Persons or organizations donating automobiles to the program shall receive a charitable donation receipt for federal income tax purpose for the value of the donated vehicle as documented in official automobile price guides.

(d) Liability insurance is the responsibility of the participant. Necessary repairs, state inspection, and license fees not covered by the donating entity may be covered by other community resources or through the Choices work-related expenses up to any local or state authorized limit.

§811.87. GED Testing Payments.

The cost of GED testing and issuance of the certificate shall be paid by the Commission or Local Workforce Development Board through direct payments to the GED test centers and the Texas Education Agency for participants referred for testing by Choices staff.

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

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TRD-9717103
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463–8812

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Subchapter G. Appeals

40 TAC §811.101

The new section is proposed under the Texas Labor Code, Chapter 301, which authorizes the Commission to adopt rules necessary for the administration of the Commission and the workforce development division. The new sections are also proposed under the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31, Financial Assistance and Service Programs, which governs employment services for recipients of financial assistance.

The new section affects the Texas Labor Code, Title 4 and the Texas Human Resources Code, Title 2, Subtitle C, Chapter 31.

§811.101. Fair Hearings or Appeals.

(a) Applicants and recipients of temporary cash assistance may appeal adverse action taken on their application for benefits or amount of benefits to DHS in accordance with DHS' rules located at 40 TAC §3.2406 of this title (relating to Right to Appeal).

(b) Persons who are dissatisfied with decisions of Choices staff relating to Choices activities or support services may file an appeal of the decision. The request must be submitted in writing to the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410; Austin, Texas 78778-0001, within 30 calendar days after being notified in writing of the decision. Choices staff shall inform participants, upon request, of the procedures for requesting a fair hearing.

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

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J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463–8812

Chapter 819. Interagency Matters

40 TAC §§819.1–819.3

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

The Texas Workforce Commission proposes repeal of §§819.1-819.3, concerning Interagency Matters. The rule will be concurrent with proposal of §§800.201-800.204 being published.

The repeal will result in relocating the rules into 40 TAC Chapter 800 regarding General Administration. New rules proposed concurrently with this repeal will include all of the language from the rules proposed for repeal with the exception of the technical changes of the agency title from "Texas Employment Commission" to "Texas Workforce Commission."

Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications as a result of enforcing or administering the rules. There will be no additional costs to the state as a result of enforcing the rules. There will be no reduction in costs to the state. There will be no costs to local governments. There is no net effect in revenues as a result of enforcing and administering the rules, and no foreseeable implications relating to costs or revenues to the state or to local governments. We do not anticipate that there would be significant costs to small business, nor that there would be significant economic costs to persons who are required to comply with the sections as proposed or significant costs associated with implementing these sections.

J. Ferris Duhon, Acting Deputy Director of Legal Services, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the repeals will be that the proposed new sections which will be relocated in Chapter 800, §§800.201–800.204 will result in a greater degree of interaction and cooperation among the agencies affected by the proposed rules. There is no anticipated effect on small businesses and there are no anticipated costs to persons who are required to comply with the rules as proposed.

All official comments submitted to J. Ferris Duhon will be considered before the final rules are adopted. Comments on the proposed rules may be submitted to J. Ferris Duhon, Acting Deputy Director of Legal Services, Texas Workforce Commission Building, 101 East 15th Street, Room 264, Austin, Texas 78778, fax (512) 463-1426, or e-mailed to: ferris.duhon@twc.state.tx.us.Comments must be received by the Commission by 5:00 p.m. on February 3, 1998 for consideration.

The repeals are proposed under Texas Labor Code, §301.061, which provides that the Commission has the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed repeals affect the Texas Labor Code, Title 4.

§819.1. Memorandum of Understanding with Texas Commission for the Deaf.

§819.2. Memorandum of Understanding with Texas Education Agency.

§819.3. Memorandum of Understanding with Texas Department of Commerce.

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

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J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463–8812

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Subchapter F. Advisory Committees

43 TAC §1.82, §1.83

The Texas Department of Transportation proposes amendments to §1.82 and §1.83, concerning statutory advisory committees. Senate Bill 370, §1.34, 75th Legislature, 1997, created Transportation Code, §53.001, requiring the department to create a Port Authority Advisory Committee to advise the commission and the department on matters relating to port authorities.

In order to comply with Senate Bill 370, §1.34, 75th Legislature, 1997, and provide for representation on the committee from several geographic areas, §1.82 is amended to provide that the commission will appoint five members to staggered three-year terms, except for the initial terms. One member will be from the Port of Houston Authority of Harris County, two will be from ports located north of the Matagorda/Calhoun County line (excluding the Port of Houston Authority), and two will be from ports located south of the Matagorda/Calhoun County line. The amendment also provides that the commission will consider nominees for appointments, and authorizes the members to be reimbursed for reasonable and necessary expenses if funding has been appropriated by the legislature.

Section 1.83 establishes the duties of the committee to advise the commission and the department on matters relating to port authorities, including intermodal and multimodal transportation issues and the identification and development of funding mechanisms. It provides procedures for election of the chair and committee meetings.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the sections are in effect there will be no fiscal implications for state government as a result of enforcing or administering the sections. There are anticipated fiscal implications for local governments that have representatives on the committee as a result of administering or enforcing the amended sections. The estimated increase in costs to those local governments is $3,375 each year for Fiscal Years 1998-2002. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Jim Randall, Director, Multimodal Operations Office, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended sections. Mr. Randall has also determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be to provide a forum for the exchange of information between the commission, the department, members representing the seaport industry in Texas, and others who have an interest in seaports. There is no effect on small businesses.

Written comments on the proposed amendments may be submitted to Jim Randall, Director, Multimodal Operations Office, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be 5:00 p.m. on February 3, 1998.

The amendments are proposed under Transportation Code, §201.101 which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §53.001, which requires the department to create a Port Authority Advisory Committee to advise the commission and the department on matters relating to port authorities.

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

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees.

(b) Membership.

(1) Aviation. The commission will appoint the members of the Aviation Advisory Committee to staggered terms of three years, unless sooner removed at the discretion of the commission, with two members' terms expiring August 31 of each year.

(2) Household Goods Carriers. Pursuant to Texas Civil Statutes, Article 6675c, §8(f), the department's assistant executive director for motorist services shall appoint to the Household Goods Carrier Advisory Committee:

(A) three members as representatives of the general public;

(B) one member as a representative of the department; and

(C) one member each as representatives of motor carriers transporting household goods using small equipment, motor carriers transporting household goods using medium equipment, and motor carriers transporting household goods using large equipment.

(3) Public Transportation. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(4) Vehicle Storage Facility/Tow Truck Rules. The department's assistant executive director for motorists services will appoint to the Vehicle Storage Facility/Tow Truck Rules Advisory Committee two members who represent the general public and one member each as representatives of the following:

(A) tow truck operators;

(B) vehicle storage facility operators;

(C) owners of property having parking facilities;

(D) law enforcement agencies or municipalities; and

(E) insurance companies.

(5) Port Authority.

(A) The commission will appoint five members to staggered three-year terms unless removed sooner at the discretion of the commission.

(B) For initial terms, the commission will appoint:

(i) one member to serve a term expiring on December 31, 1999;

(ii) two members to serve terms expiring December 31, 2000; and

(iii) two members to serve terms expiring December 31, 2001.

(C) Existing members shall serve until the commission appoints new members under subparagraph (A) of this paragraph.

(D) The commission will appoint:

(i) one member from the Port of Houston Authority of Harris County;

(ii) two members from ports located north of the Matagorda/Calhoun County line and excluding the Port of Houston Authority; and

(iii) two from ports located south of the Matagorda/Calhoun County line.

(D) The commission will consider nominees for the five members from:

(i) Texas Ports Association;

(ii) other port associations;

(ii) Texas ports; and

(iv) the general public.

(6)[(5)] Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The Port Authority Advisory Committee shall elect a chair for a one-year term. The department encourages the committee to rotate the chair among the members from the different geographic areas represented.

(c) Meetings.

(1) Open meeting requirements. Advisory committees shall post and hold all meetings in accordance with the provisions applicable to meetings of the commission under the Texas Open Meetings Act, the Government Code, Chapter 551. Filing of notice of open meetings with the secretary of state shall be coordinated through the department's general counsel.

(2) Regular meetings. The chair of the committee shall provide notice of time, date, place, and purpose of regular meetings to the members and the executive director, by mail or telephone or both, at least 10 calendar days in advance of each meeting.

(3) Quorum. A majority of the membership of an advisory committee constitutes a quorum. The committee may act only by majority vote of its membership.

(4) Attendance. A record of attendance at each meeting shall be made. If a member of a committee appointed by the commission or by the department misses two consecutive meetings, written notice shall be given to the member. A third consecutive absence from a regular meeting will be sufficient grounds for removal of the member.

(5) Parliamentary procedure. Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Roberts Rules of Order, except that the chair may vote on any action as any other member of the committee.

(6) Record. Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) Open records. All minutes, transcripts, and other records of the advisory committees are records of the commission and as such are subject to disclosure under the provisions of the Government Code, Chapter 552.

(d) Reimbursement. Advisory committee members are not entitled to receive compensation for serving as members. Members of the Public Transportation , [and] Aviation Advisory, and Port Authority Advisory Committees will be reimbursed for reasonable and necessary expenses for performing their duties if funding has been appropriated by the legislature . Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement for expenses of advisory committee members.

(e) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) Administrative support. For each advisory committee, the executive director will designate an office of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) Advisory committee recommendations. In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) Manner of reporting.

(1) The office designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or his or her designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

§1.83. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(4) Duration. The committee is abolished September 1, 2001, unless continued in existence by affirmative vote of the commission.

(b) Household Goods Carriers Advisory Committee.

(1) Purpose. The Household Goods Carriers Advisory Committee provides a forum for household goods carriers and the general public to provide input into modernizing and streamlining department rules adopted under Texas Civil Statutes, Article 6675c, §8(c), which are designed to protect customers of household goods movers from deceptive or unfair practices and unreasonably hazardous activities on the part of movers. The committee, with representation from the regulated community, the general public, and the department, helps ensure effective communication among interested parties and valuable input into modernizing and streamlining department rules affecting household goods carriers and their customers.

(2) Duties. The committee shall:

(A) examine the rules adopted under Texas Civil Statutes, Article 6675c, §8(c) and advise the department on methods of modernizing and streamlining such rules;

(B) conduct a study of the feasibility and necessity of requiring any vehicle liability insurance for household goods carriers required to register under Texas Civil Statutes, Article 6675c,§8;

(C) recommend a maximum level of liability for loss or damage of household goods carriers required to register under Texas Civil Statutes, Article 6675c, §8, not to exceed 60 cents per pound; and

(D) perform other duties as assigned by the Motor Carrier Division Director.

(3) Meetings. The committee shall meet at the request of the Motor Carrier Division Director.

(4) Duration. The committee is abolished September 1, 2001, unless continued in existence by affirmative vote of the commission.

(5) Rulemaking. Section 1.84 of this title (relating to Rulemaking) does not apply to the Household Goods Carrier Advisory Committee.

(c) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; and

(C) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet:

(A) as necessary, at the call of its chair, but not exceeding once each month;

(B) at the request of the commission; and

(C) as required by §1.84 of this title (relating to Rulemaking).

(4) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(5) Duration. The committee is abolished September 1, 2001, unless continued in existence by affirmative vote of the commission.

(d) Vehicle Storage Facility/Tow Truck Rules Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6675c, the purpose of the Vehicle Storage Facility/Tow Truck Rules Advisory Committee is to advise the department on the development of rules concerning the registration of tow trucks under Texas Civil Statutes, Article 6675c, and the administration of the Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a. The committee, with representation from the regulated community, law enforcement, and the general public, helps ensure effective communication among interested parties and valuable input into the development of rules affecting the tow truck industry.

(2) Duties. The committee shall advise the department on the adoption of rules regarding:

(A) the application of Texas Civil Statutes, Article 6675c to tow trucks; and

(B) the administration by the department of the Vehicle Storage Facility Act.

(3) Meetings. The committee shall meet:

(A) at the request of the Motor Carrier Division Director; and

(B) as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee is abolished September 1, 2001, unless continued in existence by affirmative vote of the commission.

(e) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §53.001, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the port industry in Texas and others who have an interest in ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding ports and transportation-related matters to be considered in formulating department policies concerning the Texas port system.

(2) Duties. The committee shall:

(A) advise the commission and the department on matters relating to port authorities, including:

(i) intermodal and multimodal transportation issues relating to Texas waterways, ports, and port improvements;

(ii) the identification and development of funding mechanisms, including the state infrastructure bank, for addressing the issues described by clause (i) of this subparagraph; and

(B) perform other duties as determined by the commission or the executive director or his or her designee.

(3) Meeting. The committee shall meet once a calendar year and such other times as requested by the commission or the executive director or his or her designee.

(4) Subcommittees.

(A) The Port Authority Advisory Committee may appoint one or more subcommittees to provide advice on specific issues.

(B) A subcommittee shall report any findings and recommendations to the Port Authority Advisory Committee chair.

(5) Duration. The committee is abolished on September 1, 2001, unless continued in existence by affirmative vote of the commission.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716955
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–8630

Chapter 17. Vehicle Titles and Registration

Subchapter A. Motor Vehicle Certificates of Title

43 TAC §17.2, §17.9

The Texas Department of Transportation proposes amendments to §17.2, concerning definitions, and new §17.9, concerning child support liens.

Senate Bill 29, 75th Legislature, 1997, amended Family Code, Chapter 157, to provide for child support liens to be placed on motor vehicle records for past due child support and required that the lien be perfected in accordance with Transportation Code, Chapter 501.

Section 17.2 is amended to add the definition of "obligor" as an individual who is required to make payments under the terms of a support order for a child.

New §17.9 describes the process for perfection of a child support lien against a motor vehicle. In order to perfect a lien, a certified copy of the child support lien notice that has been filed with the county clerk's office or an abstract of judgment for past due child support must be presented to the county tax assessor-collector along with the obligor's title and application for certificate of title.

Frank J. Smith, Director, Budget and Finance Division has determined that for the first five-year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The economic costs to individuals who choose to comply with the requirements of the section by filing a child support lien will be $13 for each lien filed. Jerry L. Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments and new section. Mr. Dike has also determined that for each year of the first five years the amendments and new section are in effect, the public benefit anticipated as a result of enforcing the amendments and new section will be the establishment of a procedure to assist in the collection of past due child support through the enforcement of child support liens. There will be no effect on small businesses.

Written comments on the proposal may be submitted to Mr. Jerry L. Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p. m. on February 3, 1998.

The amendment and new section are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Family Code, Chapter 157, which provides for the perfection of child support liens on motor vehicles.

No statutes, articles, or codes are affected by the proposed amendments and new section.

§17.2. Definitions.

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

Obligor-An individual who is required to make payments under the terms of a support order for a child.

§17.9. Child Support Liens.

Pursuant to Family Code, Chapter 157, a child support lien arises by operation of law through court ordered payment of past due child support.

(1) A child support lien must be perfected in accordance with Chapter 501, Transportation Code.

(2) The person filing the lien must provide the department with the obligor's certificate of title and an application for a certificate of title for the same vehicle, and;

(A) a certified copy of the child support lien notice containing the information required by Family Code, §157.313, which has been filed with the county clerk's office; or

(B) an abstract of judgment for past due child support.

(3) The lien is perfected when the department has issued a subsequent title disclosing that the vehicle is subject to a child support lien.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716956
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–8630

43 TAC §17.3

The Texas Department of Transportation proposes amendment to §17.3, concerning Motor Vehicle Certificates of Title. The amended section is necessary to ensure the department's proper administration of the laws concerning the issuance of motor vehicle certificates of title.

House Bill 1173, 75th Texas Legislature, 1997, amended Transportation Code, §501.115(a) to require that a lienholder must discharge a lien on a motor vehicle within 21 days once the lien is satisfied.

To comply with House Bill 1173, §17.3 is amended by adding new subsection (h) to require a lienholder to discharge a lien within 21 days from receipt of the final payment, prescribe the contents of the form for release of lien, and clarify the release of lien procedure.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or local government as a result of enforcing or administering the section. There will be no economic costs to individuals who are required to comply with the requirements of the section.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed section.

Mr. Dike also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the section will be the proper, efficient, and effective release of liens for motor vehicles. There will be no effect on small businesses.

Written comments on the proposal may be submitted to Mr. Jerry L. Dike, Director, Vehicle Titles and Registration, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on February 3, 1998.

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, Chapter 501 which authorizes the department to carry out the provisions of those laws governing the issuance of motor vehicle certificates of title.

No statutes, articles, or codes are affected by these proposed amendments.

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of Title. Unless otherwise exempted by law or this chapter, the owner of any vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall be required to apply for a Texas Certificate of Title in accordance with the Certificate of Title Act, Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or a moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until such time as the unit is registered.

(C) A vehicle which meets the criteria for a moped and has been certified as a moped by the Department of Public Safety, must be registered and titled as a moped; otherwise, if the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry and may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.283, and farm tractors used as road tractors to mow rights-of-way or used to move commodities over the highway for hire are required to be registered and titled.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under the Certificate of Title Act, Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates in accordance with Transportation Code, §502.276, and §502.278;

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.163; and

(C) vehicles eligible for permit license plates in accordance with Transportation Code, §§502.351-502.353.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers must apply for and receive a Texas Certificate of Title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semitrailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph in order to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for trailers and semitrailers, the rated carrying capacity shall not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as a dwelling, but classified as commercial semitrailers, and must be registered and titled as such if operated upon the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and which is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing

Standards Act, Texas Civil Statutes, Article 5221f, administered by the Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle which is less than eight feet in width and less than forty feet in length is classified as a travel trailer and must be registered and titled.

(iii) A camper trailer must be titled as a house trailer and must be registered with travel trailer license plates.

(b) Initial application for Certificate of Title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by 16 TAC, §111.15(c) (relating to Record of Sales and Inventory) and §17.8(a)(1) (relating to Certificates of Title for Salvage Vehicles), a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered, within 20 working days of the date of sale.

(2) Information to be included on application. An applicant for an initial certificate of title shall file an application on a form prescribed by the department. The form shall at a minimum require the:

(A) motor vehicle description which includes, but is not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity in tons for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed;

(H) signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed; and

(I) applicant's social security number, if the application is filed in a county in which the department's automated registration and title system has been implemented, with the following exceptions:

(i) applications filed in the name of entities which do not have, or are not eligible to obtain, a social security number, or

(ii) individual applicants who do not have, or are not eligible to obtain, a social security number (such applicants shall be required to execute a statement to that effect on a form prescribed by the department).

(3) Serial Number. If no serial number is die-stamped by the manufacturer upon a motor vehicle, house trailer, trailer, semi-trailer, or an item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed or obliterated, the department will upon proper application, presentation of evidence of ownership, and presentation of a law enforcement physical inspection, assign a serial number to the motor vehicle, trailer or equipment; the manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a certificate of title.

(4) Accompanying documentation. The certificate of title application shall be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the vehicle was last registered in another state or country; and

(D) release of any liens or, if not released, the liens shall be carried forward on the new certificate of title application pursuant to the following limitations.

(i) An out-of-state lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant shall accompany the certificate of title application. Evidence shall include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser shall be required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin shall be in the form prescribed by the division director and shall contain, at a minimum, the following information:

(i) motor vehicle description which includes, but is not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a Texas dealer as defined in 16 TAC, §111.2, (relating to Definitions),

and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502; and

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only.

(B) When a motor vehicle manufactured in another country is sold directly to a non-manufacturer's representative or distributor, the manufacturer's certificate of origin shall be assigned to the purchaser by the importer.

(2) Used motor vehicles.

(A) Evidence of ownership. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership shall be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(B) Rights of survivorship. A signed "rights of survivorship" agreement, which is either attached to or printed on the certificate of title, allows the transfer of ownership by a surviving spouse. The surviving spouse or the surviving spouse's transferee may make application for a new certificate of title in accordance with the provisions of subsection (b) of this section, surrendering the properly executed certificate of title, along with a copy of the death certificate of the deceased spouse.

(3) Imported motor vehicles. An application for certificate of title for a motor vehicle last registered or titled in a foreign country shall be supported by, but is not limited to, the following documents:

(A) the motor vehicle registration certificate or other verification issued by a foreign country which reflects the name of the applicant as the motor vehicle owner, or reflects that such evidence of ownership has been legally assigned to the applicant; and

(B) proof of compliance with United States Department of Transportation regulations for all 1968 and subsequent year model motor vehicles and for all 1969 and subsequent year model motorcycles which shall include, but is not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the United States Department of Transportation, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the United States Department of Transportation confirming the exemption from the bond release letter required in subitem (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on United States Customs letterhead and signed by a United States Customs agent verifying that the motor vehicle complies with United States Department of Transportation regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, or verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the United States Department of Transportation was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on their letterhead stationary.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership shall constitute valid reason for the rejection of any transaction to which such altered evidence is attached. The department may accept certain types of alterations provided that they are corrected in accordance with the following procedures.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of that state in which the lien originated verifying the correct lien information.

(B) A strikeover on any document which leaves any doubt as the legibility of any digit in a number will not be accepted.

(C) A correct manufacturer's certificate of origin will be required if the documents show an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's year model;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) where the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(d) Certificate of title issuance. Upon receiving a completed application for certificate of title, along with the title application fee of $13 and any other applicable fees, the department or its designated agent will process and issue a certificate of title.

(1) Negotiable titles. The department will issue and mail or deliver negotiable titles, marked "Original," to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(2) Non-negotiable titles. The department will issue non-negotiable titles, which may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle, or to establish a new lien:

(A) in the event that there is a lien disclosed in the application a duplicate certificate of title marked "Duplicate Original," will be mailed or delivered to the address of the applicant as disclosed upon the application;

(B) in the event that the owner of a vehicle last registered or titled in another state (and subject to registration in this state) cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a negotiable Texas title, a duplicate certificate of title marked "Registration Purposes Only" will be mailed or delivered to the address of the applicant as disclosed upon the application (in instances where the title or registration receipt is assigned to the applicant, an application for "Registration Purposes Only" will not be processed).

(e) Replacement of certificate of title. If a certificate of title is lost or destroyed, the owner or lienholder may obtain a certified copy of that title upon proper application with the department in accordance with the Certificate of Title Act, Transportation Code, Chapter 501, and payment of the appropriate fee to the department.

(1) Certified copy.

(A) Applicant who is a vehicle owner, lienholder, or verified agent.

(i) If the applicant requests that a certified copy be issued before the fourth business day following application, the application must be made in person and the applicant must present valid personal identification, including a photograph, issued by an agency of this state or of the United States.

(ii) If the applicant is an agent, the applicant must present verifiable proof that he or she is an agent of the owner or lienholder. This proof may include a power of attorney, business card, written authorization on company letterhead, or employee identification.

(B) Applicant other than the vehicle owner, lienholder, or verified agent.

(i) The department will not issue a certified copy of a certificate of title before the fourth business day after application has been made.

(ii) Such titles shall only be issued by mail.

(2) Certified copy designation. A certified copy of an existing certificate of title will be marked "Certified Copy" until such time that ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(3) Fees. The fee for obtaining a certified copy of a certificate of title shall be $2.00 if the application is processed at the department's headquarters office, and $5.45 if such application is processed at one of the department's regional offices.

(4) Recovery of lost title. In the event that the "Duplicate Original" or "Original" certificate of title is recovered, the owner shall relinquish the certified copy to the department for cancellation and the words "Certified Copy" will be eliminated from certificates issued thereafter by the department as a result of transfer of ownership.

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Texas Civil Statutes, Article 6687-5 as amended, and this subsection.

(1) Notification form. The department shall provide a form for written notice of transfer, which shall include:

(A) vehicle identification number of the vehicle;

(B) license plate number issued to the vehicle;

(C) full name and address of the transferor;

(D) full name and address of the transferee;

(E) date the transferor delivered possession of the vehicle to the transferee;

(F) signature of transferor; and

(G) date the transferor signed the form.

(2) Records. Upon receipt of written notice of transfer and a $5.00 fee from the transferor of a motor vehicle, the department shall mark its records to indicate the date of transfer and the full name and address of the transferee.

(3) Ownership of transferred vehicle. After the date of the transfer of the vehicle as shown in the department records, the transferee of the vehicle is rebuttably presumed to be:

(A) the owner of the vehicle; and

(B) subject to civil and criminal liability arising out of the use, operation, or abandonment of the vehicle, to the extent that ownership of the vehicle subjects the owner of the vehicle to criminal or civil liability under another provision of the law.

(4) Certificate of title issuance. A certificate of title may not be issued in the name of a transferee until such transferee files an application for the certificate of title as described in this section.

(g) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the certificate of title if the:

(A) application contains any false or fraudulent statement;

(B) applicant has failed to furnish required information requested by the department;

(C) applicant is not entitled to the issuance of a certificate of title under the Certificate of Title Act, Transportation Code, Chapter 501;

(D) department has reasonable ground to believe that the vehicle is a stolen or converted vehicle, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee;

(E) registration of the vehicle stands suspended or revoked; or

(F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest such decisions in accordance with the Certificate of Title Act, Transportation Code, §§501.052-501.053, in the following manner:

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply to the designated agent of the county in which they reside for a hearing. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. Upon the filing of the bond, the department may issue a certificate of title. The bond shall expire three years after the date it becomes effective and shall be returned to the person posting bond, upon expiration, unless the department has been notified of the pendency of an action to recover on the bond.

(h) Discharge of lien. A lienholder must provide the owner, or the owner's designee, a discharge of the lien within 21 days from receipt of the final payment. The lienholder must submit one of the following documents:

(1) the certificate of title including an authorized signature in the space reserved for release of lien;

(2) a release of lien form prescribed by the department that requires the:

(A) certificate of title/document number or motor vehicle description including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) vehicle identification number; and

(iv) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) printed name of lienholder;

(B) signature of lienholder or an authorized agent;

(C) printed name of authorized agent if agent's signature is shown;

(D) telephone number of lienholder; and

(E) date signed by lienholder;

(3) signed and dated correspondence submitted on company letterhead that includes:

(A) a statement that the lien has been paid;

(B) a description of the vehicle as indicated in paragraph (2)(A) of this subsection;

(C) a certificate of title/document number; or

(D) lien information;

(4) any out-of-state prescribed release of lien form or a lien filing receipt;

(5) out-of-state evidence with the word "Paid" or "Lien Satisfied" stamped or written in longhand on the face, followed by name of lienholder, countersigned or initialed by an agent, and dated; or

(6) original or copies of original security agreements if they are stamped "Paid" or "Lien Satisfied" with a company paid stamp, or a "Paid Statement" in longhand followed by the company's name.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716957
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–8630

Subchapter D. Salvage Vehicle Dealers

43 TAC §17.62

The Texas Department of Transportation proposes amendment to §17.62, concerning salvage vehicle dealer and agent licenses. The amendments are necessary to ensure the department's proper administration of the laws concerning the renewals of expired salvage vehicle dealer and agent licenses.

Texas Civil Statutes, Article 6687-1a requires the department to develop and implement policies regarding the issuance and renewal of licenses to salvage vehicle dealers and agents, and to adopt rules regarding the policies and procedures.

Senate Bill 370, §5.02, 75th Legislature, 1997, amended Texas Civil Statutes, Article 6687-1a concerning vehicle dealer and agent licenses to require the department to notify a salvage vehicle dealer or agent of expiration of license, and to revise the deadlines and fees for renewal of licenses.

The amendments to §17.62(h) require the department to notify a salvage vehicle dealer or agent at least 30 days prior to expiration of license, allow renewal up to one year after expiration of license for an additional fee, and allow a license holder who has moved out-of-state and has been doing business there to renew its license for an additional fee.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five years the amendments are in effect, there will be fiscal implications as a result of enforcing or administering the section. The anticipated estimated increase in revenue to the state is $25,463 for Fiscal Years 1998-2002. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the section. The anticipated economic cost to persons who are required to comply with the requirements for the business operation will apply to those persons who do not renew their license before the date of expiration. The increased fees for those who renew after expiration of license will be $32.50 if renewed within 90 or less days and $75 if renewed after 90 days and before one year.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Dike also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the proper, efficient, and effective licensing of salvage vehicle dealers and agents in the business of acquiring, selling, or dealing in salvage and nonrepairable vehicles and parts. There will be no effect on small businesses.

Written comments on the proposal may be submitted to Mr. Jerry L. Dike, Director, Vehicle Titles and Registration, Texas

Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on February 3, 1998.

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1a, which requires the department to adopt rules to administer the licensing of salvage vehicle dealers and agents.

No statutes, articles, or codes are affected by these proposed amendments.

§17.62. Salvage Vehicle Dealer and Agent Licenses.

(a) Applicability. A person who acts as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including a person who stores or displays vehicles as an agent or escrow agent of an insurance company, must obtain a salvage vehicle dealer or an agent license in accordance with Texas Civil Statutes, Article 6687-1a, and the provisions of this subchapter.

(b) Exemptions. The provisions of this subchapter do not apply to:

(1) a person who purchases a nonrepairable or salvage vehicle from a salvage pool operator in a casual sale;

(2) an insurance company authorized to engage in the business of insurance in this state;

(3) a person predominantly engaged in the business of obtaining ferrous or nonferrous metals;

(4) a person who sells or offers for sale less than five new or late model salvage motor vehicles of the same type in a calendar year when such vehicles are owned, and registered and titled in the name of such person;

(5) a person who sells or offers to sell a new or late model salvage motor vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Texas Civil Statutes, Article 6687-1a;

(6) an agency of the United States, this state, or local government;

(7) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(8) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(9) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in the Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and

(10) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding a provision of Texas Civil Statutes, Article 6687-1a, and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a salvage dealer's license, the auction may be conducted at any location for which a salvage dealer's license has been issued to that person or at a location approved by the department as provided by §17.63(a)(1) of this title (relating to Place of Business).

(c) Classification of licenses. The department will classify salvage vehicle dealers according to the type of activity performed by the dealer. A salvage vehicle dealer may not engage in activities of a particular classification as indicated in this subsection unless the salvage vehicle dealer holds a license authorizing business under that classification. An applicant may apply for a salvage vehicle dealer license in one or more of the following classifications:

(1) new automobile dealer;

(2) used automobile dealer;

(3) used vehicle parts dealer;

(4) salvage vehicle pool operator;

(5) salvage vehicle broker; or

(6) salvage vehicle rebuilder.

(d) Application for salvage vehicle dealer or agent license.

(1) Application for salvage vehicle dealer license. An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department. An applicant who will operate as a salvage vehicle dealer under a name other than the name of that applicant shall use the name under which that applicant is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application form using the letters "DBA."

(A) Form of application. The application form must be signed by the applicant, be accompanied by the application fee of $95, and include:

(i) the name, business address(es), and business telephone number(s) of the applicant;

(ii) the name under which the applicant will do business;

(iii) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(iv) a statement indicating whether the applicant has previously applied for a salvage dealer vehicle license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(v) an affidavit containing a statement that the applicant has never been convicted of a felony or that it has been at least three years since the applicant's termination of the sentence, parole, mandatory supervision, or probation for a felony conviction;

(vi) three business association references;

(vii) the applicant's federal tax identification number, if any;

(viii) the applicant's state sales tax number;

(ix) the applicant's social security number, if the applicant is an individual; and

(x) the classification(s) of license(s) for which the form is being submitted.

(B) Verification of assumed name. The department will require verification of the assumed name, if applicable, in the

form of an assumed name certificate on file with the secretary of state or county clerk at the time the application form is submitted.

(2) Application for salvage vehicle agent license. An applicant, who is authorized to operate as an agent for a salvage vehicle dealer must apply on a form prescribed by the department. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name of the applicant;

(B) the name, business address, and business telephone number of the salvage vehicle dealer authorizing the applicant as a salvage vehicle agent;

(C) the name under which the salvage vehicle dealer will do business;

(D) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(E) a statement indicating whether the applicant has previously applied for a salvage vehicle dealer or agent license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer or agent license that was revoked or suspended;

(F) an affidavit containing a statement that the applicant has never been convicted of a felony or that it has been at least three years since the applicant's termination of the sentence, parole, mandatory supervision, or probation for a felony conviction;

(G) three business association references;

(H) the applicant's federal tax identification number, if any;

(I) the applicant's state sales tax number; and

(J) the applicant's social security number.

(3) Application for corporate salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the applicant must apply on a form prescribed by the department.

(A) Form of application. The form must indicate the name of the corporation, as it appears on file with the secretary of state, be signed by the applicant, be accompanied by the application fee, and include:

(i) the name, business address(es), and business telephone number(s) of the corporation;

(ii) the name under which the corporation will do business;

(iii) the location, by number, street, and municipality, of each office from which the corporation will conduct business;

(iv) the state of incorporation;

(v) a statement indicating whether an employee, officer, or director has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether an employee, officer, or director has ever been the holder of a salvage dealer vehicle license that was revoked or suspended;

(vi) an affidavit containing a statement that each officer and director has never been convicted of a felony or that it has been at least three years since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of each officer and director;

(vii) three business association references;

(viii) the applicant's federal tax identification number, if any;

(ix) the applicant's state sales tax number;

(x) the name, address, date of birth, and social security number of each of the principal officers and directors of the corporation;

(xi) the classification(s) of license(s) for which the form is being submitted.

(B) Verification of corporate franchise taxes. The corporation must also provide verification that all corporate franchise taxes required under the Texas Business Corporation Act, Article 2.45, have been paid at the time the application form is submitted to the department.

(4) Partnerships. If the license applicant intends to engage in business through a partnership, the applicant must apply on a form prescribed by the department. The form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name, business address(es), and business telephone number(s) of the partnership;

(B) the name under which the partnership will do business;

(C) the location, by number, street, and municipality, of each office from which the partnership will conduct business;

(D) a statement indicating whether an owner, partner, or employee, has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether an owner, partner, or employee, has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(E) an affidavit containing a statement that each owner or partner has never been convicted of a felony or it has been at least three years since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of each owner or partner;

(F) three business association references;

(G) the partnership's federal tax identification number, if any;

(H) the partnership's state sales tax number;

(I) the name, address, date of birth, and social security number of each owner and partner; and

(J) the classification(s) of license(s) for which such form is being submitted.

(e) Issuance, investigation, and report by the department. The department will not grant a salvage vehicle dealer or an agent a license until the department completes an investigation of the applicant's qualifications and references in accordance with Texas Civil Statutes, Article 6687-1a. Such investigation shall be conducted not later than the 15th day after the date the application is received by the department. Upon completion of the investigation, the results of the investigation shall be reported to the applicant(s) by written notification from the department. If the applicant is denied, the applicant may appeal the decision as specified in §17.64 of this title (relating to Denial, Suspension, or Revocation).

(f) License issuance. The department will issue a license to an applicant who meets the license qualifications of subsection (d) of this section and pays the required fees described in this subsection.

(1) The license fee for each salvage vehicle dealer or agent license issued for a period of less than one year shall be prorated and only that portion of the $95 license fee allocable to the number of months for which the license is issued shall be payable by the licensee. The amount of such license fees will be rounded off to the nearest dollar.

(2) A license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(3) A person whose license has been revoked in accordance with §17.64 of this title (relating to Denial, Suspension, or Revocation) may not be issued a new license before the first anniversary of the date of the revocation.

(g) Use of agents by salvage vehicle dealers. The holder of a salvage vehicle dealer license may authorize not more than five persons to operate as salvage vehicle agents under the dealer's license. An agent may acquire, sell, or otherwise deal in new or late model salvage or nonrepairable vehicles or salvage parts as directed by the dealer. An agent authorized to operate for a salvage vehicle dealer is entitled to a salvage vehicle agent license on application to the department and payment of the required $95 fee as provided by subsection (e) of this section.

(h) License renewal.

(1) The department shall notify a salvage vehicle dealer or agent, at least 30 days prior to expiration of license. The notice will be in writing and sent to the person's last known address according to the records of the department.

(2)[~~(1)~~] A salvage vehicle dealer or agent license expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee of $85.

(3) If the license is not renewed prior to the expiration date, a salvage vehicle dealer or agent may not engage in the activities that require the license until the license has been renewed.

(4)[~~(2)~~] If the license is not renewed prior to the expiration date, and:

(A) if it has been 90 days or less since the date of expiration, the license holder may renew the license on payment of the renewal fee of $127.50; [~~and a late fee of $10, provided such fees are submitted within one year of expiration~~]

(B) if it has been more than 90 days since the date of expiration, the license holder may renew the license on payment of the renewal fee of $170; or

(C) if the license holder has moved out-of-state and has been doing business in another state for two years, the license holder may renew the license by providing:

(i) the renewal fee of $170;

(ii) a certificate or other official document issued by the other state demonstrating that the license holder has a business in that state; and

(iii) the expired Texas salvage vehicle dealer license number.

(4) [~~(3)~~] If the license has been expired for a period of one year or longer, the license holder must apply for a new license in the same manner as an applicant for an initial license, except as provided in paragraph (3)(C) of this subsection.

(i) Licensee duties.

(1) Proper assignment of ownership.

(A) If a salvage vehicle dealer acquires ownership of a new or late model salvage vehicle from an owner, the dealer must receive a properly assigned certificate of title. If the assigned certificate of title is not a salvage or nonrepairable motor vehicle certificate of title or comparable ownership document issued by another state or jurisdiction, the licensed salvage vehicle dealer shall, not later than the 10th day after the date of receipt of the title, surrender the assigned certificate of title to the department and apply for a salvage or nonrepairable motor vehicle certificate, as appropriate as provided by §17.8 of this title (relating to Certificates of Title for Salvage Vehicles).

(B) If a new or late model salvage or nonrepairable vehicle is to be dismantled, scrapped, or destroyed, the salvage vehicle dealer shall surrender the assigned ownership document to the department in the manner prescribed by the department not later than the 30th day after the date the vehicle is acquired and report to the department that the vehicle was dismantled, scrapped, or destroyed.

(C) If the holder of a salvage vehicle dealer license acquires ownership of an older model vehicle from an owner and receives an assigned certificate of title and the vehicle is to be dismantled, scrapped, or destroyed, the license holder shall surrender the assigned certificate of title to the department on a form prescribed by the department not later than the 30th day after the date on which the title is received. Evidence that the vehicle was dismantled, scrapped, or destroyed must also be presented.

(D) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer licensed as a used vehicle parts dealer may not receive a motor vehicle unless the dealer first obtains a certificate of authority, sales receipt, or transfer document in accordance with Transportation Code, Chapter 683, or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

(2) Unique inventory number.

(A) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer shall assign a unique inventory number to each transaction in which the dealer purchases or takes delivery of one or more component parts. The unique inventory number shall contain the:

(i) salvage vehicle dealer's license number;

(ii) day, month, and year of the purchase or delivery; and

(iii) sequential log number for that day.

(B) The unique inventory number shall then be attached to each component part the dealer obtains in the transaction. The unique inventory number may not be removed from the component part while the part remains in the inventory of the salvage vehicle dealer.

(C) Each component part shall be retained in its original condition on the business premises of the salvage vehicle dealer who originally purchased the part for at least three calendar

days, excluding Sundays, after the date on which the dealer obtains the part.

(D) The provisions of subsection (i)(2)(A) and (B) do not apply to a nonoperable engine, transmission, or rear axle assembly purchased by one salvage vehicle dealer from another salvage vehicle dealer or an automotive-related business.

(E) The provisions of subsection (i) do not apply to:

(i) interior used component parts or special accessory parts on a motor vehicle more than 10 years of age; or

(ii) used component parts delivered by commercial freight lines or commercial carriers.

(j) Record of purchases, sales, and inventory.

(1) Each holder of a salvage vehicle dealer license shall maintain records of each salvage or nonrepairable vehicle and any salvage parts purchased, sold, or being held in inventory by the license holder. Such records, except as specified in paragraph (2)(C) of this subsection, shall be maintained for a five-year period. These records shall include the:

(A) date of purchase;

(B) name and address of the person selling the vehicle or part to the dealer;

(C) a description of the vehicle or part to include the year model, make, and vehicle identification or component part number, if applicable;

(D) ownership document number and state of issuance, if applicable;

(E) copy of the front and back of the ownership document for the vehicle or salvage part purchased by the dealer unless the year model exceeds 10 or more years;

(F) date the ownership document was surrendered to the department;

(G) evidence indicating that an older model salvage vehicle was dismantled, scrapped, or destroyed;

(H) date of sale;

(I) name and address of the person purchasing the vehicle or part from the dealer; and

(J) copy of the front and back of the ownership document for the vehicle or salvage part sold by the dealer unless the year model exceeds 10 or more years.

(2) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer licensed as a used vehicle parts dealer shall keep an accurate and legible inventory of each used component part purchased by or delivered to the dealer.

(A) Such parts inventory shall include:

(i) the date of purchase or delivery;

(ii) the name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;

(iii) the license number of the motor vehicle used to deliver the used component part;

(iv) a complete description of the item purchased, including the type of material and, if applicable, the make, model, color, and size of the item; and

(v) the vehicle identification number of the motor vehicle from which the used component part was removed.

(B) In lieu of the information required in subparagraph (A) of this paragraph, a salvage vehicle dealer may record the name of the business from which the motor vehicle or motor vehicle part is purchased and the Texas certificate of inventory number or federal taxpayer identification number of the business.

(C) A salvage vehicle dealer is not required to keep records under this subsection for:

(i) interior used component parts or special accessory parts on a motor vehicle more than 10 years of age; or

(ii) used component parts delivered by commercial freight lines or commercial carriers.

(D) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer shall maintain two copies of each record for used component parts addressed by paragraph (2) of this subsection on a form prescribed by the department for one year after the date of sale or disposal of the item.

(k) Authorized sale.

(1) New or late model water damaged salvage motor vehicles. The owner of a new or late model salvage motor vehicle or a nonrepairable motor vehicle so classified solely caused by flood conditions is exempt from the provisions of this subsection, and is not prohibited from selling such vehicle to any person.

(2) Sales, transfer or release of new or late model salvage or nonrepairable motor vehicle. A salvage vehicle dealer or agent may not sell, transfer, or release a new or late model salvage or nonrepairable motor vehicle to anyone other than:

(A) a governmental entity;

(B) the vehicle's former owner;

(C) a licensed salvage vehicle dealer;

(D) an out-of-state buyer;

(E) a buyer in a casual sale at auction; or

(F) a person described by Texas Civil Statutes, Article 6687-2b, Section (g).

(l) Determination of estimated cost of repair. If it is necessary for a salvage vehicle dealer or agent to determine the estimated cost of repair, which includes parts and labor, for completion of an application for Texas salvage or nonrepairable motor vehicle certificate of title, the estimated cost of repair parts shall be determined as follows:

(1) by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts; and

(2) the estimated labor costs shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716958

Bob Jackson
Deputy General Counsel
Texas Department of Transportation

Earliest possible date of adoption: February 2, 1998
For further information, please call: (512) 463–8630

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 183. Acupuncture

22 TAC §183.17

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed repeal to §183.17, which appeared in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9214).

Issued in Austin, Texas, on December 19, 1997.

TRD-9717075
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 22, 1997
For further information, please call: (512) 305–7016

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22 TAC §§183.17, 183.23

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed new to §§183.17, 183.23, which appeared in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9214).

Issued in Austin, Texas, on December 19, 1997.

TRD-9717076
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: December 22, 1997
For further information, please call: (512) 305–7016

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part III. Office of the Attorney General

Chapter 55. Child Support Enforcement

Subchapter H. License Suspension

1 TAC §§55.204, 55.205, 55.209

The Office of the Attorney General adopts amended 1 TAC §§55.204(a), 55.205(a) and (g), and 1TAC §55.209(a) concerning administrative procedures in actions to suspend licenses for failure to pay child support, without changes to proposed text as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11187). The text will not be republished.

The amended sections are being adopted to update the new phone number and physical address of the Office of the Administrative Law Judge, and the physical address of the Administrative Law Section, of which the name is also amended to License Suspension Prosecutor for clarity, for contact and filing purposes. The amended §55.209(a) is also being adopted to clarify the procedure for requesting a telephone hearing.

The amended sections provide the updated phone number and physical address of the Office of the Administrative Law Judge, and the physical address of the Administrative Law Section, for contact and filing purposes, as well as clarify that the Administrative Law Section is the License Suspension Prosecutor. Amended §55.209(a) sets out the procedure for requesting a telephonic hearing in compliance with the recent consolidation of the Request for Telephonic Hearing into the Request for Hearing form. These rules affect the Family Code, Chapter 232.

No comments were received.

The amended sections are adopted under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support or Comply with Subpoena, §232.016, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 232.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717010
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Effective date: January 8, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 475–4499

♦ ♦ ♦

1 TAC §55.217

The Office of the Attorney General adopts the repeal of 1 TAC §55.217 concerning administrative procedures in actions to suspend licenses for failure to pay child support, without changes to the proposed text as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11188). The text will not be republished.

The repeal of the section is adopted because the section is duplicative of 1 TAC §55.213 authorizing the IV-D Agency to assess the cost of preparing a record of an agency license suspension proceeding against the appealing party pursuant to Texas Government Code §2001.177.

The repeal of the section deletes a duplicative rule. It affects the Family Code, Chapter 232.

No comments were received.

The repeal of the section is adopted under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support or Comply with Subpoena, §232.016, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 232.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717011
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Effective date: January 8, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 475–4499

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter A. Election Procedures

4 TAC §§3.1, 3.5, 3.7

The Texas Department of Agriculture (the department) adopts amendments to §3.1 and §3.5, concerning election procedures for the conducting of boll weevil eradication program elections and referenda, and new §3.7, concerning payment of a boll weevil eradication zone's debt in the event of the discontinuation of an eradication program, without changes to the proposal as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11041).

The amendments and new section are adopted in order to update Chapter 3, Subchapter A, to make that subchapter consistent with statutory changes made during the 75th Legislative Session, to delete unnecessary language, including language already stated in the statute, to clarify the sections and to make the election and referendum process more efficient. Amendments to §3.1 update and clarify voter eligibility. Amendments to §3.5 provide for all members of the committee canvassing referendum ballots to be appointed by the commissioner of agriculture and update and clarify which information will be recorded by the canvassing committee. New §3.7 provides for the payment of zone debt upon the discontinuation of an eradication program in that zone.

No public comments were received regarding the proposal.

The amendments and new section are adopted under the Texas Agriculture Code, §74.114, as amended by Senate Bill 1814, 75th Legislature, 1997, which requires the Texas Department of Agriculture to adopt procedures for the conducting of elections and referenda conducted in accordance with the Code, Chapter 74, Subchapter D; and the Texas Agriculture Code, §74.120, which provides the department with the authority to adopt rules to carry out the purposes of Chapter 74.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717002
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: January 8, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 463–7541

Subchapter E. Creation of Eradication Zones

4 TAC §§3.100-3.103, 3.110

The Texas Department of Agriculture (the department) adopts new §§3.100-3.103 and 3.110, concerning the creation of nonstatutory boll weevil eradication zones and division of a statutory zone, with changes to proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11042) and the correction of error published in the *Texas Register* on November 21, 1997 (22 TexReg 11193). The new sections are adopted to implement the Texas Agriculture Code, §74.1042 and Senate Bill 1814, §1.27(d), and to establish a new nonstatutory boll weevil eradication zone. New §3.110 is adopted with changes. New §§3.100-3.103 are adopted without changes and will not be republished.

New §3.110 has been changed to clarify the geographic description of the new zone based on comment received and to correct an error made in the proposal. New §§3.100-3.103 provide a statement of purpose and authority, provide for conducting of public hearings, provide requirements for the establishment of a zone once designated by rule, and provide for the apportionment of any debt once a statutory zone is divided. New §3.110 establishes the Southern High Plains Boll Weevil Eradication Zone

No comments were received on proposed §§3.100-3.103. Many comments were received on proposed §3.110, proposing the establishment of the Southern High Plains Boll Weevil Eradication Zone. Comments generally in favor of proposed §3.110 were received from a large number of individuals, Plains Cotton Growers Inc., and the Texas Agricultural Experiment Station.

Generally, the written comment was received on form letters with the vast majority indicating support for establishing a new boll weevil eradication zone. Oral comment in support of the proposal was also received at a public hearing conducted by the department on December 11, 1997, in Seagraves, Texas. Comments in support of creating the new zone by splitting the larger Southern High Plains/Caprock zone centered on the need for smaller, more manageable zones to enable cotton growers to address like cultural practices and boll weevil pressures in localized areas in order to make the program more fair to those it affected, if a referendum were passed. Fourteen comments were received that did not support a new zone for various reasons including the cost of the program, the belief that there is not actual support for the zone among producers, and belief that a program would impose an unfair assessment because of differences in farming dryland versus irrigated cotton. In addition to the comments generally supporting the new zone, additional comments were received on the dire need for a boll weevil eradication program, regarding the way an assessment should be crafted and who should pay it, on who should run an eradication program, and comments in support of the proposed boundaries. Comments in support of the proposed boundaries stated that the geographic boundaries are the most workable given the existing terrain in the zone and would provide the best natural division and barriers.

Other comments received on the zone boundaries were primarily in regard to Terry and Lynn counties. An individual comment was submitted that expressed concerns about dividing Terry and Lynn counties because of lack of natural barriers and potential confusion on boundary lines. Eight other comments were received stating a concern about the proximity of cotton along the proposed zone's borders, requesting the inclusion of all of Terry County and Lynn County, the adding of southern Cochran County and the adding of Dawson County to the proposed zone. The department respects these comments, but agrees with the comments received supporting the proposed boundary lines and no change has been made to the proposal in that regard. If a program is approved by referendum vote of producers in the defined areas, other areas could be added to this zone if a petition is received indicating this interest and a referendum approved by the growers affected. In the interest of time and the need to proceed to conduct a grower referendum, the department feels the boundaries should remain as proposed. Petitioners also submitted language clarifying the proposed boundaries, which more specifically identified roads stated in the proposal and more accurately reflects the area covered in the zone.

The new sections are adopted under the Texas Agriculture Code, §74.120, which provides the commissioner of agriculture with the authority to adopt rules to carry out the purposes of Chapter 74; §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone; and Senate Bill 1814, 75th Legislature, 1997, §1.27(d), which provides the commissioner of agriculture with the authority to by rule divide a statutory zone and fairly apportion any debt to each portion of the divided zone.

§3.100. Authority and Purpose.

The Texas Agriculture Code, §74.1042 provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed eradication zone as long as the area is not within a statutory zone that has approved an eradication program by referendum. Senate Bill 1814, 75th R.S. ch. 463, §1.27(d) (SB 1814, §1.27(d)), provides the commissioner of agriculture with the authority, by rule, to divide a statutory zone, after solicitation and consideration of public opinion and to fairly apportion any debt to each portion of a zone divided by rule in accordance with SB 1814, §1.27(d).

§3.101. Public Hearing.

The commissioner may conduct a public hearing within a proposed nonstatutory or statutory eradication zone to take public comment on the establishment of a nonstatutory zone or division of a statutory zone, as appropriate.

§3.102. Zone Activation; Grower Approval.

(a) Once an eradication zone has been designated by adoption of a rule under the Texas Agriculture Code, §74.1042, the zone is not established until approved by a referendum of cotton growers in the new zone held in accordance with the Texas Agriculture Code, §74.105.

(b) If the commissioner divides a statutory zone by adoption of a rule under SB 1814, §1.27, the commissioner may hold a referendum in the new zone.

(c) Once an eradication zone has been designated by rule and established by approval of cotton growers in the zone, as provided in subsections (a) and (b) of this section, the zone shall operate in accordance with the provisions of the Texas Agriculture Code, Chapter 74, Subchapter D, and rules adopted thereunder.

§3.103. Apportioning of Debt.

Once a statutory zone has been divided by rule of the commissioner, in accordance with SB 1814, §1.27(d), and approved by growers as provided in §3.102(b) of this title (relating to Zone Activation, Grower Approval), the commissioner may fairly apportion any debt to each portion of the divided zone.

§3.110. Southern High Plains Boll Weevil Eradication Zone.

The Southern High Plains Boll Weevil Eradication Zone shall consist of the following area originally included as a part of the Southern High Plains/Caprock Eradication Zone described at the Texas Agriculture Code, §74.1021(e): all of Andrews, Gaines and Yoakum counties; all of Terry County except for all land north of a line 1.25 miles south of the Hockley County line from FM 303 east to Highway 385 and all land north and east of a line with boundaries of County Road 230, County Road 525 also known as Cemetery Road, and County Road 280 to the Lynn County line; and all of Lynn County except for all land north and east of a line 5 miles north of Hwy 380 following County Road 18 that extends from the Terry County line east for 10 miles, then turns south to Hwy 380, and runs east to the intersection of FM 212 before turning south to the Borden County line.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717003
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: January 8, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 463–7541

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 7. Gas Utilities Division

Substantive Rules

16 TAC §7.74

The Railroad Commission of Texas adopts new §7.74, relating to school piping testing, to implement the requirements of House Bill 1611 (H.B. 1611), enacted by the 75th Legislature, Regular Session, and effective June 20, 1997. H.B. 1611 added Texas Civil Statutes, Article 6053-2a. The commission adopts the rule without changes to the version published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10874).

The new rule is identical to the version of §7.74 in effect from June 24, 1997, through December 21, 1997. The commission initially adopted §7.74 on an emergency basis on June 24, 1997, and extended its effectiveness for an additional 60 days on October 21, 1997.

H.B. 1611 requires that at least every two years school districts pressure test the natural gas piping system in each school district facility. The proposed rule implements the various provisions of H.B. 1611.

Paragraph (1) of the new rule provides that the testing must be a pressure test or shut-in test to determine if the school piping in each school building where students may be present will hold at least normal operating pressure over a time interval of no less than two hours. A test performed under a municipal code will satisfy the pressure testing requirement.

Paragraph (2) of the rule provides that the testing may be performed on a two-year cycle under which each district pressure tests the natural gas piping system in approximately one-half of its facilities each year. If a school district operates one or more school district facilities on a year-round calendar, then the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the pressure test is performed.

Paragraph (3) requires operators to develop procedures for receiving notification from the school districts regarding the location of facilities supplied with natural gas; for terminating service in the event that testing is not completed in the two-

year time interval, or a hazardous leak is reported by the person conducting the testing or by the school board of trustees; for providing for special circumstances for receiving written notification from the school or school district that the school or school district is not able to perform tests before the beginning of the designated school year; and for receiving notification from the commission regarding non-interruption of service.

Paragraph (4) requires all operators to maintain a listing of the schools that are supplied natural gas and the results of each test for at least two years.

The proposed rule implements the underlying objectives of H.B. 1611. The rule will insure the safety of schools where students will be present by requiring schools and school districts to test school natural gas piping and by requiring operators to insure that the tests have been performed and to terminate service if the tests are not performed or if a leak is found (except where the operator is notified that the school district is unable to perform the tests before the beginning of the designated school year or where the operator is notified by the commission that service should not be interrupted). The rule also implements the administrative objectives of the bill by requiring operators to receive notice of school facilities served by natural gas, maintain lists of the schools that are supplied natural gas, and maintain records of the results of tests.

The commission received one comment on the proposal, a letter filed jointly by Energas, Entex, Lone Star Gas Company, and Southern Union Gas Company (operators). The operators' filing did not comment directly on the provisions of the proposed rule but, instead, proposed a substantially different rule. Because the operators' proposed rule is substantially different from the published proposed rule, it is beyond the scope of the notice given in publishing the commission's proposed rule and would, therefore, require republication and opportunity for comment prior to commission adoption. Republication would delay the adoption of a school piping rule for an additional period.

The commission cannot adopt the operators' proposed rule at this time; however, the operators' proposed rule merits future consideration by the commission. The commission finds that it is in the public interest to adopt a school piping rule as expeditiously as possible and, accordingly, it is in the public interest to proceed with adoption of the rule as published on November 7. The commission may consider the operators' proposed rule, as well as any rule proposed by any other person, after new §7.74 becomes effective.

The commission adopts the new section under Texas Utilities Code, §§121.201-121.205, which authorize the commission to adopt safety standards and practices applicable to the transportation of gas and to all gas pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 U.S.C. §§60101, *et seq.* (West 1997), and under Texas Civil Statutes, Article 6053-2a, which directs the Railroad Commission of Texas to enforce the article.

Texas Utilities Code, §§121.201-121.210, and Texas Civil Statutes, Article 6053-2a, are affected by the new 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.

Issued in Austin, Texas, on December 16, 1997.

TRD-9716834

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Effective date: January 5, 1998

Proposal publication date: November 7, 1997

For further information, please call: (512) 463–7008

Chapter 15. Alternative Fuels Research and Education Division

Subchapter B. Propane Consumer Rebate Program

16 TAC §§15.101, 15.105, 15.115, 15.120, 15.125, 15.135, 15.140, §15.152, 15.160, 15.165,

The Railroad Commission of Texas adopts amendments to §§15.101, 15.105, 15.115, 15.120, 15.125, 15.135, 15.140, 15.160, 15.165, and adopts new §15.152, relating to the Alternative Fuels Research and Education Division's consumer rebate program for propane-fueled appliances and equipment, without changes to the text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10219). The commission adopts these amendments and new section to implement legislation increasing consumer rebate program spending to 50 percent of available funds, to indicate changes in organizational nomenclature at the commission, and to broaden the water heater rebate program to include other propane-fueled appliances and equipment for the purpose of achieving energy conservation and efficiency or improving the quality of air in this state. The amendments and new rule expand on the existing and continuing water heater rebate program. Pending applications for the water heater rebate under the current rules are not affected by these amendments. New §15.152 implements the requirements of Senate Bill 925, 75th Legislature, Regular Session (S.B. 925) prohibiting the use of the commission name and seal on advertising for water heater rebates.

One of the amendments, which changes "LP-Gas Division" to "Gas Services Division, LP-Gas Section," conforms the rules to the commission's new organizational nomenclature. The former LP-Gas Division has been incorporated as a section within the new Gas Services Division of the commission. Other amendments implement statutory changes. Changing the available funds to 50 percent of funds available in Alternative Fuels Research and Education Fund Account 101, General Revenue-Dedicated, for purposes of consumer incentive or rebate programs implements the requirements of S.B. 925. Finally, broadening the definition of eligible equipment enables the commission to expand eligibility for rebates beyond water heaters to other appliances and equipment that use LPG (liquefied petroleum gas or propane), as long as the equipment promotes energy conservation and efficiency or improves air quality. New §15.152 implements S.B. 925's restriction on the use of the commission's name of seal on advertising that promotes the water heater rebate program.

For the first year that the proposed amended and new sections are in effect, the commission expects to set the water heater rebate level at $150 for each eligible installation. The commission also expects to expand the list of eligible equipment to include

propane clothes dryers and to set the clothes dryer rebate level at $75 for each eligible installation.

The commission received no comments on the proposed amendments and new rule.

The commission adopts the amendments and new section under Texas Natural Resources Code, §113.243(b), which authorizes the commission to adopt rules relating to the establishment of consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial fuels for the purpose of achieving energy conservation and efficiency or improving air quality in this state; and Texas Natural Resources Code, §113.243(c)(6), which authorizes the commission to use money in the Alternative Fuels Research and Education Fund, now Alternative Fuels Research and Education Fund Account 101, General Revenue-Dedicated, to pay the direct and indirect costs of such programs.

Texas Natural Resources Code, §§113.243(c)(6), 113.2435(b), 113.2435(c)(5&6), and 113.246(b) are affected by the amendments and new rule.

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

Issued in Austin, Texas, on December 16, 1997.

TRD-9716823
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: January 5, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 463–7008

Part VI. Texas Motor Vehicle Commission

Chapter 101. Practice and Procedure

General Rules

16 TAC §101.6, §101.16

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts amendments to §101.6, concerning appearances and new §101.16, concerning expenses of witness or deponent without changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8823).

The amendments to §101.6 add language allowing the Board to require agreements between a party in interest and an attorney or other authorized representative concerning any pending proceeding to be in writing, signed by the party in interest, and filed as a part of the record of the proceeding.

New §101.16 allows mileage reimbursement for non-party witnesses and deponents equivalent to the current state employee rate for going to and returning from the place of the hearing or deposition, if the place is more than 25 miles from the person's place of residence and the person uses a personally owned or leased motor vehicle for the travel.

The effect of the amendments to §101.6 will be to relax the existing rule. As amended, the requirement of evidence of representation is discretionary, rather than mandatory and will conserve the time and resources of the agency and entities appearing before it. The effect of §101.16 will entitle non-party witnesses and deponents to the same rate of reimbursement as state employees rather than limiting them to ten cents a mile, as provided in the Texas Government Code, §2001.103 which allows reimbursement at ten cents per mile or a greater amount prescribed by agency rule.

Written and oral comments regarding §101.6 state that the proposed rule is too broad and may open the door to requiring production of engagement letters protected by attorney-client privilege. Commenters recommend that an attorney only be required to show authority in response to challenge or limiting the filing be generic without seeking privileged material. No comments were filed concerning proposed §101.16.

Written comments on the proposed amendments to §101.6 were filed by the American Automobile Manufacturers Association (AAMA). Oral comments were received from Mr. Merritt Spencer, attorney, representing AAMA. No written or oral comments on proposed amendments to §101.16 were filed.

The amendment and new section are adopted under §3.06 of the Texas Motor Vehicle Commission Code, Article 4413(36) and (36a), Texas Revised Civil Statutes, which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717007
Brett Bray
Director
Texas Motor Vehicle Commission
Effective date: January 8, 1998
Proposal publication date: September 5, 1997
For further information, please call: (512) 416–4800

Chapter 107. Warranty Performance Obligations

16 TAC §107.8, §107.10

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts amendments to §107.8, concerning decisions and §107.10, concerning compliance with changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8826).

The amendments to §107.8 are necessary pursuant to action taken by the 75th Legislature, House Bill 2382, which, effective September 1, 1997, mandates regulation of towable recreational vehicle (TRV) manufacturers, distributors, and dealers by the Motor Vehicle Board. These amendments formally address the requirement of a reasonable allowance for the owner's or lessee's use of a towable recreational vehicle included in the Texas Motor Vehicle Commission, Code, Texas Civil Statutes, Article 4413(36), §6.07(c), pertaining to the Lemon Law, and develop a formula for calculating the allowance in cases where no evidence or insufficient evidence is presented by the parties on that issue. The Board considered the comments to §107.8 and determined that the proposed amendments, including changing

the word "repurchase" to "purchase" for a typographical error in Section 107.8(5), will greatly expedite lemon law hearings by simplifying the proof requirements relating to the reasonable allowance for use (RAFU) deduction or offset used in calculating the repurchase price of a lemon TRV. This fact alone outweighs the concerns expressed against the amendments. In addition, the Board considers that a minimum RAFU and a reduced useful life for full time occupancy are reasonable for TRVs, especially in view of the provision in the amendments permitting a party to increase or decrease the RAFU by showing the vehicle has a longer or shorter expected useful life.

The amendments to §107.10 add a requirement for a manufacturer, distributor, or converter to affix a disclosure label, in addition to providing a disclosure statement, to an approved location in or on the vehicle of vehicles replaced or repurchased pursuant to a board order, or to an approved location in or on the vehicle of vehicles reacquired under the lemon law of another jurisdiction and transferred to this state for the purpose of resale. In addition, on the transfer of the vehicle, a manufacturer, distributor, or converter is required to provide the board, in writing, the name, address and telephone number of the transferee within 60 days of the transfer. The Board considered the comments to §107.10 and determined that the proposed amendments will eliminate strict liability for manufacturers, converters, or distributors for non-disclosure of lemon vehicles and, at the same time, will ensure the first retail purchaser of a lemon vehicle is informed that it was reacquired by the manufacturer, distributor, or converter under a state lemon law program. In addition, the Board agrees with the safety concerns expressed regarding the location of the disclosure label on the front window and revised the amendments to §107.10(4) and (5) to provide that the director is authorized, on behalf of the Board, to approve the format of the disclosure label, including its location in or on the vehicle.

The effect of the amendments to §107.8 will be to expedite lemon law hearings by simplifying the proof requirements relating to the reasonable allowance for use deduction or offset used in calculating the repurchase price of a lemon vehicle. The effect of the amendments to §107.10 will be to ensure the first retail purchaser of a lemon vehicle is informed that it was reacquired by the manufacturer, distributor, or converter under a state lemon law program.

Comments generally in favor of the amendments to §107.8 expressed concern that the reasonable allowance for use (RAFU) should not be less than 10% of the purchase price because the living facility of a towable recreational vehicle (TRV) could have significant more wear and tear than an automobile, and that TRVs occupied on a full time basis should not be subject to the lemon law because they become more like a permanent dwelling. Comments generally against the adoption of the proposed amendments expressed concern with a RAFU of at least 10%, especially when the owner has not been able to use the vehicle as intended; with the useful life being reduced for TRVs occupied full time, despite the fact most concerns show up during the first 6 months; and with any attempt to eliminate those occupied full time from the lemon law because they are usually occupied, in this situation, by retired couples.

Comments generally in favor of the amendments to §107.10 expressed concern as to the location of the disclosure label; the use of only Motor Vehicle Board issued or approved disclosure labels; the need to eliminate strict liability of manufacturers, distributors, or converters for failing to ensure the disclosure statements and labels accompany or are affixed to the vehicle; the need to add the provision that each subsequent transferee, through the first retail sale, be required to provide the disclosure statement; the need to require that dealers bringing reacquired vehicles into Texas issue a disclosure statement and affix a label to the vehicle; and the need to add a provision requiring that the Motor Vehicle Board use the disclosure statement as a means for manufacturers, distributors, or converters to provide the Board with the name, address and telephone number of each transferee. Other comments in favor of the amendments expressed concern with dealers being held responsible for providing disclosure information on vehicles transferred into Texas when they lack knowledge of vehicle's status.

Written comments supporting the proposed amendments to §107.8 were received from the Texas Recreational Vehicle Association, the Recreational Vehicle Industry Association and the Recreational Vehicle Dealers Association of North America. Written comments generally against the proposed amendments were received from the Escapees RV Club. Oral comments were received at the public hearing on November 6, 1997, from Mr. Joe Peterson, President, Escapees RV Club.

Written comments supporting the proposed amendments to §107.10 were received from Attorney Richard H. Gateley, McLean & Sanders, the Association of International Automobile Manufacturers, General Motors Corporation and the American Automobile Manufacturers Association. Oral comments supporting the proposed amendments were received at the public hearing on November 6, 1997, from Attorney Richard H. Gateley, Ms. Karen Coffey, Chief Counsel of the Texas Automobile Dealers Association, and from Mr. Merritt Spencer, attorney for the American Automobile Manufacturers Association.

The amendments to §107.8 and §107.10 are adopted under §3.06 of the Texas Motor Vehicle Commission Code, and Texas Civil Statutes, Article 4413(36) and (36a), which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

§107.8. Decisions.

Any decisions by the board and recommended decision by a hearing officer shall give effect to the presumptions provided the Texas Motor Vehicle Commission Code, §6.07(d), where applicable.

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

(5) Except in cases where clear and convincing evidence shows that the vehicle has a longer or shorter expected useful life than 120 months, the reasonable allowance for the owner's use of the towable recreational vehicle shall be the greater of 10% of the purchase price, as defined in paragraph (3) of this section, or that amount obtained by adding the following:

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 120 months , except the denominator shall be 60 months, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of months from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120 months, except the denominator shall be 60 months, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator

the number of months of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of months during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the board hearing.

(6) Except in cases involving unusual and extenuating circumstances, supported by a preponderance of the evidence, where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by him to the lessor under the terms of the lease; and

(ii) all sums previously paid by him to the lessor in connection with the entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other documentary fees, if applicable.

(B) The lessor shall receive the total of:

(i) the actual price paid by the lessor for the vehicle, including tax, title, license, and documentary fees, if paid by lessor, and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; plus

(ii) an additional 5.0% of such purchase price plus any amount or fee, if any, paid by lessor to secure the lease or interest in the lease;

(iii) provided, however, that a credit, reflecting all of the payments made by the lessee, shall be deducted from the actual purchase price which the manufacturer is required to pay the lessor, as specified in causes (i) and (ii) of this subparagraph.

(C) When the commission orders a manufacturer to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph. The lessor shall transfer title of the vehicle to the manufacturer, as necessary in order to effectuate the lessee's rights under this rule. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interest may appear. The refund to the lessee under subparagraph (A) of this paragraph shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in paragraph (4) or (5) of this section, using the amount in subparagraph (B) (i) of this paragraph as the applicable purchase price.

§107.10. Compliance.

Compliance with the board's order will be monitored by the board.

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

(4) If complainant's vehicle is replaced or repurchased pursuant to a board order, the manufacturer, distributor, or converter shall, prior to resale of such vehicle, issue a disclosure statement in the format of Attachment 1 or on a form approved by the board. In addition, the manufacturer, distributor, or converter repurchasing or replacing the vehicle shall affix a disclosure label provided by or approved by the board through its director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase after the board order. Neither the manufacturer, distributor, converter nor any person holding a license or general distinguishing number issued by the board under the Code or Chapter 503, Transportation Code, shall remove or cause the removal of the disclosure label until delivery of the vehicle to the first retail purchaser. A manufacturer, distributor or converter shall provide the board, in writing, the name, address and telephone number of the transferee to whom the manufacturer, distributor or converter, as the case may be, transfers the vehicle within 60 days of each transfer. Any manufacturer, distributor, converter, or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Code. In addition, the manufacturer, distributor, or converter must repair the defect or condition in the vehicle that resulted in the repurchase or replacement and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first) on a form provided by or approved by the board, which warranty shall be provided to the first retail purchaser of the vehicle following the board order.

(5) If a manufacturer, distributor, or converter brings a vehicle into this state, which has been reacquired under the lemon law of another jurisdiction, the manufacturer, distributor, or converter shall, prior to the first retail sale, issue a disclosure statement on a form provided by or approved by the board. In addition, the manufacturer, distributor, or converter repurchasing or replacing the vehicle shall affix a disclosure label provided by or approved by the board through its director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase. Neither the manufacturer, distributor, converter nor any person holding a license or general distinguishing number issued by the board under the Code or Chapter 503, Transportation Code, shall remove or cause the removal of the disclosure label until delivery to the first retail purchaser. Any manufacturer, distributor, converter, or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanction prescribed by the Code.

(6) In the event of any conflict between this rule and the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(7) The failure of any manufacturer, distributor, converter, or dealer to comply with a decision and order of the board within the time period prescribed in the order may subject the manufacturer, distributor, converter, or dealer to formal action by the board and the assessment of civil penalties or other sanctions prescribed by the Texas Motor Vehicle Commission Code for the failure to comply with an order of the board.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717008
Brett Bray
Director
Texas Motor Vehicle Commission
Effective date: January 8, 1998
Proposal publication date: September 5, 1997
For further information, please call: (512) 416–4800

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 283. Licensing Requirements for Pharmacists

22 TAC §283.6

The Texas State Board of Pharmacy adopts an amendment to §283.6, concerning Preceptor Requirements, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9224). The amendments delay implementation of a requirement for preceptor's to have six hours of preceptor training from September 1, 1997 to September 1, 1998.

The agency received no comments regarding the amendments as proposed.

The amendment is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes): Section 4 which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; Section 16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; Section 17(a)(3) which gives the Board the authority to establish requirements for practical training, including internship; Section 21(f) which requires an applicant for licensure by examination to obtain practical experience under conditions determined by the Board; and Section 21(g) which requires the Board to establish standards for internship and qualifications for preceptors.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717053
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: January 12, 1998
Proposal publication date: September 12, 1997
For further information, please call: (512) 305–8028

Part XXV. Structural Pest Control Board

Chapter 591. General Provisions

22 TAC §591.21

The Texas Structural Pest Control Board adopts an amendment to §591.21, without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 Tex Reg 10612).

Justification for the rule creates a defined concept of the bait process for insect control.

The rule will function in that it adds a definition of bait process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Article 135b-6 which provide the Structural Pest Control Board with the authority to license and regulate structural pest control services.

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.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716928
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: January 8, 1998
Proposal publication date: October 31, 1997
For further information, please call: (512) 451–7200

Chapter 599. Treatment Standards

22 TAC §599.4

The Structural Pest Control Board adopts an amendment to §599.4, without changes to the proposed text as published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10878).

Justification for the rule are the changes will provide clearer information to consumers regarding the types of termite treatments available.

The rule will function in that the amendments eliminate the concept of a full treatment for subterranean termites, further define spot treatments and change the concept from spot to limited treatment for drywood termites.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Article 135b-6 which provide the Structural Pest Control Board with the authority to license and regulate persons who perform structural pest control services.

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.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716929
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: September 1, 1998
Proposal publication date: November 7, 1997
For further information, please call: (512) 451–7200

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter H. Interstate Transfer

25 TAC §§403.221-403.232

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§403.221- 403.232 of Chapter 403, Subchapter H, concerning interstate transfer, without changes to the proposed text as published in the October 24, 1997, issue of the Texas Register (22 TexReg 10492). New §§411.351-411.362, concerning the same, which replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register.*

The repeals allow for the adoption of new sections.

No public comment was received.

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers and the Interstate Compact on Mental Health, Texas Health and Safety Code, Chapter 612, which authorizes the adoption of rules to carry out the compact more effectively.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716978
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 8, 1998
Proposal publication date: October 24, 1997
For further information, please call: (512) 206–4516

Chapter 408. Standards and Quality Assurance

Subchapter D. Additional Mandatory Standards for Selected Mental Retardation Community-based Providers

25 TAC §§408.101-408.106

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§408.101-408.106 of Chapter 408, Subchapter D, governing additional mandatory standards for selected providers of community-based mental retardation supports and services without changes to the text as proposed in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9625).

The repeal accommodates Senate Bill 1247 of the 75th Legislature which amends the Texas Health and Safety Code, Chapter 142, to clarify that entities serving only persons enrolled in a program funded and monitored by this department satisfy the requirements for licensure by the Texas Department of Health (TDH) as a home and community support services agency (HCSSA).

No public hearing was held. Written comments were received from the Private Providers Association of Texas (PPAT), Austin.

The commenter expressed support for the repeal of the subchapter, noting that the organization was an active participant in the passage of SB 1247. The department acknowledges the statement of support.

The repeal is adopted under the Texas Health and Safety Code, §532.015(a), which provides TDMHMR with broad rulemaking authority; and under §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716976
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 8, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 206–4516

Chapter 409. Medicaid Programs

Subchapter D. Home and Community-based Services

25 TAC §§409.101, 409.103, 409.109, 409.114, 409.115, 409.119

The Texas Department of Mental Health and Mental Retardation adopts amendments to §§409.101, 409.103, 409.109, 409.114, 409.115, and 409.119 of Chapter 409, Subchapter D (relating to Home and Community-based Services (HCS)). Sections 409.101 and 409.109 are adopted with changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8842-8845). Sections 409.103, 409.114, 409.115, and 409.119 are adopted without changes and will not be republished.

TDMHMR adopts the amendments in order to streamline the HCS eligibility determination process and to improve the enforceability of the HCS program provider certification requirements.

The adopted amendments would require the transfer of initial ICF-MR level-of-care eligibility determinations for HCS applicants from the Texas Department of Human Services (TDHS) to TDMHMR; clarify the HCS eligibility criteria; incorporate the HCS Consumer Principles for Evidentiary Certification affecting the rights of recipients and the certification of providers; update sections of the rule to reflect current practices for correcting lapsed level-of-care determinations and the transfer of program provider contract administration from TDHS to TDMHMR; correct a typographical error inadvertently included in the last action on this rule; and provide cross-references for some citations.

Section 409.101(b) is revised on adoption to retain paragraph (3), with the addition of language clarifying that individuals diagnosed by a licensed physician as having a related condition, as defined in §406.202 of Chapter 406, Subchapter E (relating to Definitions for Level-of-Care and Level-of-Need), may be eligible for enrollment in the HCS program. Figure 1: 25 TAC §409.109, HCS Consumer Principles for Evidentiary Certification, is adopted with the following revisions: Principle 8 which

requires providers to have evidence that persons being served are currently enrolled in HCS is deleted as unnecessary due to the recent implementation of an automated enrollment and billing system; Principle 42 (proposed as Principle 43) was revised to clarify when the interdisciplinary team's authorization to purchase adaptive aids for an individual must be based on the recommendation of the individual's physician or another licensed professional; Principle 59 (proposed as 60) has been revised to conform to the definition of Supported Home Living as contained in the waiver by deleting the reference to individuals receiving foster care services from the Texas Department of Human Services; Principles 61.02 (proposed as 62.02), 61.03 (proposed as 62.03), 61.04 (proposed as 62.04), and 61.05 (proposed as 62.05) were modified for consistency with the respite service definition contained in the HCS waiver request; Principle 65 (proposed as 66) was revised to include as members of an individual's interdisciplinary team other persons who are assigned to provide or who are currently providing services to that individual.

A public hearing regarding the proposed rules was held September 18, 1997, at which no oral or written comments were received. Written comments were received from the Texas Department of Mental Health and Mental Retardation, Austin; Tarrant County Mental Health Mental Retardation Services, Fort Worth; Mental Health and Mental Retardation Authority of Harris County, Houston; Nueces County MHMR Community Center, Corpus Christi; Autistic Treatment Center, Dallas; Parent Association for the Retarded of Texas, Austin; and two private citizens.

One commenter recommended that the department re-evaluate the anticipated fiscal impact of the rule amendment because the impact appeared to be too low.

The department responds that the fiscal impact is correct as published. The anticipated fiscal impact pertains only to the assumption by TDMHMR of initial Level-of-Care(LOC) determinations and not to other department functions related to the HCS Program enrollment process and annual LOC renewal process.

Another commenter recommended that the Level-of-Care Assessment Form and the Inventory for Client and Agency Planning (ICAP) be attached to the rule as exhibits.

The department responds that the Level-of-Care Assessment Form and instructions for completing the form are available from the department and from the Texas Department of Human Services (TDHS) upon request and are also available in various program provider manuals published by the department and TDHS. The ICAP is a copyrighted instrument which is available to appropriately credentialed professionals from the publishers of the instrument (Riverside Publishing Company, 425 Spring Lake Drive, Itasca, Illinois, 60143-2079).

One commenter recommended that the rule specify that all correspondence between the department and HCS provider agencies referenced in the rule sections under consideration also be sent to the consumer's legally authorized representative.

The department responds that a consumer and/or the consumer's legally authorized representative may request copies of records related to the consumer's services and eligibility from the HCS provider agency serving the consumer. The department will provide copies of correspondence related to payment of a provider agency or correspondence related to the contractual relationship between the department and the provider agency in accordance with the Open Records Act and Chapter 405, Subchapter Y, of this title (relating to Client Rights).

Several commenters urged the department to retain the requirement that a determination of mental retardation be completed in accordance with state law prior to an individual's enrollment in the HCS Program. The commenters believed that the standards for determining that a person has mental retardation prescribed under current departmental rules (Chapter 405, Subchapter D, relating to Determination of Mental Retardation and Admission to Mental Retardation Services) decreases the possibility of misdiagnosis and, therefore, the possibility that an individual's service needs will not be appropriately addressed. The commenters also noted that the standards for assessment and diagnosis contained in departmental rules regarding the assignment of ICF/MR Levels-of-Care (Chapter 406, Subchapter E, relating to ICF/MR Programs: Eligibility and Review) are not adequate to insure proper diagnosis.

The department responds that as the Medicaid operating agency for the ICF/MR Program and the HCS Program, the department must assure that a consistent criteria is used to assign an ICF/MR Level-of-Care (LOC) which is required for eligibility for each of these programs. The proposed revision to the HCS eligibility criteria was intended to eliminate an inconsistency in the criteria caused by requiring an individual to have a determination of mental retardation and to qualify for an ICF/MR LOC I, V, or VI. The current criteria for the ICF/MR LOCs I and V allow the assignment of an LOC if an individual is assessed to have a full-scale I.Q. score within the range of 35 to 75, has deficits in adaptive behavior, and has a related condition (a developmental disability other than mental retardation) which occurred prior to the individual's twenty-second birthday. The department will revise the paragraph proposed for deletion to indicate that applicants to the HCS Program must have either a determination of mental retardation performed in accordance with state law or be diagnosed by a licensed physician as having a related condition as defined in Chapter 406, Subchapter E, prior to enrollment in HCS. The department will review the rules governing the ICF/MR LOC assignment and will study ways to increase the objectivity and reliability of the diagnostic standards pertaining to the assignment of LOCs for individuals with related conditions.

Two commenters indicated that the department needed to add the term legally authorized representative (LAR) at least 19 places in the principles.

The department is unable to determine from this comment the specific locations where the term LAR is suggested to be added. The continuing role and authority of the LAR is presented in HCS Consumer Principles 5.39 and 65 (proposed as 66). Principle 5.39 requires the LAR to be informed of all rights of the HCS Program; to have the opportunity to participate in the planning for HCS services; and to have the opportunity to advocate for all rights of the individual. Principle 65 (proposed as 66) requires the LAR to be a member of the individual's Interdisciplinary Team which is responsible for developing and overseeing the services delivered by the HCS Provider. Finally, under applicable state law the LAR is the designated person responsible for all decisions involving his/her ward. HCS Providers are required to comply with state law.

Two commenters stated, regarding principle 5.18, that the individual (consumer) should also live near family and/or the LAR.

The department responds that the requirement for the consumer to maintain involvement with the family and to live near the family and/or the LAR is contained in principles 12 (proposed as 13) and 38 (proposed as 39). Principle 12 (proposed as 13) requires the HCS Provider to encourage and assist families to remain involved in the individual's life. Principle 38 (proposed as 39) requires the HCS provider to facilitate the opportunity for the individual to live near family and friends unless justified by the Interdisciplinary Team based on the informed consent of the individual or, if applicable, the LAR.

Two commenters stated that the principle pertaining to enrollment in the HCS Program on a zero-reject and first- come, first-served basis should be changed to a most-in-need basis.

The department responds that the principle reflects the department's current policy whereby vacancies in the HCS Program are filled based on the eligible individual's position on the waiting list in accordance with §409.102 of this title (relating to process for applicant referral to contracted HCS provider agencies).

Two commenters expressed concern regarding Principles 13, 14 and 15 (proposed as 14, 15 and 16), which indicate that the HCS program provider shall have evidence that when a child is unable to reside or live with the child's natural family members, then the child must be supported in a family environment such as an adoptive family or a foster family. The commenters indicated that these principles suggest that whenever a natural family can not keep the child at home they are not a supportive family and should let an adoptive or foster family take over.

The department responds that the intent of these principles is to ensure that a consumer who is under age 18 has the opportunity to live in as permanent a family environment as possible. The department makes no judgement on the supportiveness of a family who is unable to keep an individual in the home. These principles are also intended to address situations where parental rights have been terminated through legal processes. The rights of the LAR to choose placement, regardless of the age of the consumer, is not effected by these principles. It is the expectation of the HCS program that the LAR will be involved in all decisions regarding a consumer's program and living arrangements.

Two commenters stated, regarding Principle 51 (proposed as 52), that the LAR should be added to the language or the interdisciplinary team (IDT) can contraindicate, document and justify exceptions to the requirements of the principle. Further the commenters indicated that severely or profoundly retarded consumers must not be allowed the acquisition of skills for sex, driving a car or wandering off alone even though this is age appropriate behavior.

The department responds that the HCS provider is expected to protect the health and safety of all individuals in its program. This protection is mandated through the HCS Consumer Principles and by the federal government. A requirement of the HCS program, illustrated throughout the HCS Consumer Principles, involves the development by the IDT (which includes the LAR) of all services based upon the needs, abilities and strengths of the individual, as determined through assessment information. This principle addresses consumer integration and opportunities for meaningful age-appropriate activities which promote growth and learning. These activities are expected to be consistent with the functional abilities and comprehension of the individual and do not include opportunities which could result in danger to the individual or others. Further, the activities listed in the day habilitation section of the principles are those activities which qualify as approved services within the waiver service definition. The IDT is expected to develop appropriate goals for individuals based upon assessed needs, level of functioning, and strengths. This principle does not require all habilitation training activities to be addressed for all individuals. The amount and type of service provided to an individual should be based upon the actual needs of the individual, as determined by the IDT.

Two commenters expressed concern, regarding Principle 73 (proposed as 74), governing denials and discharge, that an individual who is ICF-MR eligible could be refused HCS enrollment by TDMHMR.

The department responds that an individual who meets all eligibility requirements, including an ICF-MR Level-of-Care, may not be refused enrollment by TDMHMR. The intent of this principle is to prevent HCS providers from arbitrarily refusing services to individuals who are eligible.

Two commenters stated, regarding Principle 74 (proposed as 75), that MRAs should be required to have evidence of the individual's informed choice between ICF/MR and HCS as part of their performance contract.

The department responds that an informed choice between ICF-MR and HCS is a federal requirement for consumer eligibility. MRAs who are also HCS program providers are required to comply with this principle. Elements of the performance contract between the department and the MRAs are outside the scope of this rule.

Regarding Principle 75 (proposed as 76), two commenters questioned what happens to the individual during the 10 working days the HCS program provider has to submit evidence to TDMHMR regarding approval of temporary or permanent service termination.

The department responds that TDMHMR is the only authority which may authorize temporary or permanent discharge. This principle is included to assure that providers notify TDMHMR of those potential discharges. The status of the consumer during the 10 day period is dependent upon the individual situation of the consumer and whether he/she is still available to be served by the provider. Within this principle, it is expected that, as possible, the provider will develop a discharge plan to assure alternate service linkages and continuity of services. It is also expected that, within the ability of the provider, the consumer's health and safety be protected at all times.

Regarding Principle 5.15, one commenter requested that the term restraint be defined and that the use of emergency restraint be included.

The department responds that the right to freedom from restraint is available to all HCS consumers. However, the department recognizes the possibility that individuals may require restraint procedures in order to protect the consumer or others from harm. That possibility is addressed in Principle 5.05 which states that the individual is to be informed of the Individual Service Plan and Individual Plan of Care, including any restrictions affecting the individual's rights. Restraint is also addressed in Principle 101 (proposed as 102), describing the requirements

for intrusive behavioral techniques and, in general, in the principles related to IDT functions and program development.

Regarding Principles 5.16 and 26 (proposed as 27), one commenter indicated that the language needs to be revised to indicate that the consumer may attend the school of their choice, since some parents choose private schools or home schools for their children.

The department responds that these principles address the right of access to free public schooling and do not state that an individual must attend public school, only that the provider may not restrict access. Appropriate schooling as determined by the LAR and/or the IDT and as allowed within the Texas education system are acceptable alternatives.

Regarding Principle 5.42, one commenter indicated that the client rights hotline telephone number needs to be included, and a distinction made between the TDMHMR rights hotline telephone number and the Texas Department of Protective and Regulatory Services (TDPRS) abuse/neglect hotline telephone number.

The department responds that the TDMHMR hotline number was included in the principle as published. This number is clearly identified as the TDMHMR number to be used for registering complaints. The provider's responsibility to notify the Texas Department of Protective and Regulatory Services (TDPRS) for abuse/neglect allegations is stated in Principle 97 (proposed as 98). The Provider may use the central hotline number or may report allegations to the TDPRS regional offices.

Regarding Principle 8, one consumer stated that with the current automated billing system this principle is not applicable.

The department responds that it agrees with the comment and will delete Principle 8.

Regarding Principle 42 (proposed as 43), one commenter indicated that the language needs to specify adaptive aids costing less than $500 each are authorized by the IDT.

The department responds that it agrees with the comment and will reword the principle to clarify that each adaptive aid costing less than $500 requires IDT authorization.

Regarding Principle 44.08 (proposed as 45.08), one commenter stated that the language needs to read "arranging transportation as needed to carry out the Individual Service Plan."

The department responds that the current language has been approved by the Health Care Financing Administration (HCFA). Any service reimbursed through the waiver must be addressed in the consumer's Individual Service Plan.

Regarding Principles 59.02, 59.03, and 59.04 (proposed as 60.02, 60.03, and 60,04), one commenter indicated that the phrase "specific to the consumer served" needs to be added.

The department responds that residential assistance services and the accompanying consumer goals are developed through the IDT process, which must consider the individualized needs of the consumer.

Regarding Principle 64.01 (proposed as 65.01), one commenter indicated that the language needs to be reworded to state "No more than 1 employee or 3% of the work force have developmental disabilities..." The commenter stated that it is discriminatory to ask how many people have physical disabilities, therefore that information can not be obtained prior to employment.

The department responds that the general requirement of 3% of the work force or no more than one employee is consistent with the TDMHMR definition of supported employment and the service definition as approved by the Health Care Financing Administration. The HCS provider is not expected to engage in discriminatory activities when placing individuals in supported employment, but is expected, within the realm of prudent judgement, to assure that work settings are as integrated as possible.

Regarding Principle 65 (proposed as 66), one commenter indicated that direct care provider (habilitator) is not included.

The department agrees and will add direct service providers to the composition of the IDT.

Regarding Principle 73 (proposed as 74), one commenter stated that the phrase "or if the program is at capacity" be added.

The department responds that the capacity of individual programs is a contractual issue and not one of certification. If a program is at contractual capacity, that program is not an option from which the consumer may choose.

Regarding Principle 74 (proposed as 75), one commenter indicated that Form 3609 is provided by the MRA.

The department responds that Form 3609, which verifies the consumers choice between ICF-MR and HCS, is completed by the local Mental Retardation Authority (MRA). However, the HCS provider is required to maintain copies of all enrollment documentation in the consumer's file.

Regarding Principle 88 (proposed as 89), one commenter stated the language needs to be reworded to state "...shall verify that the provider of dental treatment is currently qualified..." The commenter states that dentists do not contract with the provider, therefore, when the consumer has chosen their own service provider for dental services it would not be appropriate for the HCS provider to ask for a copy of the dentist's license.

The department responds that regardless of how a dental treatment provider is chosen, if the HCS provider is reimbursed through the waiver for such service, the provider must have evidence that the dentist is licensed in the State of Texas. The principle does not specifically require a copy of a license. Any verifiable evidence of licensure is sufficient.

Regarding Principle 62 (proposed as 63), one comment stated that the principle has been amended so that the IDT for the individual involved in respite specify the visit by the person receiving the respite services and that the visit provides no deterrent to the health, safety and welfare as well as rights and/or needs of either individual. Previously, the principle allowed the individuals who live in the home to give permission for another individual to come into the home for respite services. The commenter is of the opinion that the involvement of the full IDT is not feasible. However, the commenter does view it as feasible if respite options are discussed during the annual individual service plan meeting where compatible individuals are identified.

The department responds that this principle has been reworded for minor grammatical changes. The requirements have not substantially changed from the original language in use prior to the publication of the current proposal. It is acceptable for the IDT of each involved consumer to authorize respite services for

more than one occurrence, as long as there are no changes in the consumers' status.

The amendments are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Government Code, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§409.101. Eligibility Criteria.

(a) (No change.)

(b) To be determined eligible by TDMHMR for HCS services, individuals must also:

(1) meet the ICF-MR I, V, or VI level of care criteria as determined by TDMHMR or TDHS according to Chapter 406, Subchapter E, of this title, concerning ICF/MR Program: Eligibility and Review, and applicable federal regulations, and as verified by a current level of care (LOC) assessment form;

(A) An LOC assessment (or reassessment) form signed by TDMHMR or TDHS is considered valid for enrollment purposes by TDMHMR for 364 days from the date of issuance.

(B) Reevaluations of level of care are performed annually by TDMHMR. An initial reevaluation of level of care must be performed no later than 364 calendar days from the date of enrollment. Subsequent LOC reevaluations must be performed no later than 364 calendar days from the effective date of the prior level of care assignment.

(C) In order for payment to be considered for days that an individual was receiving HCS services but did not have a current LOC assessment form in place, the provider must follow the process described in §409.119 of this title (relating to Gaps in Level-of-Care Coverage);

(2) live in the contracted provider's geographic catchment area. If an applicant has been removed from his home and community because of ICF-MR institutional placement, he may be considered for placement in the HCS program even though his original county of residence is outside the provider's geographic catchment area; and

(3) have had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593. Admission and Commitment to Mental Retardation Services, Subchapter A) or be diagnosed by a licensed physician as having a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-Care and Level-of-Need), prior to enrollment in the HCS Program.

(4) have an Individual Plan of Care for Home and Community-based Services form developed by the provider's interdisciplinary team composed of a case manager and nurse who meet the qualifications specified in the waiver, and the individual or legally authorized representative.

(A) The Individual Plan of Care for Home and Community-based Services form must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration.

(B) The Individual Plan of Care for Home and Community-based Services form must be signed and dated by the interdisciplinary team prior to implementation. The interdisciplinary team must certify in writing that the waiver services authorized on the Individual Plan of Care form are necessary to avoid ICF-MR institutional placement and are appropriate to meet the applicant's needs in the community, as recommended. The initial individual plan of care must be based upon the community support analysis (Exhibit A) developed by the mental retardation authority (MRA) according to §409.102 of this title (relating to Process for Applicant Referral to Contracted HCS Provider Agencies).

(C) The initial Individual Plan of Care for Home and Community-based Services form must be approved by TDMHMR. The Individual Plan of Care form must be updated by the provider at least annually. Revisions and updates to the Individual Plan of Care form are subject to review and approval during annual on-site certification and other reviews conducted by TDMHMR. Any gaps in the coverage periods of the individual plans of care result in loss of payment to the provider.

(c) (No change.)

(d) (No change.)

(e) (No change.)

§409.109. Corrective Action and Provider Sanction.

The HCS provider must be in continuous compliance with the HCS Consumer Principles for Evidentiary Certification. Each HCS provider will receive a certification review at least annually in order to maintain certification status. The guidelines specified in §§409.110 - 409.115 of this title (relating to Hazards to Health, Safety, and Welfare; Level I Action; Level II Action; Level III Action; Unannounced or Intermittent Review Visits; and Discretionary Certification Sanctions) are used by TDMHMR to determine the need for provider sanctions and/or provider onsite follow up review visits that occur before those required concurrently with the recertification review. Current certification review corrective action plans required from the provider and related timelines remain in effect.
Figure 1: 25 TAC §409.109

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.

Issued in Austin, Texas, on December 19, 1997.

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Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206–4516

Chapter 411. State Authority Responsibilities

Subchapter H. Interstate Transfer

25 TAC §§411.351-411.362

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§411.351-411.362 of Chapter 411, Subchapter H, concerning interstate transfer. Sections 411.353 and 411.357-411.360 are adopted with changes to the proposed text as published in the October 24, 1997, issue of the *Texas Register* (22 TexReg 10493). Sections 411.351, 411.352, 411.354-411.356, 411.361, and 411.362 are adopted without changes to the proposed text. The repeals of existing §§403.221-403.232, concerning the same, are contemporaneously adopted in this issue of the *Texas Register.*

The subchapter describes the procedures for transferring persons with mental retardation and mental illness between department facilities in Texas and other states. The procedures contained in the subchapter comply with state statute; reflect current practice which has been determined to be an effective, efficient, and compassionate manner of interstate transfer; and facilitate coordination with other states that are parties to the Interstate Compact on Mental Health as well as the five states that are not parties to the compact.

The definitions of "family member" and "legally authorized representative" were modified for clarification. Language was added to §411.357(a) and §411.358(a) stating that regardless of who initiates the request for transfer, the preferences of the adult person who has not been adjudicated incompetent prevails. Language was modified in §411.357(c)(2) regarding the appropriateness of a discussion about the transfer with the person and staff's responsibility to *ascertain whether* transfer is in the person's best interest; and in (f)(1) regarding travel arrangements being acceptable to the person being transferred *and/or the person's legally authorized representative.* Language was modified in §411.357(f)(5)(P) and §411.358(f)(4) regarding the supply of all prescribed medications which accompanies the person during transfer. Language was added to §411.358(c)(7) and §411.360(a)(8) to include a summary of the person's social history. Language was added to §411.359(b) and §411.360(b) clarifying that the determination of eligibility for admission to a facility is determined by the Interstate Compact Coordinator (ICC), the appropriate local authority, and the appropriate facility. The procedures proposed as §411.359(e) and §411.360(e) regarding referrals to the director of mental retardation facilities or mental health facilities was modified for clarification and moved as new subsections (c), to take place before eligibility is determined. Language was added to §411.359 and §411.360 stating that if the person is determined ineligible for admission to a facility then the ICC notifies the requesting state of the person's right to provide additional information to be considered in redetermining eligibility if the person believes that incomplete or inaccurate information was used to determine ineligibility.

Public comment was received from Advocacy, Inc., Austin; Parent Association for the Retardation of Texas, Austin, and the parent of a state school resident, Garland, TX.

One commenter expressed concern that the rules do not clearly state that if there is a dispute between the family member and a legally competent person regarding the transfer, the wishes of the person will be honored. The department responds by adding language to reflect the commenter's concern.

Regarding §411.360(d), the commenter stated that although disputes relating to the benefits derived from a proposed transfer and clinical issues relating to eligibility for admission to a facility are referred to a TDMHMR administrator, the rules gives no information about what the person can expect from this referral. The commenter requested that the rules indicate what appeal rights the person has, if the person will be contacted to provide information, the anticipated time frames, and how the TDMHMR administrator will provide notice to the person about the outcome of the referral. The department responds that language has been added which states that the TDMHMR administrator is responsible for resolving referred disputes. It also states that if the person is determined ineligible for admission to a facility, then the ICC notifies the requestor of the person's right to provide additional information to be considered in redetermining eligibility if the person believes that incomplete or inaccurate information was used to determine ineligibility.

Regarding §403.222, two commenters objected to the term "local authority" replacing "mental health authorities and mental retardation authorities (MHA/MRA)." The commenters stated that for consistency with state statute, the terms "mental health authorities" and "mental retardation authorities" should be used in the rule. The department responds that the rule's definition of "local authority" is consistent with the statute's definitions of "local mental health authority" and "local mental retardation authority." The abbreviated term, used in numerous department policies, allows for a shorter and more reader-friendly rule.

The same commenters objected to the phrase "any individual the person identifies as playing a significant role in the person's life" as part of the definition of "family member." The commenters requested that the phrase be deleted from the definition of family member and that the significant-role-playing-individual be termed and defined as an actively involved person. The department responds that in non-traditional families an individual need not be related by blood or marriage to be considered a "family member." For the purposes of this subchapter, the department honors as a family member any individual identified by the person served as playing a significant role in the person's life. The department notes that "playing a significant role in the person's life" generally means being actively involved.

Regarding the definitions section, the same commenters suggested adding the term "interdisciplinary team (IDT)" and using the statutory definition. The department responds that the term is not used in the subchapter and therefore does not need to be defined.

The same commenters requested modifying the definition of "legally authorized representative (LAR)" to state that the guardianship orders issued by the court must *implicitly or explicitly* authorize the guardian to make decisions concerning the person's living arrangements. The department responds by modifying the language as requested.

The same commenters suggested adding mental retardation services to the definition of "single portal authority." The commenters asked if, because of the definition, voluntarily committed individuals cannot or will not be served. The department responds that the term "single portal authority," as defined by state statute, applies exclusively to mental health services. The department notes that the term "commitment" applies only to involuntary patients; patients who present themselves for inpatient services may be voluntarily *admitted*.

Regarding §411.357(c), the same commenters suggested that the facility forward the items listed in paragraphs (1)-(10) to *the legally authorized representative (LAR)* as well as the ICC. The department responds that *if the person has an LAR* , then the LAR would be initiating the transfer in the first place and would have either provided the items listed or would already have access to the items listed.

Regarding §411.357(c)(2), the same commenters suggested adding "and/or if appropriate" after "... discussion with the person" and before "contact with the person's family...". The commenters stated that the LAR may not want the transfer discussed with the person. One of the commenters gave an example of when the person was unable to understand or participate in a discussion about the transfer. The commenters further stated that the interdisciplinary team (IDT) does not "de-

termine" anything [in reference to determining if the transfer is in the person's best interest], but that the IDT merely "assesses and recommends." The department responds that language has been modified to reflect the commenters' concern.

Regarding §411.357(f)(1), the same commenters suggested adding "and/or LAR" after the phrase "the most comfortable and expeditious mode of travel that is acceptable to the person being transferred." The department responds by adding the suggested language.

The same commenters suggested adding a distribution section to include "individual advocates and advocacy organizations." The department responds that it is unable to make the change as requested because a distribution section was not proposed. The Administrative Procedures Act prohibits adding a section on adoption that has not been proposed in the *Texas Register*.

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; the Interstate Compact on Mental Health, Texas Health and Safety Code, Chapter 612, which authorizes the adoption of rules to carry out the compact more effectively; the Texas Health and Safety Code, §533.011, which permits the return of persons with mental retardation to their state of residence; and the Texas Health and Safety Code, §571.008, which permits the return of committed patients to their state of residence.

§411.353. Definitions.

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

Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Facility - Any state hospital, state school, or campus-based component of a state center of the Texas Department of Mental Health and Mental Retardation.

Family member - The person's spouse, parent, sibling, adult child, or any individual the person identifies as playing a significant role in the person's life.

Informed consent - The knowing agreement to a proposed transfer without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

Interstate compact coordinator (ICC) - The employee at the department's Central Office responsible for coordinating interstate transfers.

Legally authorized representative (LAR) - The parent, guardian, or managing conservator of a person who is a minor or the guardian of a person who is an adult. The guardianship orders issued by the court must implicitly or explicitly authorize the guardian to make decisions concerning the person's living arrangements.

Local authority - An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.

Person - The individual for whom interstate transfer is requested.

Single portal authority - A local authority that has been designated by the Texas Mental Health and Mental Retardation Board to serve as the agency with responsibility for coordinating and facilitating the delivery of mental health services to involuntarily committed persons in its local service area.

Transfer - The importation or deportation of a person under the provisions of the Texas Mental Health Code, Texas Health and Safety Code, Title 7, §571.008; the Texas Mental Health and Mental Retardation Act, Texas Health and Safety Code, Title 7, §533.011 and §533.014(a)(3); or the Interstate Compact on Mental Health, Texas Health and Safety Code, Title 7, Chapter 612.

§411.357. Requests for Persons with Mental Retardation to be Transferred from Texas.

(a) Requests for interstate transfer may be initiated by the person, a family member of the person, or the person's LAR. Regardless of who initiates the request for transfer, the preferences of the adult person who has not been adjudicated incompetent prevails.

(b) In response to a transfer request, the facility in which the person resides is responsible for obtaining informed consent to the transfer from the person or the person's LAR and completing the "Consent to Interstate Transfer and to Release Confidential Information" form and the "Request for Interstate Transfer" form, which are referenced as Exhibits A and B, respectively in §411.361 of this title (relating to Exhibits).

(c) The facility forwards to the ICC:

(1) documentation of the person's prerequisite for transfer to the receiving state, in accordance with §411.354(a) of this title (relating to Prerequisite for Transfer);

(2) documentation of staff's discussion with the person regarding the proposed transfer and/or if appropriate documentation of staff's contact with the person's family, friends, or other available sources in ascertaining whether the transfer is in the person's best interest;

(3) the completed "Consent to Interstate Transfer and to Release Confidential Information" form;

(4) the completed "Request for Interstate Transfer" form;

(5) a copy of the person's current individual habilitation plan;

(6) a copy of the person's diagnosis of mental retardation;

(7) a copy of the person's annual planning conference documents;

(8) the person's current and complete social history, and a copy of the person's psychological and medical evaluations, with current physician's orders;

(9) guardianship or other legal documentation pertaining to the individual requesting transfer; and

(10) a brief cover letter signed by the facility chief executive officer or designee stating why the transfer is desired.

(d) While the request for transfer is pending, the facility is responsible for informing the ICC of any changes in the person's status, the request, or of anything that would affect the transfer request.

(e) Upon receipt of the elements described in subsection (c) of this section, the ICC contacts the receiving state and makes a reasonable effort to obtain authorization for the transfer.

(f) If the receiving state decides to accept the person for immediate transfer, then the facility shall:

(1) make all travel arrangements, choosing the most comfortable and expeditious mode of travel that is acceptable to the person being transferred and/or the LAR;

(2) be responsible for all transfer expenses;

(3) ensure that arrangements are made for an escort or escorts to accompany and assist the person in reaching the final destination;

(4) inform the ICC of the completed transfer; and

(5) ensure that the following items accompany the person upon transfer:

(A) a copy of the person's birth certificate or appropriate substitute;

(B) all legal documents;

(C) the person's Social Security card;

(D) a copy of the person's immunization record;

(E) a copy of the person's weight and height record;

(F) a copy of the person's seizure record, if appropriate;

(G) a copy of the person's treatment and diet record;

(H) Medicaid, Medicare, or third-party insurance cards, if available;

(I) a copy of the person's current nursing care plan;

(J) a summary of the person's medical history, including all major surgeries, and significant acute illnesses and injuries requiring hospitalization or long recovery period;

(K) a summary of the person's medication history, including start/stop dates and dose ranges, effectiveness of all long-term medications, and antibiotic use including dates, effectiveness, sensitivities, and allergies;

(L) a summary of the person's dental history, including all oral surgeries, extractions, restorations, appliances, and types of anesthesia required for dental work;

(M) copies of all the person's laboratory reports of exams conducted within the past 30 days and any additional significant reports made within the past year (including, X-ray, EEG, and EKG);

(N) all personal belongings;

(O) transfer program summary; and

(P) the previously agreed upon supply of all prescribed medication, not to exceed a 14-day supply.

(g) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed "Consent to Interstate Transfer and to Release Confidential Information" form.

§411.358. Requests for Persons with Mental Illness to be Transferred from Texas.

(a) Requests for interstate transfer may be initiated by the person, a family member of the person, or the person's LAR. Regardless of who initiates the request for transfer, the preferences of the adult person who has not been adjudicated incompetent prevails.

(b) In response to a transfer request, the facility in which the person resides is responsible for obtaining informed consent to the transfer from the person or the person's LAR and completing the "Consent to Interstate Transfer and to Release Confidential Information" form and the "Request for Interstate Transfer" form, which are referenced as Exhibits A and B, respectively in §411.361 of this title (relating to Exhibits).

(c) The facility forwards to the ICC:

(1) documentation of the person's prerequisite for transfer to the receiving state, in accordance with §411.354(a) of this title (relating to Prerequisite for Transfer);

(2) documentation of staff's discussion with the person regarding the proposed transfer and documentation of staff's contact with the person's family, friends, or other available sources in ascertaining whether the transfer would be in the person's best interest;

(3) the completed "Consent to Interstate Transfer and to Release Confidential Information" form;

(4) the completed "Request for Interstate Transfer" form;

(5) documentation of approval to transfer from the committing court, as required by the Texas Health and Safety Code, §612.007(b);

(6) a copy of the person's comprehensive medical history, with current physician's orders;

(7) a summary of the person's social history and history of mental illness, and a copy of the person's psychiatric and psychological evaluations;

(8) a copy of the person's current diagnosis;

(9) a list of the person's current medication; and

(10) a brief cover letter signed by the facility chief executive officer or designee stating why the transfer is desired.

(d) While the request for transfer is pending, the facility is responsible for informing the ICC of any changes in the person's status, the request, or of anything that would affect the transfer request.

(e) Upon receipt of the elements described in subsection (c) of this section, the ICC contacts the receiving state and makes a reasonable effort to obtain authorization for the transfer.

(f) If the receiving state decides to accept the person for immediate transfer, the facility shall:

(1) make all travel arrangements, choosing the most comfortable and expeditious mode of travel acceptable to the person being transferred;

(2) be responsible for all transfer expenses;

(3) ensure arrangements are made for an escort or escorts to accompany and assist the person in reaching the final destination;

(4) ensure that all personal belongings and the previously agreed upon supply of all prescribed medications, not to exceed a 14-day supply, accompany the person upon transfer to the receiving state; and

(5) inform the ICC of the completed transfer.

(g) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed "Consent to Interstate Transfer and to Release Confidential Information" form.

§411.359. Requests for Persons with Mental Retardation to Transfer to Texas.

(a) A letter of request for transfer of a person to a TDMHMR facility, which is initiated by the person, a family member of the person, or the person's LAR, is sent by the requesting state's Interstate Compact Coordinator or designee to the ICC, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The letter of request must be accompanied by:

(1) documentation of the person's prerequisite for transfer to Texas, in accordance with §411.354(b) of this title (relating to Prerequisite for Transfer);

(2) a consent to the release of records to the department, signed by the person or the person's LAR;

(3) the completed "Request for Interstate Transfer" form;

(4) a copy of the person's immunization record;

(5) a copy of the person's Social Security card;

(6) a copy of the person's birth certificate or appropriate substitute;

(7) a copy of the person's current individual habilitation plan;

(8) a copy of the person's diagnosis of mental retardation;

(9) a copy of the person's annual planning conference documents;

(10) the person's current and complete social history, and a copy of the person's psychological and medical evaluations, with current physician's orders;

(11) guardianship documentation, if applicable, court commitment documentation, and other legal documentation pertaining to the person requesting transfer; and

(12) a brief cover letter signed by the institution's chief executive officer or designee stating why the transfer is desired.

(b) Upon receipt of the letter of request, the ICC reviews the documents and consults with the appropriate local authority, who consults with the appropriate facility, to determine whether the person is eligible for admission to the facility.

(c) The ICC refers disputes relating to the benefit derived from a proposed transfer and clinical issues relating to eligibility for admission to a facility to the director of mental retardation facilities at the department's Central Office for resolution.

(d) If the person is determined eligible for admission to a facility, then the person is referred to the appropriate local authority who arranges for the person's name to be placed on the register of the appropriate facility. The ICC notifies the sending state of the department's action regarding the request for transfer and supplies necessary transfer information.

(e) If the person is determined ineligible for admission to a facility, then the ICC notifies the requesting state of such ineligibility. The ICC also notifies the requesting state of the person's right to provide additional information to be considered in redetermining eligibility if the person believes that incomplete or inaccurate information was used to determine ineligibility.

(f) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed consent to release confidential information document or in accordance with law.

§411.360. Requests for Persons with Mental Illness to Transfer to Texas.

(a) A letter of request for transfer of a person to a TDMHMR facility, which is initiated by the person, a family member of the person, or the person's LAR, is sent by the requesting state's Interstate Compact Coordinator or designee to the ICC, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The letter of request must be accompanied by:

(1) documentation of the person's prerequisite for transfer to Texas, in accordance with §411.354(b) of this title (relating to Prerequisite for Transfer);

(2) a consent to the release of records to the department, signed by the person or the person's LAR;

(3) the completed "Request for Interstate Transfer" form;

(4) a copy of the person's immunization record;

(5) a copy of the person's Social Security card;

(6) a copy of the person's birth certificate or appropriate substitute;

(7) a copy of the person's comprehensive medical history, with current physician's orders;

(8) a summary of the person's social history and history of mental illness, and a copy of the person's psychiatric and psychological evaluations;

(9) a copy of the person's current diagnosis;

(10) a list of the person's current medication;

(11) guardianship documentation, if applicable, court commitment documentation, and other legal documentation pertaining to the person requesting transfer; and

(12) a brief cover letter signed by the institution's chief executive officer or designee stating why the transfer is desired.

(b) Upon receipt of the letter of request, the ICC reviews the documents and consults with the appropriate local authority, who consults with the appropriate facility, to determine whether the person is eligible for admission to the facility.

(c) The ICC refers disputes relating to the benefit derived from a proposed transfer and clinical issues relating to eligibility for admission to a facility to the director of mental health facilities at the department's Central Office for resolution.

(d) If the person is determined eligible for admission to a facility, then the person is referred to the appropriate local authority who arranges for the person's name to be placed on the register of the appropriate facility. The ICC notifies the sending state of the department's action regarding the request for transfer and supplies necessary transfer information.

(e) If the person is determined ineligible for admission to a facility, then the ICC notifies the requesting state of such ineligibility. The ICC also notifies the requesting state of the person's right to provide additional information to be considered in redetermining eligibility if the person believes that incomplete or inaccurate information was used to determine ineligibility.

(f) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed consent to release confidential information document or in accordance with law.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716977
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 8, 1998
Proposal publication date: October 24, 1997
For further information, please call: (512) 206–4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 19. Agent's Licensing

Subchapter R. Utilization Review Agents

28 TAC §19.1722

The Commissioner of Insurance adopts new §19.1722 concerning the creation of a utilization review advisory committee without changes to the proposed text as published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10896).

This new section is necessary to set forth the parameters of an advisory committee to assist the commissioner in implementing and enforcing the Health Care Utilization Review Agents statute appearing at Insurance Code Article 21.58A. The rule defines and describes the duties, make-up and duration of the Utilization Review Advisory Committee, pursuant to Insurance Code Article 21.58A, §13. The Utilization Review Advisory Committee is necessary to assist the commissioner in developing rules for utilization review. It is anticipated that at least one area of utilization review rules will be necessary in the coming year. The Utilization Review Advisory Committee is terminated as of December 31, 1998. Setting a firm termination date for the committee encourages it to fulfill its statutory purpose efficiently and timely.

This section describes the purpose of the Utilization Review Advisory Committee, which is to advise the commissioner in developing rules and regulations for utilization review, and enumerates the tasks by which the committee is to achieve its purpose. The advisory committee is to be comprised of one representative from each of the following: Office of Public Insurance Counsel, an insurance company, an HMO, a group hospital service corporation, a utilization review agent, a consumer group, an employer, a physician, a dentist, a hospital, a registered nurse, and other health care providers. The advisory committee is to terminate on December 31, 1998 unless its duration is extended by the commissioner.

No comments were received regarding adoption of the new section.

The new section is adopted under the Insurance Code, Articles 21.58A, §13 and 1.03A. Insurance Code Article 21.58A, §13 directs the commissioner to appoint an advisory committee to assist and advise the commissioner in developing rules and regulations for utilization review. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance. The Government Code, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

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.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716869
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Effective date: January 6, 1998
Proposal publication date: November 7, 1997
For further information, please call: (512) 463–6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office (Land Office) adopts an amendment to §15.11(b)(1) relating to the conditional certification of the City of Galveston's (City's) dune protection and beach access plan (Plan) under the state rules for Management of the Beach/Dune System (beach/dune rules), 31 TAC §§15.1-15.10. The Land Office adopts this amendment to §15.11(b)(1) with changes to the proposed text of the rule as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10617).

This amendment is in response to an amendment of the City's conditionally certified Plan. City Ordinance Number 97-80, Sept. 30, 1997 (fibercrete ordinance). The City has requested that the Land Office certify a Plan amendment that includes a variance from the prohibitions and requirements of §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of the beach/dune rules. Section 15.4(c)(8) prohibits the construction of concrete slabs or other impervious surfaces within 200 feet landward of the natural line of vegetation. Section 15.5(b)(3) prohibits a local government from issuing a beachfront construction certificate if the construction includes a proposal to build a concrete slab or other impervious surface within 200 feet landward of the line of vegetation or within the eroding area boundary, whichever distance is greater. Section 15.6(f)(3) applies to construction in eroding areas and provides that a local government may allow a permittee to alter or pave only the ground within the footprint of the habitable structure only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet landward from the line of vegetation or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater.

The City has amended its Plan to: (1) prohibit the paving or altering of the ground below the lowest habitable floor in the area between the line of vegetation and 25 feet landward of the north toe of the dune; and (2) allow only the use of unreinforced fibercrete in 4 feet by 4 feet sections, no more than 4 inches thick and separated by expansion joists or pervious materials, in the area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation. The City has also instituted a $200 fibercrete maintenance fee that will be used to pay for the cleanup of fibercrete from the public beaches should the need arise.

The City has submitted to the Land Office a reasoned justification demonstrating how the fibercrete variance will: (1) advance the public interest; and (2) provide an equal or better level of protection or equal or better procedures than provided under the beach/dune rules. The Land Office finds that the variance requested by the City and the City's reasoned justification for the variance meet the requirements for a variance under §15.3(o)(6) of the beach/dune rules.

The City has not completed the modification of its plan consistent with the Land Office's comments of October 14, 1993. Therefore, the conditional certification of the City's Plan is reissued and continued for another 180 days from the effective date of this certification. Comments on the proposed certification were submitted by the City, the Office of the Attorney General, and the Houston and Galveston Chapters of the Sierra Club. The City pointed out that a variance also was requested regarding the provisions of §15.6(f)(3), relating to construction in eroding areas, as well as §15.4(c)(8), relating to prohibited actions under the dune protection standards, and §15.5(b)(3), relating to prohibition of certification under the beachfront construction standards. The City's original request also applied to §15.6(f)(3), and the Land Office regrets unintentionally omitting the reference to §15.6(f)(3) from the proposed certification. The Land Office considered the requested variance from §15.6(f)(3) when reviewing the City's reasoned justification but neglected to include a citation to §15.6(f)(3) in the text of the proposed certification. Section 15.11(b)(1)(B) has been modified in response to this comment.

The Houston and Galveston Chapters of the Sierra Club (HGSC) stated that the proposed certification ". . . is not fair to other coastal dwellers and is an abrogation of uniform state standards." Section 15.3(o) of the beach/dune rules, relating to administration, was recently amended to provide local governments with a process for requesting a variance from specific provisions of the beach/dune rules. The Land Office may only grant such a variance if a local government submits a reasoned justification demonstrating that the requested variance will provide either or, where appropriate, both an equal or better level of protection of dunes, dune vegetation, and public access to and use of the public beach than provided under the beach/dune rules or equal or better procedures for evaluating the impacts identified in an application for a permit or certificate on dunes, dune vegetation, and public access to and use of the public beach. Furthermore, at its November 12, 1997, meeting, the Coastal Coordination Council certified as consistent with the goals and policies of the Texas Coastal Management Program the amendment to §15.3(o), providing for variances from the uniform standards of the beach/dune rules. *See* 31 TAC §505.23. Under the provisions of §15.3(o) the City requested a variance from the requirements of §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) and submitted a reasoned justification supporting the requested variance. No change was made in response to this comment.

The Office of the Attorney General (OAG) said that ". . . it is not evident . . . how the variance will provide equal or better protection than provided under current beach/dune rules . . ." and that " the City's justification for the use of fibercrete appears to focus mainly on the economy and ease in cleaning up fibercrete, as well as the aesthetics and economy in using the product." The City offered several reasons to justify the fibercrete ordinance and the requested variance. First, the City explained that the clean-up of fibercrete would be quicker, easier, and more economical than the clean-up of brick pavers which are allowed under the beach/dune rules and that the use of fibercrete will not impact the beach/dune system in any greater manner than will materials currently permitted under the beach/dune rules. Second, the City established the fibercrete maintenance fee to pay for the clean-up of fibercrete from the public beach. Finally, the City has established specific conditions for its Beachfront Construction and Dune Protection Permits to ensure that the fibercrete paving is installed in a manner that minimizes adverse impacts to dunes and dune vegetation. No change was made in response to this comment.

The HGSC stated that the proposed amendment ignores the operation of coastal ecosystems and will reduce the ability of dunes to rebuild and recover from normal and storm erosion. The provisions affected by this proposal - §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) - apply only to the construction of concrete slabs and other impervious surfaces. This amendment does not affect the obligation under §15.4(f) to avoid, minimize, and mitigate all adverse effects to dunes and dune vegetation to the greatest extent practicable. Thus, if a proposed project using fibercrete has an adverse effect on dunes and dune vegetation, impairing the operation of coastal ecosystems and the ability of the dunes to rebuild and recover from erosion, then the project sponsor has an obligation under §15.4(f)(3) to mitigate for the adverse effect, replacing the affected dunes and dune vegetation at not less than a 1:1 ratio. No change was made in response to this comment.

The OAG commented that the City's justification does not address ". . . how fibercrete acts in allowing percolation of water or preventing concentrated runoff from rain . . . ." The City's Plan requires that fibercrete be installed in 4 feet by 4 feet sections separated by expansion joints or pervious materials. The expansion joints and pervious materials will allow percolation and disperse runoff. The City's justification also provides that an applicant for a Beachfront Construction and Dune Protection Permit is required to provide City staff with plans for drainage to the nearest landward public right-of-way. Furthermore, §15.4(d) and §15.6(g), which require that impacts to natural hydrology be minimized, as well as the mitigation requirements under §15.4(f), remain in effect. No change was made in response to this comment.

The OAG commented that there is no apparent rationale for changing the pervious surfacing driveway requirement for applicants in eroding areas 200 feet landward of the line of vegetation and beyond. Beyond 200 feet landward of the line of vegetation, it is less likely that a concrete slab or other pervious surface will become beach debris due to erosion. Should the surfacing become beach debris, the City may access the fibercrete maintenance fee to pay for the debris removal. No change was made in response to this comment.

The OAG expressed concern that the City's standard for using the funds collected from the fibercrete maintenance fee for the removal of fibercrete from the public beaches is not clear. The HGSC also objected to the fibercrete maintenance fee, commenting that the fee would be inadequate to pay for the removal of fibercrete debris. The City intends that the fibercrete maintenance fee serve as a reserve fund. Individual property owners have the primary responsibility for removing any fibercrete debris from the public beaches. Second, following a storm, federal, state, and local emergency funds may be available to remove fibercrete and other debris from the public beaches. Finally, after these resources have been exhausted, the City will use the fibercrete maintenance fee to remove any remaining fibercrete debris from the public beaches. Furthermore, the City has estimated that it will cost $1,200.00 to break-up and remove one 2,000 square foot fibercrete slab. No change was made in response to these comments.

The OAG commented that the reasoned justification and method for calculating the fibercrete maintenance fee are not clear given that the fee may apply both to proposals for paving 200 square feet or 2,000 square feet. HGSC also commented that the fee should be scaled so that the fee is greater for projects that cause more damage. The $200 fibercrete maintenance fee is applied to all beachfront construction projects, distributing the risk that the City may be required to remove debris resulting from any one project. No change was made in response to this comment.

Finally, HGSC stated that it is "ridiculous" to allow construction up to 25 feet from the line of vegetation in the critically hazard beach and dune area. As noted above, the proposed amendment does not alter the obligation under §15.4(f) to avoid, minimize, and mitigate adverse effects to dunes and dune vegetation. Furthermore, there is nothing under the beach/dune rules that prohibits construction up to 25 feet from the line of vegetation. No change was made in response to this comment.

Persons commenting for the amendment: City of Galveston. Persons commenting against the amendment: Office of the Attorney General and Houston and Galveston Chapters of the Sierra Club.

The Land Office has prepared a takings impact assessment for the adoption of this amendment and determined that adoption of this amendment will not result in a taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Sylvia Sissom, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, facsimile number 512/463-6311.

The certification of a local government beach access or dune protection plan is an action subject to the Texas Coastal Management Program. The Land Office has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies.

The amendment is proposed under Texas Natural Resources Code, §61.011 and §61.015(b), which provide the Land Office with the authority to preserve and enhance public beach access; Texas Natural Resource Code, §63.121, which provides the Land Office with the authority to identify and protect critical dune areas; Texas Natural Resource Code, §33.601, which provides the Land Office with the authority to adopt rules on erosion; and Texas Water Code, §16.321, which provides the Land Office with the authority to adopt rules on coastal flood protection.

§15.11. Certification of Local Government Dune Protection and Beach Access Plans.

(a) (No change.)

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993, amended September 30, 1997).

(A) This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(B) This certification includes a variance from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title, (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards). The City of Galveston's plan:

(i) provides that paving or altering the ground below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(ii) provides that paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists, or pervious materials approved by the City Department of Planning and Transportation, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation;

(iii) assesses a "Fibercrete Maintenance Fee" of $200.00 to be used to pay for the clean-up of fibercrete from the public beaches, should the need arise; and

(iv) allows the use of reinforced concrete in that area landward of 200 feet from the line of vegetation.

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

(c)-(f) (No change.)

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.

Issued in Austin, Texas, on December 15, 1997.

TRD-9716802
Garry Mauro
Commissioner
General Land Office
Effective date: January 5, 1998
Proposal publication date: October 31, 1997
For further information, please call: (512) 305–9129

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter A. Practice and Procedure

34 TAC §9.105

The Comptroller of Public Accounts adopts new §9.105, concerning tax refunds for economic development, with changes to the proposed text as published in the August 29, 1997, issue of the *Texas Register* (22 TexReg 8602).

The new section sets forth how the Comptroller of Public Accounts shall provide for refunds and management review of state taxes paid by a person owning certain abated property as provided by the Tax Code, §§111.301-111.304, in the manner required by law. This new section establishes the procedures to be followed by a person seeking a refund under the Tax Code, §§111.301-111.304, and provides for a management review process, including review by the comptroller, for persons whose refund applications are determined to be ineligible. A management review process is created rather than providing access to an administrative hearings process because the statutorily created deadlines imposed upon the comptroller for computing the total amount eligible for refund, in combination with the limited amount of state funds available for this refund program, would create a delay in distribution of all refunds if a formal administrative hearings process is used for the small number of persons whose refund application may be determined to be ineligible.

Comments were received from an accounting firm in Dallas requesting additional explanation of subsection (b)(2)(A), which deals with the limitations on the amount of the refund and states that a person may be required to return a portion of the refund if the person filed an amended sales tax and/or franchise tax return for the refund year. The comptroller agreed and changed the language of the subsection to clarify this point.

Comments were received from the Texas Taxpayer and Research Association (TTARA) suggesting a clarification in subsection (b)(3)(A), stating that a taxpayer remains eligible for a refund if the taxpayer has an agreement with a school district to pay the full amount of the taxes in two or more payments, provided full payment is made before the application deadline. The comptroller accepts that change and has added language to the subsection to clarify this point.

TTARA also commented that in the example in Figure 1 of subsection (b)(3)(C), Item 1, which refers to appraised value of land, needed to be clarified to include appraised value of improvements and personal property. The language suggested is the same as the language used in the application form (AP-186). The comptroller made the suggested changes.

TTARA commented that subsection (b)(4)(A)(ii) should not require submission of an original tax receipt with the application but should allow the taxpayer to submit a copy of the tax receipt. The comptroller made the suggested change.

The accounting firm also commented on subsection (b)(4)(A)(iii) which requires the taxpayer to furnish the comptroller with a copy of the tax abatement agreement. The firm felt this was unnecessary. The comptroller does not have authority to waive this statutory requirement, therefore the change was not made.

TTARA suggested that the requirement of a statement from city or county officials verifying that the taxpayer is in compliance with each term of the tax abatement agreement in proposed subsection (b)(4)(A)(vi) was not needed and may be burdensome to taxpayers since the taxpayer was already certifying compliance in the application. The comptroller agreed and has deleted this subsection due to its ability to verify the taxpayer's compliance through other resources.

Additionally, TTARA commented that the requirement in proposed subsection (b)(4)(A)(vii) that the applicant submit Texas Workforce Commission returns showing an increase in payroll be a requirement only if the person is applying for the refund based on an increase in the person's payroll. The comptroller agreed and has changed the subsection to require the statement only if the basis for the refund is an increase in payroll. The subsection in the adopted rule is (b)(4)(A)(vi).

TTARA and the accounting firm commented that the number of days to submit additional information after receiving a request from the comptroller's office was too short in proposed subsection (b)(4)(B) in view of the vagaries of the postal service. Also, the accounting firm commented that these requests should be faxed to the taxpayer. The comptroller has changed the subsection to provide two different timelines, based on the application filing date and to provide delivery of the request for additional information by fax. The subsections in the adopted rule are (b)(4)(B) and (b)(4)(C).

TTARA also submitted comments requesting that the comptroller specify how the proportional reduction will be made if the total amount of claims exceeds $10 million in proposed subsection (b)(4)(G). The comptroller has changed the subsection to specify that the reduction of a refund will be based on the applicant's eligible refund as a percentage of all eligible refunds. The subsection in the adopted rule is (b)(4)(H).

The accounting firm commented that the 10 days to request a management review be changed to 10 working days and that the denial notice be by fax in proposed subsection (b)(4)(H). The comptroller has changed the subsection to provide 10 working days to request a management review and to provide delivery of the denial notice and management review responses by fax. The subsection in the adopted rule is (b)(4)(I).

The accounting firm also commented that if this process is not governed by the Administrative Procedures Act, it will eliminate the claimant's access to a hearing and due process. Because the management review in proposed subsection (b)(4)(H) provides due process, the comptroller has made no change. The subsection in the adopted rule is (b)(4)(I).

TTARA had questions about the expiration of the program and its effect on the refunds for tax year 2001. After reviewing the enabling legislation, the comptroller deleted proposed subsection (b)(4)(I), because the Sunset reference is to Tax Code, Chapter 312, not subchapter F of Tax Code, Chapter 111.

This new section is adopted under the Tax Code, §111.303, which requires the comptroller to adopt forms and rules for the administration of the provisions of the Tax Code, §111.301 and §111.302.

The new section implements the Tax Code, §§111.301-111.304.

§9.105. Tax Refund for Economic Development.

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

(1) Appraised value - The chief appraiser's opinion as to the market value on a specific appraisal date.

(2) Compliance - Conforming to all the terms of an abatement agreement.

(3) Management review - Review by comptroller management staff of the denial of a refund based on the facts present.

(4) Taxes paid - The franchise tax and state sales and use tax paid directly to the state, and state sales and use tax that is paid to a seller or collected from customers and remitted to the state, minus any applicable tax credits.

(b) Tax refund for economic development.

(1) Eligible property and taxes. An eligible person is entitled to a refund of taxes paid and postmarked in a calendar year, not to exceed the amount for which the person paid ad valorem taxes to a school district in that calendar year on property that:

(A) is located in a reinvestment zone established under the Tax Code, Chapter 312;

(B) is exempt in whole or in part from the ad valorem taxes imposed by a municipality or a county under a tax abatement agreement entered into after January 1, 1996, with the municipality or county under the Tax Code, Chapter 312; and

(C) is not subject to a tax abatement agreement entered into by the school district.

(2) Limitations on refunds.

(A) The amount of the refund that can be paid by the comptroller in a calendar year is limited to the amount of taxes paid and postmarked, as the term is defined in subsection (a)(4) of this section, by the person after any applicable tax credit. A person who receives a tax abatement refund under this section, and who later receives a refund, credit, or other adjustment of the amount of "taxes paid and postmarked" on which the tax abatement refund was based, may be required to return a portion of that tax abatement refund.

(B) The refund period is limited to the lesser of:

(i) five years; or

(ii) the duration of the tax abatement agreement entered into with a municipality or county.

(3) Eligibility for the refund.

(A) To be eligible for the refund, a person must have paid in full, by single or multiple payments, ad valorem taxes to the school district and:

(i) established a new business in the reinvestment zone;

(ii) expanded an existing business in the reinvestment zone; or

(iii) modernized an existing business located in the reinvestment zone to retain jobs for employees of the business.

(B) The business must have had:

(i) since the date of the tax abatement agreement with a municipality or county, an increase of $3 million in the business' payroll, specific to property located in this state according to records filed by the business with the Texas Workforce Commission; or

(ii) an increase of at least $4 million in appraised value of the business' property subject to the tax abatement agreement from an initial base comparison year beginning on or after January 1, 1996.

(C) The following is an example of how the refund available under this subsection will be administered.
Figure: 34 TAC 9.105(b)(3)(C)

(4) Application for refund.

(A) An application for the refund must:

(i) be made on a form prescribed by the comptroller and properly completed;

(ii) include an attached copy of the tax receipt from the assessor and collector of taxes for the school district showing full payment of school district ad valorem taxes on the property for the tax year for which the refund is sought;

(iii) include an attached copy of the tax abatement agreement entered into with the municipality or county;

(iv) include an attached signed statement from the county appraisal district's chief appraiser verifying that an exemption from property tax was granted and showing the current appraised value and the beginning or base year's appraised value of the property subject to the abatement agreement;

(v) include an attached statement from each applicable city or county official verifying that the abatement agreement has been filed with the entity responsible for maintaining a registry of tax abatements;

(vi) include attached copies of Texas Workforce Commission returns for the calendar year subject to the claim, showing an increase in payroll since entering the abatement agreement, if the person is applying for the refund based on an increase in payroll; and

(vii) include any other information requested by the comptroller to support the refund request.

(B) If a comptroller employee has requested in writing additional information, the person requesting the refund must submit the requested materials:

(i) within 30 calendar days after the request is issued by fax, if the application was filed on or before April 30 of the year following the tax year , or

(ii) within 10 calendar days after the request is issued by fax, if the application was filed on or after May 1 of the year following the tax year.

(C) If additional information is not submitted as required by paragraph (B) of this subsection, the refund may be denied in full due to missing information.

(D) A refund payable under this subsection does not earn interest.

(E) A person applying for a refund must certify to the comptroller that the person is in compliance with each term of the tax abatement agreement entered into with the municipality or county.

(F) A complete application for refund must be filed before August 1 of the year following the ad valorem tax year for

which the applicant has paid ad valorem taxes described by the Tax Code, §111.301(a).

(G) If the total amount of eligible refunds claimed by all persons is less than $10 million, the amount of a tax refund is equal to the ad valorem taxes paid to a school district by the person for the applicable tax year on the property that the person would not have been required to pay if the school district had entered into a tax abatement agreement covering the property that included the same terms, including terms governing the portion of the property that is to be exempt from taxation under the agreement, as the applicable municipal or county tax abatement agreement.

(H) If the total amount of eligible refunds claimed by all persons is greater than $10 million, the comptroller shall proportionally reduce the amount of each refund of persons whose claims are determined to be eligible as necessary to reduce the total refund amount to the $10 million available based on the applicant's eligible refund as a percentage of all eligible refunds. The amount by which a refund is reduced under this subsection may not be included in a claim for a refund in a subsequent year.

(I) The decision of the comptroller regarding a claim for refund becomes final 10 working days after the date the comptroller issues by fax notice of denial unless the claimant delivers a written request stating specific grounds for reconsideration of that comptroller decision, which request must be accompanied by appropriate supporting documentation. Management of the Property Tax Division will conduct a management review and fax a response to the taxpayer within 10 calendar days after the taxpayer's request for reconsideration was received by the comptroller. The decision of the Property Tax Division's management review becomes final 10 calendar days after the date the comptroller issues by fax notice of such review unless the claimant delivers a second written request for reconsideration to the manager of Property Tax Division stating grounds and providing documentation for a Comptroller of Public Accounts review within that time. A comptroller review will be conducted with the benefit of the Property Tax Division's recommendation and a response will be faxed within 20 calendar days after the request is filed. This process is not governed by the Administrative Procedures Act; it is provided solely to ensure an appropriate administrative review of a refund claimed under this section.

(J) Application for refund. An application for refund must be substantially in the form of an Application for Refund of State Taxes Paid by Person Owning Certain Abated Property (Form AP- 186). The comptroller adopts this form by reference. Copies of the form are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 365-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717006
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: January 8, 1998
Proposal publication date: August 29, 1997
For further information, please call: (512) 463-3699

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 109. Developmental Disabilities Program

40 TAC §109.7

The Texas Rehabilitation Commission adopts new §109.7, concerning the developmental disabilities program, without changes to the proposed text as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11313) and will not be republished.

The section is adopted to add a new rule to Chapter 109, regarding the Traumatic Brain Injury Advisory Board. The new rule will implement the requirements of the Traumatic Brain Injury Act of 1996, Public Law 104-166, 41 United States Code, §300d-52.

Section 109.7 was adopted on an emergency basis in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9187). The Texas Rehabilitation Commission proposed the rule with a slight change. Subsection (f) was added to incorporate the duration of the board.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023 which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

Issued in Austin, Texas, on December 22, 1997.

TRD-9717030
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: January 12, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 424–4152

♦ ♦ ♦

Chapter 116. Advisory Committees/Councils

40 TAC §§116.2–116.10

The Texas Rehabilitation Commission adopts amendments to §§116.2 - 116.9 and new §116.10, concerning advisory committees/councils, without changes to the proposed text as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11314) and will not be republished.

The amendments add a new subsection (f), which is pursuant to Texas Government Code, §2110.008(a). New §116.10 is adopted to enable Texas Administrative Code users to find

all of the Texas Rehabilitation Advisory Boards, Councils and Committees in one chapter.

No comments were received regarding adoption of the amendments or new rule.

The amendments and new rule are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023 which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

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Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
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For further information, please call: (512) 424–4152

Part XX. Texas Workforce Commission

Chapter 817. Child Labor

The Texas Workforce Commission adopts the repeal of §§817.1- 817.8 and new §§817.1-817.5, 817.21-23, and 817.31-33, concerning Child Labor, without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10633).

The repeal and new rules result in a rearrangement of the rules into a new format incorporating technical and clarity changes.

The technical changes include items such as changing "Texas Employment Commission" to "Texas Workforce Commission," changing "administrator" to "executive director," and changing "agency" to "commission." The technical changes are being adopted to conform terms to those required by the Texas Labor Code, Chapter 51 and the Texas Workforce Commission's enabling legislation. The clarity changes include items such as adding subchapters, breaking down old sections into several shorter sections, naming sections accordingly and adding clarifying language to the rules as needed. New language is adopted clarifying the expiration date of a special authorization for child actors employed as extras.

No comments were received regarding adoption of the repeals and new sections.

40 TAC §§817.1–817.8

The repeals are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary to promote the purpose of Texas Labor Code, Chapter 51, Employment of Children.

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.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717105
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: January 12, 1998
Proposal publication date: October 31, 1997
For further information, please call: (512) 463–8812

Subchapter A. General Provisions

40 TAC §§817.1–817.5

The new rules are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

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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J. Randel (Jerry) Hill
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Subchapter B. Limitations on the Employment of Children

40 TAC §§817.21–817.23

The new rules are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

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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J. Randel (Jerry) Hill
General Counsel
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For further information, please call: (512) 463–8812

Subchapter C. Employment of Child Actors

40 TAC §§817.31–8187.33

The new rules are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

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

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For further information, please call: (512) 463–8812

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 6. State Infrastructure Bank

The Texas Department of Transportation adopts new Chapter 6, §§6.1-6.4, 6.11, 6.12, 6.21-6.24, 6.31, 6.32, and 6.41-6.46 concerning a state infrastructure bank. Sections 6.1-6.4, 6.11, 6.12, 6.21-6.24, 6.31, 6.32, and 6.41-6.46 are adopted without changes to the proposed text as published in the October 10, 1997, issue of the *Texas Register* (22 TexReg 10076) and will not be republished.

Section 350 of the Federal National Highway System Designation Act of 1995 (Pub. L. No. 104-59) provides that federal funds are available for the provision of financial assistance to eligible transportation projects through a state infrastructure bank. Senate Bill 370, 75th Legislature, 1997, enacted Transportation Code, Chapter 222, new Subchapter D to create a state infrastructure bank to provide financial assistance for urgently needed transportation systems. Final adoption of new Chapter 6 is necessary to implement this legislation.

Section 6.1 describes the purpose of the bank as defined by law.

Section 6.2 provides definitions for words and terms used in this chapter.

Section 6.3 describes general policies to provide the public with information which pertains to all activities of the bank. Subsections (a) through (f) restate provisions of law and are included to emphasize requirements which cannot be negotiated. Subsection (g) implements audit requirements of the federal regulations and further provides for prudent safeguards for the use of public funds.

Section 6.4 provides that projects which are complete or are in advanced stages of consideration by the department do not have to incur additional costs or time delays because of the adoption of these rules.

Section 6.11 provides that applicants must be legally authorized to construct, maintain, or finance eligible projects. Section 6.12 implements the provisions of law by defining projects that are eligible for consideration.

Section 6.21 states that the executive director may assist potential applicants in developing an application provided the department is authorized by state law to do so.

Section 6.22 provides that all requests for financial assistance will be made in a form which allows comparison regardless of the type of assistance requested. Comparability will aid in approving or rejecting projects and in prioritizing projects should the demand for assistance exceed the bank's ability to provide assistance.

Section 6.23 provides that applicants must submit basic information in an application to describe the project and requested financial assistance. Supplemental information and data are also required to more fully describe the project and to provide information regarding financial feasibility, project impacts, and commitments and approvals. An exception is provided to avoid unduly burdening applicants with new study requirements when the project is in the Unified Transportation Program's Priority 1 or Priority 2 designations. Also to avoid undue burdens, irrelevant requirements may be waived. To provide complete information, additional explanations and expansions of information or data may be required.

Section 6.24 provides that the commission may suspend and subsequently restart the taking of applications should the bank's operation or financial condition need such action. This is intended to avoid applicants incurring the costs of studies and application preparation when the bank is unable to promptly consider offering financial aid.

Section 6.31 provides that applicants will be notified when an application is complete. The executive director will analyze the information presented and submit findings and recommendations for the application to the commission for further consideration.

Section 6.32 explains that all completed applications will be submitted to the commission for consideration. The commission may grant preliminary approval if the project and applicant are likely to have sufficient revenues to repay the financial assistance, the project is consistent with various transportation plans, and meets applicable requirements for social, economic and environmental impact studies. Preliminary approval authorizes the executive director to negotiate an appropriate agreement with the applicant regarding the project and financial assistance. Preliminary approval of an agreement to provide financial assistance may be made so long as it does not authorize final approval and construction of the project.

Final approval of a project and its construction may be made only after completion and approval of all required social, economic and environmental studies. The commission may postpone action on an application if warranted by the bank's financial condition. The commission may make both preliminary and final approval contingent on the applicant meeting requirements or performing acts. Preliminary approval, final approval, or disapproval must be made by written commission order and include rationale, findings and conclusions.

Section 6.41 provides that the executive director will negotiate agreements. Specific guidance on the anticipated nature of these agreements is provided. However, the executive director may choose to not include terms given in the subchapter and

may include terms that are not in the subchapter depending on the nature of each individual project.

Section 6.42 provides that the department may perform all or part of the work for a project. If performed, the work will be performed in the normal course of business with financial aid provided as required. The applicant will be liable for repayment of principal, interest and any fees from the date the financial aid is provided. In order to allow the department to work on the project in the most efficient and economic manner, applicants may not contest the department's decisions. The applicant will provide rights of entry and otherwise assist in the pursuit of the work.

The section also provides that the department may allow the applicant to conduct all or part of the work. If so conducted, additional provisions are required to avoid jeopardizing the department's revenues from federal reimbursements. Should an applicant charged with conducting the work fail to comply with requirements, then the applicant will reimburse the department for the loss of any federal funds. To ensure that federal requirements are met, requests for approvals will be routed through normal departmental channels.

Section 6.43 provides that the department may require adherence to applicable standards in order to ensure that federal requirements are met.

Section 6.44 provides that the department may require the use of maintenance standards when needed to protect security interests in a project or asset and to protect the public's safety. The section also provides that applicants shall set any applicable speed limits as prescribed by state law in order to meet the department's duty to provide for the public safety.

Section 6.45 provides that traditional terms covering the loan of financial assistance, repayment and security will be included.

Section 6.46 provides notice to the public and applicants that additional terms and conditions may be included as the executive director may require.

A public hearing was held on October 28, 1997 and no oral comments were received. However, the department did receive a written comment from the City of Dallas.

Comment: The City of Dallas requested that an allowance be made to utilize city design criteria and standards for off-system projects rather than being required to utilize federal and state design criteria as provided for in proposed §6.13(a).

Response: This requirement cannot be changed. For a project to qualify for financial assistance from the State Infrastructure Bank, it must be eligible for federal aid. Thus, any project eligible for federal aid must use federal or state design criteria. The department does not have the authority to allow the City of Dallas to use local design criteria.

Subchapter A. General Provisions

43 TAC §§6.1–6.4

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the state infrastructure bank.

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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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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Subchapter B. Eligibility

43 TAC §6.11, §6.12

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the state infrastructure bank.

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. Procedures

43 TAC §§6.21–6.24

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the state infrastructure bank.

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Subchapter D. Department and Commission Action

43 TAC §6.31, §6.32

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the state infrastructure bank.

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. Financial Assistance Agreements

43 TAC §§6.41–6.46

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, Chapter 222, new Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the state infrastructure bank.

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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Bob Jackson
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Chapter 23. Travel Information

Subchapter C. Texas Highways Magazine

43 TAC §23.27

The Texas Department of Transportation adopts new §23.27, concerning magazine ancillary products. Section 23.27 is adopted without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10290) and will not be republished.

Texas Civil Statutes, Article 6144e, authorizes the department to sell promotional items such as calendars, books, prints, caps, light clothing, or other items that advertise the resources of Texas. Section 23.27 provides department policies and procedures relating to the selection, pricing, and sale of these products through Texas Highways magazine.

Section 23.27 describes products which may be designed and produced by the department or purchased for resale, including a requirement that the product convey a positive image of the scenic, recreational, historical, geographical, cultural, or artistic treasures of Texas. The new section also prescribes a selection panel consisting of department employees to set prices for and recommend products, prescribes how a vendor may request its product be considered for purchase and resale, prescribes requirements for selection panel recommendation of a product, and prescribes a contract between the department and a vendor whose product has been selected for purchase and resale. The new section also describes pricing and payment for products advertised in the magazine, including prescribing the addition of shipping and handling and sales tax charges, the method of payment for products, and refunds for the return of purchased merchandise. The new section finally describes an avenue for complaints about merchandise, a department mailing list for vendors interested in supplying products, and when the department may discontinue an advertised product.

No comments were received on the proposed new section.

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to sell products approved by the Texas Transportation Commission as advertising the resources of Texas.

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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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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Chapter 25. Traffic Operations

Subchapter F. Hazardous Material Routing Designations

43 TAC §§25.101–25.104

The Texas Department of Transportation adopts new §§25.101-25.104, concerning hazardous material routing designations for the transportation of non-radioactive hazardous materials (NRHM) on roads or highways in the state of Texas. Sections 25.101-25.104 are adopted without changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10292), and will not be republished.

House Bill 711, 75th Legislature, 1997, amended Texas Civil Statutes, Article 6675d, to designate the Texas Department of Transportation as the state routing agency for the transportation of NRHM, in accordance with Title 49, Code of Federal Regulations, Part 397, Subpart C. Section 3A of Article 6675d requires the Texas Transportation Commission to adopt rules for the routing of NRHM consistent with 49 C.F.R. Part 397. Section 3A authorizes a political subdivision of the state or a state agency to designate a route for the transportation of NRHM provided the department approves the route. Section 3A also authorizes the commission to designate a NRHM route over any public road or highway in the state, provided that, in the case of a road or highway that is not part of the state highway system, the political subdivision that maintains the road or highway approves the designation.

House Bill 970, 75th Legislature, 1997, requires any municipality with a population of more than 750,000 to develop a route for commercial motor vehicles carrying hazardous materials on a road or highway in the municipality, and requires the municipality to submit the route to the department for approval.

New §25.101 describes the purpose of the new subchapter, including implementing House Bill 711 and House Bill 970, and designating the department as the state routing agency for the transportation of non-radioactive hazardous materials. This section also identifies the department as the approving agency, as of January 1, 1998, for all new NRHM routing designations and revisions to routing designations established prior to January 1, 1998 by the Texas Department of Public Safety.

New §25.102 provides definitions for words and terms used in the new subchapter.

New §25.103 prescribes the responsibilities of political subdivisions in establishing NRHM route designations, prescribes the responsibilities of political subdivisions and the department related to consultation with other political subdivisions and agencies during route development, prescribes how the public will be involved in establishing NRHM route designations, and describes how the department will review and approve a proposal to designate a route submitted by a political subdivision and to authorize political subdivisions to designate a NRHM route.

New §25.104 prescribes the responsibilities of the department, the commission, and political subdivisions in establishing NRHM route designations, prescribes responsibilities of the department related to consultation with political subdivisions and agencies during route development, and describes how the public will be involved in establishing NRHM route designations.

On October 31, 1997, a public hearing was held to receive comments, views, or testimony concerning the proposed adoption of §§25.101-25.104. Comments were received at the hearing from Mr. Carl Mixon of the Bexar County Local Emergency Planning Committee. No written comments were received.

Mr. Mixon's first comment concerned §25.102, specifically the definition of political subdivision, which includes counties and local boards. He asked "what is a local board, i.e., could it be a local emergency planning committee, or is that just a local governing board?"

A local board as defined would not include a local emergency planning committee (LEPC). The definition of political subdivision specifies that the political subdivision (e.g., county, municipality, local board) must have the authority to construct and maintain a public road or highway. The construction and maintenance of roads and highways is outside the statutory authority of LEPCs.

Mr. Mixon also asked when the rules use the term county, as, for example, in the definition of political subdivision, and in relation to the responsibilities of political subdivisions in §25.103, "is that term used across the board? For example, does a political subdivision include the county or all of the cities or municipalities within the county? Are those terms interchangeable, political subdivision for county?"

The department notes that the term "political subdivision" as defined in the rules includes both counties and municipalities. Any entity that comes within the definition of political subdivision would have the authority to establish non-radioactive hazardous material (NRHM) route designations on roads or highways open to the public under the jurisdiction of that entity. The department also notes that the definition of the types of political subdivisions comes from the federal regulations the department is implementing in these rules. Those regulations consider a political subdivision to be a separate entity, not an interjurisdictional one. The responsibility for establishing NRHM routes would therefore not reside in either a county or a municipality acting for itself and any other affected entity. Accordingly, the rules cannot be changed.

Mr. Mixon next stated that §25.103(c), where the department encourages political subdivisions to coordinate with the local emergency planning council or committee, should be changed to require such coordination. He asserted that "as the State has assigned very clear and defined roles that LEPCs are responsible for carrying out, this would help in accomplishing that task if those terms were used in a stronger way."

In response, the department believes that the permissive nature of this coordination is appropriate. There is no statutory or regulatory requirement for LEPCs to review and approve proposed NRHM routes. Additionally, while coordination with the LEPC during the route development process is useful, NRHM route development is outside the powers and duties set out in an LEPC's enabling statutes. Finally, the rules prescribe a public involvement process that provides the general public or any other interested party sufficient opportunity to comment on any proposed route.

Mr. Mixon's next comment concerns §25.103(e)(1), which requires political subdivisions to give the public 30 days prior notice of the public hearing on a proposed NRHM routing designation, through publication in at least two newspapers of general circulation in the affected area, one of which is a newspaper with statewide circulation. He asked "what is a newspaper with statewide circulation?" He also noted that §25.104 allows the department to publish notice in the Texas Register and wonders if that was something the local governments would be able to do.

In response, the department notes that the intention of this requirement is to ensure that notice of a proposed route is

adequately publicized on both the local and statewide levels. Newspapers with statewide circulation are those newspapers that are distributed and available for purchase throughout the State of Texas. These newspapers would include, but would not be limited to, publications such as the Dallas Morning News, the Houston Chronicle, the Fort Worth Star Telegram, the San Antonio Express-News, and the Austin American-Statesman.

The department also notes that Government Code, §2002.011 requires the *Texas Register* to contain notices of open meetings issued and filed in the office of the secretary of state as provided by law. Government Code, §551.053 requires notices of meetings involving a district or political subdivision extending into four or more counties to be filed with the office of the secretary of state. Districts or political subdivisions extending into fewer than four counties do not have such a requirement. Accordingly, the latter notices are not published in the *Texas Register*. A political subdivision as defined in the rules would therefore not have the authority to publish a notice in the *Texas Register*.

Mr. Mixon's next comment concerns §25.103(f)(3), which requires a route proposal to include a signature of approval by an authorized official of the political subdivision, such as the mayor, city manager, county judge or an equivalent level of authority. He asks whether each of these officials would provide a signature of approval or whether a county judge representing all of the political subdivisions could provide the signature of approval.

In response, the department reiterates that any entity that comes within the definition of political subdivision would have the authority to establish NRHM route designations, and that a political subdivision is not considered to be an interjurisdictional entity. Any such political subdivision would be required to submit a route proposal to the department, and would have to provide a signature of approval from an authorized official of that political subdivision. A county judge would be considered such an official. The intention of the rules is to have an official from the political subdivision that submits the route proposal provide the signature of approval, not for a county judge representing cities within the county provide the signature. The department notes, however, that §25.103(c) requires a political subdivision considering the establishment of a NRHM route to contact any other political subdivision within a 25 mile radius of any point along the route and to consult with those entities during the process for determining the best NRHM route. The section cannot be changed.

Mr. Mixon additionally asserts that if a municipality with a population of more than 750,000 does not designate a non-radioactive hazardous materials transportation route, then the department should do so.

In response, the department notes that House Bill 970, 75th Legislature, 1997 requires such a municipality to develop a route for commercial motor vehicles carrying hazardous materials on a road or highway in the municipality. The department also notes that it has the authority to propose a route in such a municipality. However, given the statutory mandate of House Bill 970, the department is not required to develop a route for commercial motor vehicles carrying hazardous materials on a road or highway in these municipalities. The transportation of NRHM within a municipality is a matter of local concern, as well as a matter of statewide concern. The requirements of the rules in that regard will remain unchanged.

Mr. Mixon next stated that §25.104(c), which authorizes the department to coordinate with the local emergency planning council or committee during the route development process, should be changed to require coordination.

In response, for the reasons stated in the response to the comments concerning §25.103(c), the department reiterates its belief that the permissive nature of this coordination is appropriate. The section will remain unchanged.

Mr. Mixon finally asks if these rules could look at making a political subdivision be a countywide entity that would include the cities as well as the county in the route establishment process, so that cities with large populations include counties during this process or make the county the driving force in making the route recommendation to the department.

In response, the department reiterates its comments concerning the interjurisdictional nature of a political subdivision, and again notes that §25.103(c) requires a political subdivision considering the establishment of a NRHM route to contact any other political subdivision within a 25 mile radius of any point along the proposed route, and to consult with those entities during the route establishment process. This would necessarily involve the county or counties in which the NRHM route is to be located. This coordination with affected political subdivisions would be an essential element in the department's review of a proposed route. Accordingly, the department believes that the rules provide ample opportunity for counties as well as other local governments to have input in the development of a route. The rules will not be changed.

The new sections are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Texas Civil Statutes, Article 6675d, as amended by House Bill 711 and House Bill 970, 75th Legislature, 1997.

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.

Issued in Austin, Texas, on December 19, 1997.

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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: January 8, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 463–8630

Chapter 28. Oversize and Overweight Vehicles and Loads

The Texas Department of Transportation adopts amendments to §28.2, concerning definitions and amendments to §§28.10-28.16, concerning oversize and overweight vehicles and loads. Sections 28.11 and 28.13 are adopted with changes to the proposed text as published in the October 17, 1997 issue of the *Texas Register* (22 TexReg 10296). Sections 28.2, 28.10, 28.12 and 28.14-28.16 are adopted without changes and will not be republished.

The amendments are necessary to implement the provisions of Senate Bill 370, Senate Bill 605, Senate Bill 1631, House Bill 1345, and House Bill 2703, 75th Legislature, 1997, and to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

Senate Bill 370 amended Chapter 201, Transportation Code, to allow the filing of license applications and the issuance of licenses by electronic means, and provides procedures for allowing the use of digital signatures on license applications. As used in this bill, the term "license" includes an oversize/overweight permit issued by the department. Further, Senate Bill 370 amended §623.074, Transportation Code, to authorize the department to adopt rules authorizing electronic submission of permit applications and electronic issuance of permits.

Senate Bill 605 amended Subchapter F, Chapter 623, Transportation Code to allow the transport of portable building unit compatible cargo with a portable building unit permit, and established portable building unit escort vehicle requirements. Senate Bill 1631 amends Chapter 621 and 623, Transportation Code, to allow electronic fund transfers.

House Bill 1345 amended §623.071, Transportation Code, to authorize the department to issue an annual permit for water well drilling machinery and to authorize the department to issue an annual permit for superheavy or oversize equipment.

House Bill 2703 amends §623.093, Transportation Code, to provide that the mover of a manufactured home, which is not being moved to or from a location where it is intended to be occupied as a dwelling, need not supply information relating to taxing authorities when applying for a permit. House Bill 2703 further authorizes the department to issue an annual permit for the transportation of new homes from a manufacturing facility to a temporary storage location.

Section 28.2, Definitions, is amended to include various new terms and definitions.

Section 28.10, Purpose, includes references to the issuance of permits for portable building compatible cargo and the issuance of permits for the movement of water well drilling machinery and equipment.

Section 28.11, Permit Issuance Requirements and Procedures, is amended to clarify and provide procedures for submitting electronic applications, the use of escrow accounts for the payment of fees, and escort requirements for portable building units and portable building compatible cargo.

Section 28.12, Single-trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D, is amended to provide requirements and fees for the movement of vehicles and loads with annual water well drilling and equipment permits, annual envelope vehicle permits, and annual manufactured housing permits.

Section 28.13, which establishes procedures for the issuance of permits for the movement of manufactured housing and industrialized housing and buildings, is amended to provide procedures for initiating and replenishing escrow accounts with electronic funds transfers, and exempt permittees from providing taxing authority information for tax exempt moves of manufactured homes.

Section 28.15, which establishes procedures for the issuance of permits for the movement of portable buildings. is amended to include requirements and fees for the movement of portable building compatible cargo, including escort vehicle requirements.

Section 28.16, Permits for Military and Governmental Agencies, is amended to reflect a name change from "Central Permit Office" to "Motor Carrier Division."

A public hearing was held on November 12, 1997. Verbal comments were received from an individual and from a representative of the Texas Motor Transportation Association. One written comment was also received.

Comment: One commenter requested that the department lower the cost of the annual envelope vehicle permit provided for in §28.13(d)(3), in order to bring the permit price more in line with those of other states, and to make the permit economically attractive to permittees.

Response: The department has evaluated the potential use factor and the language in the statute, which allows the department to set the annual envelope vehicle permit fee up to $3,500. Based upon this evaluation, and uncertainties regarding usage of the annual envelope vehicle permit, the department has determined that the annual envelope vehicle permit fee shall be lowered to $2,000. Section 28.13(d)(3) will reflect this change. The department has further determined that a detailed cost analysis will be performed after the permit has been available for a period of 12 months, and the permit fee will be reevaluated at that time based upon such analysis.

Comment: One commenter requested that §28.10 be amended to state explicitly that a "hand-written" permit is acceptable as an "original" permit, for law enforcement purposes. The commenter also requested that department policies concerning night movement of permitted vehicles be clarified.

Concerning §28.13(d)(3), regarding Annual Envelope Vehicle Permits, the commenter stated that the rules should be more specific concerning the type of information to be included on the permit for enforcement purposes, and requested that the rules stipulate legal axle load limits. Further, the commenter questioned why an annual envelope vehicle permit could be used in conjunction with a single trip for additional width, height, or length, but could not be used for additional weight.

Response: Concerning §28.10, the requested amendments are not part of this rulemaking, and the department feels that additional study, in conjunction with law enforcement, is needed prior to making such amendments. In general, the department contends that it is generally understood by law enforcement that permits issued over the telephone are original permits and are handwritten, as well as night movement requirements. The department will evaluate this request further prior to the Chapter 28 rulemaking planned for early spring, 1998.

Concerning §28.13, §28.13(d)(3)(F) states that a permitted vehicle must comply with §28.11(d)(2) and (3), which delineates maximum axle weight limits and weight limits for load restricted roads. Therefore, the department believes that additional information concerning axle weight limits would not provide any further clarification. Further, concerning the request that an annual envelope vehicle permit be used in conjunction with a single trip permit for additional weight, Transportation Code §623.071(f) states that an annual envelope vehicle permit may be used in conjunction with a single trip permit to increase height or width limits. Therefore, the use of an annual envelope

vehicle permit in conjunction with a single trip permit to increase weight is not permitted under this statute.

Comment: The Texas Motor Transportation Association recommended that the annual envelope vehicle permit fee provided for in §28.13(d)(3) be lowered for the first year in order to attract more users. The commenter also stated that more users would purchase this permit if purchasers were allowed to pay the permit fee in quarterly installments.

Further, the commenter recommended that §28.11(f)(2) be amended to allow a permittee to return with a load, rather than empty, after delivering a permitted load.

Response: As stated earlier, the department has evaluated the potential use factor and the language in the statute, and has determined that the annual envelope vehicle permit fee shall be lowered to $2,000 for the first year. In response to recommended amendments to §28.11(f)(2), the department has evaluated the statement and agrees with the commenter, however, amendments to this section were not a part of this rulemaking. The department will continue reviewing this recommendation and consider it for the previously mentioned rulemaking planned for early Spring, 1998.

Finally, the department lacks the statutory authority to authorize quarterly installments of the permit fee. In §28.11(f)(2) the department is correcting a typographical error in the cross reference to §28.13(b)(3).

Subchapter A. General Provisions

43 TAC §28.2

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

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

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Bob Jackson
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Subchapter B. General Permits

43 TAC §§28.10–28.16

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

§28.11. Permit Issuance Requirements and Procedures.

(a) Application for permit.

(1) General. The applicant must complete the application, and must comply with the designated methods of payment in subsection (c) of this section prior to contacting the MCD for issuance of a permit. The applicant must list a specific load description, such as the model and serial number for any item of machinery, or in the case of concrete beams, the beam number shall be stated.

(A) The owner of a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must file a surety bond with the MCD as provided in subsection (g)(1) and (2) of this section, or register as a motor carrier in accordance with Transportation Code, Chapters 643 and 645, prior to permit issuance.

(B) When an application is made by telephone, mail, facsimile, or electronically, the permit officer will request all information in the application for entry into the department's computer for record keeping purposes and generation of the permit number. The information will be verified and a route will be selected.

(i) Applications transmitted electronically are considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application.

(ii) The department may only accept a digital signature used to authenticate an application under procedures that comply with any applicable rules adopted by the Department of Information Resources regarding department use or acceptance of a digital signature.

(iii) The department may only accept a digital signature to authenticate an application if the digital signature is:

(I) unique to the person using it;

(II) capable of independent verification;

(III) under the sole control of the person using it; and

(IV) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(C) The official permit issued by the MCD is stored in the department's mainframe computer located in Austin.

(D) A permit request made by mail or facsimile will be returned to the applicant by mail or facsimile.

(E) The MCD is closed on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) Single-trip permit application. An application for a single-trip permit may be made to the MCD by telephone, by submitting a facsimile permit request, by submitting a permit request electronically, or by taking the application in person to a cash collection office. All applications made by telephone are recorded.

(3) Time permit application. An application for a time permit issued under Transportation Code, Chapter 622, Subchapter E and Chapter 623, Subchapter D, must be submitted by mail, electronically, or by facsimile to the MCD.

(b) Permit issuance.

(1) General. The applicant must legibly enter all information and the permit number on the permit, when the permit request is made by telephone.

(A) The original permit, a facsimile copy of the permit, or a MCD computer generated permit must be kept in the permitted vehicle until the day after the date the permit expires.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the applicant's copy of the permit.

(C) A permittee may not transport an over dimension load with a void permit; a new permit must be obtained.

(2) Single-trip permit. Specific types of single-trip permits are covered in §28.12 of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), §28.14 of this title (relating to Manufactured Housing, Industrialized Housing and Building Permits), and §28.15 of this title (relating to Portable Building Permits).

(3) Time permit. A time permit may be issued by mail, electronically, or by facsimile. Specific types of time permits are covered in §28.13 of this title (relating to Time Permits Issued Under Transportation Code, Chapter 622, Subchapter E and Chapter 623, Subchapter D).

(c) Payment of permit fee.

(1) Credit card. A permit ordered by telephone, electronically, or by facsimile may be purchased with a credit card.

(A) A PAC must be established and maintained according to the contract provisions stipulated between the PAC holder and the financial institution under contract to the department and the Comptroller of Public Accounts.

(B) A permit purchased with a credit card will pay a service charge of $1.00 in addition to the permit fee.

(2) Cash. Cash is acceptable as payment of a permit ordered by telephone, and the payment must be made at a cash collection office. Cash is not the preferred form of payment.

(A) A cashier's check, or a money order is acceptable as payment of a permit, and the payment may be made at a cash collection office or at the MCD prior to receipt of the permit.

(B) A company check or a personal check is not acceptable as payment of a permit.

(3) Escrow accounts. A permit applicant may establish an escrow account with the department for the specific purpose of paying any fee that is related to the issuance of a permit under this subchapter. An escrow account may also be utilized to pay fees related to the issuance of a vehicle storage facility license or a motor carrier registration issued under Chapter 18 of this title (relating to Motor Carriers).

(A) A permit applicant that desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the minimum amount of $305, which shall be deposited to the appropriate fund by the department in the State Treasury. In lieu of submitting a check for the initial deposit to an applicant's escrow account, the applicant may transfer funds to the department electronically. Five dollars per deposit will be charged as an escrow account administrative fee and shall be deposited in the state highway fund.

(B) When the permit applicant's escrow account balance has been reduced to $150, the department will notify the holder of the escrow account with instructions to submit a cashier's check or money order, payable to the department in the minimum amount of $305, which shall be used to replenish the escrow account. In lieu of a cashier's check, the escrow account holder may replenish an escrow account by transferring funds to the department electronically.

(C) Upon receipt of a replenishment check or electronic funds transfer, the department will charge $5.00 as an escrow account administrative fee, and will credit the remainder of the transmitted funds to the balance of the escrow account holder.

(D) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder.

(4) Refunds. A permit fee will not be refunded after the permit number has been issued; however, a refund may be made after permit issuance if it is necessary to correct an error made by the permit officer.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load restricted bridge, unless a special exception is granted by the MCD, based on an analysis of the bridge.

(A) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacings of five or more feet between each axle will be based on an engineering study conducted by the MCD.

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension and mechanical suspension axles in a common weight equalizing suspension system for any axle group.

(D) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight. When two or more consecutive axle groups have an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, the department will grant reduced permit weights for each axle group based on the number of axles in the group and the spacing between the groups as shown in the following Appendix A, which is titled "Maximum Permit Weight For Axle Groups Spaced Less Than 12 Feet."
Figure 1: 43 TAC §28.11(d)(1)(D).

(E) The MCD may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment.

(2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle– 25,000 pounds;

(B) two axle group– 46,000 pounds;

(C) three axle group– 60,000 pounds;

(D) four axle group– 70,000 pounds;

(E) five axle group– 81,400 pounds;

(F) axle group with six or more axles – determined by the MCD based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle.

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle– 22,500 pounds;

(B) two axle group– 41,400 pounds;

(C) three axle group– 54,000 pounds;

(D) four axle group– 63,000 pounds;

(E) five axle group– 73,260 pounds;

(F) axle group with six or more axles – determined by the MCD based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; and

(G) two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group – 10% less than the permit weights as shown in Appendix A of subsection (d)(1)(D) of this section.

(e) Escort vehicle requirements.

(1) General. The operator of an escort vehicle shall, consistent with applicable law, warn the traveling public when a permitted vehicle: must travel over the center line of a narrow bridge or roadway; makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes; reduces speed to cross under a low overhead obstruction or over a bridge; or at any time that the permitted vehicle creates an abnormal and unusual traffic flow pattern.

(A) The MCD has the authority to require escort vehicles for the safe movement of a permitted vehicle, except for manufactured housing which has specific requirements established in Transportation Code, Chapter 623, Subchapter E and portable building units and portable building compatible cargo established in Transportation Code, Chapter 623, Subchapter F, provided the MCD has determined that the use of escort vehicles would provide for the safe movement of the permitted vehicle, and would protect the traveling public during the movement of the permitted vehicle.

(B) A motorcycle, a motorized bicycle, or a motorized quadricycle may not be used as the primary escort vehicle for a permitted vehicle traveling on the state highway system; however, a police officer may use a motorcycle to control traffic and to assist the primary escort vehicle during the movement of the permitted vehicle.

(C) The permittee must select and provide for escort vehicles and police assistance when they are required by the MCD.

(D) The permittee must provide any needed assistance from utility companies, telephone companies, television cable companies, etc., when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction.

(E) Police assistance may be required by the MCD to control traffic when a permitted vehicle is being moved within the corporate limits of cities, or at such times when police assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(2) Equipment requirements. The following are special equipment requirements for escort vehicles and permitted vehicles.

(A) An escort vehicle must be equipped with two flashing amber lights or one rotating amber beacon of not less than eight inches in diameter, affixed to the roof of the escort vehicle, which must be visible to the front, sides, and rear of the escort vehicle while actively engaged in escort duties for the permitted vehicle.

(B) An escort vehicle must display a sign, on either the roof of the vehicle, or the front or rear of the vehicle, with the words "OVERSIZE LOAD". The sign must meet the following specifications:

(i) Size: at least five feet but not more than seven feet in length, and at least 12 inches but not more than 18 inches in height.

(ii) Color: yellow background with black lettering.

(iii) Size of lettering: at least eight inches but not more than 10 inches high with a brush stroke at least 1.41 inches wide.

(iv) Visibility: The sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and such signs must not be used at any other time.

(C) An escort vehicle must maintain two-way radio communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(D) Warning flags must be either red or orange fluorescent material, at least 18 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet.

(f) General provisions.

(1) Multiple commodities.

(A) Except as provided in subparagraph (B) of this paragraph, when a permitted commodity creates a single over dimension, two or more commodities may be hauled as one permit load, provided legal axle and gross loads are not exceeded, and provided no illegal dimension of width, length or height is created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that the addition of the 10 foot wide tank does not create an illegal axle or gross weight, or an illegal length, or an illegal height.

(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.

(i) The permit applicant or the shipper of the commodities files with the department a written certification by the Texas Department of Commerce, approved by the Office of the Governor, attesting that issuing the permit will have a significant positive impact on the economy of Texas and that the proposed load

of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term significant positive impact means the creation of not less than 100 new full time jobs, the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if the permit is not issued, or creates or retains not less than one percent of the employment base in the affected economic sector identified in the certification.

(ii) Transport of the commodities does not exceed legal axle and gross load limits.

(iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its commissioners, officers, and employees from any and all liability for damages or claims of damages including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph.

(iv) The shipper and the permittee must file with the department a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its commissioners, officers, and employees as named or additional insurers on its comprehensive general liability insurance policy for coverage in the amount of $5 million per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance policy to be procured from a company licensed to transact insurance business in the State of Texas.

(v) The shipper and the permittee must file with the department, in addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its commissioners, officers, and employees as insurers under an auto liability insurance policy for the benefit of said insurers in an amount of $5 million per accident. The insurance policy to be procured from a company licensed to transact insurance business in the State of Texas. If the shipper or the permittee is self-insured with regard to automobile liability then that party must take all steps and perform all acts necessary under the law to indemnify the department, its commissioners, officers, and employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its commissioners, officers, and employees in a manner acceptable to the department.

(vi) Issuance of the permit is approved by written order of the commission which written order may be, among other things, specific as to duration and routes.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §28.13(b)(3) of this title (relating to Time Permits issued under Transportation Code, Chapter 623, Subchapter D.

(3) Registration. A vehicle registered with a permit plate will not be permitted under Transportation Code, Chapter 623, Subchapter D. A permitted vehicle operating under Transportation Code, Chapter 623, Subchapter D, must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas 72/144-hour temporary registration;

(C) current out-of-state license plates that are apportioned for travel in Texas; or

(D) foreign commercial vehicles registered under annual registration.

(4) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when:

(A) visibility is reduced to less than 2/10 of one mile; or

(B) the road surface is hazardous due to:

(i) weather conditions such as rain, ice, sleet, or snow; or

(ii) highway maintenance or construction work.

(5) Daylight and night movement restrictions. A permitted vehicle may be moved only during daylight unless an exception is granted based on a route and traffic study conducted by the MCD.

(6) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(7) Amendments. A permit may be amended for the following reasons:

(A) vehicle breakdown;

(B) changing the intermediate points in an approved permit route;

(C) extending expiration date due to vehicle breakdown;

(D) extending expiration date due to weather conditions which would not allow the move to start on time or caused the move to be delayed;

(E) changing route origin, route destination, or vehicle size limits, provided the permit has not begun; and

(F) correcting any mistake that is made due to permit officer error.

(g) Surety bonds.

(1) General. The following conditions apply to surety bonds specified in Transportation Code, §622.013, §623.075, and §623.163.

(A) The surety bond must:

(i) be made payable to the department with the condition that the applicant will pay the department for any damage caused to the highway by the operation of the equipment covered by the surety bond;

(ii) be issued on an annual basis with an expiration date of August 31;

(iii) include the complete mailing address and zip code of the principal;

(iv) be filed with the MCD and have an original signature of the principal;

(v) have a single entity as principal with no other principal names listed;

(vi) be countersigned by a Texas resident agent of the surety company issuing the surety bond, if it is not issued in the State of Texas.

(B) A certificate of continuation will not be accepted.

(C) The owner of a vehicle bonded under Transportation Code, §622.013, §623.075, and §623.163, that damages the state highway system as a result of the permitted vehicle's movement will be notified by certified mail of the amount of damage and will be given 30 days to submit payment for such damage. Failure to make payment within 30 days will result in the department's placing the claim with the attorney general for collection.

(D) The venue of any suit for a claim against a surety bond for the movement of a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any court of competent jurisdiction in Travis County.

(2) Permit surety bonds.

(A) A surety bond required under the provisions of Transportation Code, Chapter 623, Subchapter D, must be submitted on the department's standard surety bond form, Form 439; and be in the amount of $10,000.

(B) An applicant desiring a permit for a load exceeding 250,000 pounds gross weight must obtain a surety bond, issued on Form 440, in the amount of $100,000.

(C) A facsimile copy of the surety bond is acceptable in lieu of the original surety bond, for a period not to exceed 10 days from the date of its receipt in the MCD. If the original surety bond has not arrived in the MCD by the end of the 10 days, the applicant will not be issued a permit until the original surety bond has been received in the MCD.

(D) The surety bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

(E) A surety bond is required when a dealer or transporter of farm equipment or a manufacturer of farm equipment obtains a permit.

(F) The surety bond requirement does not apply to driving or transporting farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment.

(G) The surety bond requirement does not apply to a vehicle or equipment operated by a motor carrier registered with the department under Transportation Code, Chapters 643 or 645 as amended.

(3) Ready-mix concrete and concrete pump trucks, or solid waste vehicle, and recyclable materials surety bonds.

(A) A surety bond is required for a vehicle operated under provisions of Transportation Code, §622.013, §622.134 or §623.163. The surety bond must:

(i) be in the amount of $1,000 per vehicle (For example, if 10 trucks are covered by the surety bond then the total amount of the surety bond would be $10,000);

(ii) indicate the total amount of coverage; and

(iii) be submitted in duplicate to the MCD on Form 1382 or Form 1575.

(B) Form 1382-A or Form 1576 must be completed in duplicate and submitted to the MCD for certification of each vehicle bonded under Forms 1382 or Form 1575.

(C) The MCD will certify and return to the principal, one copy of Form 1382 or Form 1575, and one copy of Form 1382-A or Form 1576.

(D) The original Form 1382-A or Form 1576 must be carried in the cab of the bonded vehicle.

(E) When a vehicle is added, a new Form 1382 or Form 1575 must be submitted to the MCD that indicates the new increased amount of the surety bond.

(F) Form 1383 or Form 1577 must be used to add or delete a vehicle covered by Form 1382 or Form 1575, and must be completed in duplicate and submitted to the MCD for certification.

(G) The MCD will certify and return to the principal, one copy of Form 1383 or Form 1577 when a new vehicle is added to the surety bond. When a vehicle is dropped from the surety bond the MCD will make the necessary revision to the principal's file.

(H) Form 1383 or Form 1577 must be carried in the cab of the bonded vehicle.

(I) A facsimile copy of Forms 1382, 1382-A, 1383, 1575, 1576 or 1577 is not acceptable in lieu of the original surety bond.

§28.13. Time Permits.

(a) General Conditions. Time permits issued under Transportation Code, Chapter 623, and this section shall be governed by the requirements of §28.11(b)(1) and (3) of this title (relating to Permit Issuance Requirements and Procedures). The following conditions apply to time permits issued for overwidth or overlength loads, or overlength vehicles, under this section.

(1) Fees. The fee for a 30-day permit is $60; the fee for a 60-day permit is $90; and the fee for a 90-day permit is $120.

(2) Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days, based on the request of the applicant, and will begin with the "movement to begin" date stated on the permit.

(3) Weight/height limits. The permitted vehicle may not exceed the weight or height limits set forth by Transportation Code, Chapter 621, Subchapters B and C.

(4) Registration requirements for permitted vehicles. The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination as set forth by Transportation Code, §502.151. Time permits will not be issued to a vehicle or vehicle combination that is registered with temporary registration.

(5) Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit, but will not be listed on the permit.

(6) Periods of movement. Permitted vehicles may only be moved during daylight hours.

(7) Permit routes. The permit route will be limited to eight adjoining districts, unless a specific route with an exact origin and destination is requested by the permit applicant. In cases where

a specific route with an exact origin and destination is requested, the route may include more than eight districts.

(8) Travel restrictions.

(A) The permitted vehicle must not cross a load restricted bridge and must not travel over any load restricted road, or through any highway construction or maintenance area.

(B) The permitted load must not be moved during hazardous weather conditions, as described in §28.11 of this title (relating to Permit Issuance Requirements and Procedures).

(C) The permittee is responsible for obtaining information regarding load restrictions, highway construction or maintenance areas, and weather restrictions from the department.

(9) Availability. A time permit is available to all applicants and is not restricted to any class of operators.

(10) Transfer of time permits. Time permits are non-transferable between permittee or vehicles.

(b) Overwidth loads. An overwidth time permit may be issued for the movement of any non-divisible load or overwidth trailer, with the following conditions.

(1) Width requirements. A time permit will not be issued for a vehicle with a width exceeding 13 feet.

(2) Weight, height, and length requirements. The permitted vehicle shall not exceed legal weight, height, or length according to Transportation Code, Chapter 621, Subchapters B and C. When multiple items are hauled at the same time, the items may not be loaded in a manner that creates:

(A) a width greater than the width of the widest item being hauled;

(B) a height greater than 14 feet;

(C) an overlength load; or

(D) a gross weight exceeding the registered gross weight of the vehicle hauling the load.

(3) Movement of overwidth trailers. When the description of the permitted vehicle is listed as an overwidth trailer, it will be permitted to move empty to and from the job site, or to return from the job site to the permittee's place of business with a load that is less than the width of the trailer, provided the place of business is located on the authorized route stated on the permit, or is within the authorized area of travel indicated on the permit.

(c) Overlength loads. An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle, subject to the following conditions.

(1) Length requirements. The maximum overall length for the permitted vehicle may not exceed 110 feet.

(2) Weight, height and width requirements. The permitted vehicle may not exceed legal weight, height, or width according to Transportation Code, Chapter 621, Subchapters B and C.

(A) The maximum length for a single permitted vehicle may not exceed 75 feet.

(B) A permitted vehicle with a load extending more than 20 feet beyond the rearmost portion of the load carrying surface must have a rear escort, unless an exception is granted by the department's Motor Carrier Division, based on a route and traffic study.

(C) A permitted vehicle with a load extending more than 20 feet beyond the foremost portion of the permitted vehicle must have a front escort, unless an exception is granted by the department's Motor Carrier Division based on a route and traffic study.

(D) A permit will not be issued when the load has more than 25 feet front overhang, or more than 30 feet rear overhang, unless an exception is granted by the department's Motor Carrier Division, based on a route and traffic study.

(3) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle has a front and a rear escort vehicle.

(d) Annual permits.

(1) Implements of husbandry. An annual permit may be issued for an implement of husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as part of an agricultural operation.

(A) The fee for the permit is $135, plus the highway maintenance fee specified in Transportation Code, §623.077, for an overweight load.

(B) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(C) The maximum width may not exceed 16 feet; maximum height may not exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the limits stated in §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures).

(D) The permitted vehicle must not travel over a load restricted bridge, or through any highway construction or maintenance area, and must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(E) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination as set forth by Transportation Code, Chapter 621.

(F) Movement will be during daylight hours only.

(G) The permitted vehicle must:

(i) have a front escort vehicle if the width exceeds 14 feet but does not exceed 16 feet when traveling on a two-lane highway, unless an exception is granted by the department's Motor Carrier Division based on a route and traffic study;

(ii) have a rear escort vehicle if the width exceeds 14 feet but does not exceed 16 feet when traveling on a roadway of four or more lanes, unless an exception is granted by the department's Motor Carrier Division based on a route and traffic study;

(iii) have a front and a rear escort vehicle if the width of the load exceeds 16 feet, unless an exception is granted by the department's Motor Carrier Division based on a route and traffic study; and

(iv) not travel on the main lanes of a controlled access highway if the width of the load exceeds 16 feet, unless an exception is granted by the department's Motor Carrier Division based on a route and traffic study.

(2) Water well drilling machinery. The department may issue annual permits under Transportation Code, §623.071, for water well drilling machinery and equipment that cannot be reasonably dismantled.

(A) The fee for a permit issued under this paragraph is $135, plus the highway maintenance fee specified in Transportation Code, §623.077, for an overweight load.

(B) A water well drilling machinery permit is valid for one year from the "movement to begin" date stated on the permit.

(C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches high, 110 feet long, and maximum weight may not exceed the limits stated in §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures).

(D) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for the maximum weight of the vehicle as set forth by Transportation Code, Chapter 621.

(E) A permit issued under this paragraph is non-transferable between permittees or vehicles.

(F) Movement will be during daylight hours only.

(G) A permit issued under this section authorizes a permitted vehicle to operate only on the state highway system.

(H) The permitted vehicle must not travel over a load restricted bridge or load restricted road with weights greater than the posted limits, or through any highway construction or maintenance area.

(I) The permitted load must not be moved during hazardous weather conditions, as described in §28.11(f)(4) of this title (relating to Permit Issuance Requirements and Procedures).

(J) The permitted vehicle must:

(i) have a front escort vehicle if the width exceeds 14 feet 6 inches but does not exceed 16 feet when traveling on a two-lane highway, unless an exception is granted by the MCD based on a route and traffic study; and

(ii) have a rear escort vehicle if the width exceeds 14 feet but does not exceed 16 feet when traveling on a roadway of four or more lanes, unless an exception is granted by the MCD based on a route and traffic study.

(3) Envelope vehicle permit. The department may issue an annual permit under Transportation Code, §623.071(3), for the movement of superheavy or oversize equipment that cannot reasonably be dismantled.

(A) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not exceed:

(i) 12 feet in width;

(ii) 14 feet in height;

(iii) 110 feet in length; or

(iv) 120,000 pounds gross weight.

(B) Superheavy or oversize equipment operating under an annual envelope vehicle may not transport a load that has more than 25 feet front overhang, or more than 30 feet rear overhang.

(C) The fee for an annual envelope vehicle permit is $2,000, and is non-refundable.

(D) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(E) This permit authorizes operation of the permitted vehicle only on the state highway system.

(F) The permitted vehicle must comply with §28.11(d)(2) and (3) of this title (relating to Permit Issuance Requirements and Procedures).

(G) The permitted vehicle may not travel over a load restricted bridge with weights greater than the bridge posted limits.

(H) Authorized movement for a vehicle permitted under this section shall be valid during daylight hours only as defined by Transportation Code §541.401.

(I) The permitted load must not be moved during hazardous weather conditions, as described in §28.11(f)(4) of this title (relating to Permit Issuance Requirements and Procedures).

(J) The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(K) The permitted vehicle or vehicle combination must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(L) The permitted vehicle must:

(i) have a rear escort for loads extending more than 20 feet beyond the rearmost portion of the load-carrying surface; and

(ii) have a front escort for loads extending more than 20 feet beyond the foremost portion of the permitted vehicle.

(M) A permit issued under this paragraph is non-transferable between permittees.

(N) A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(i) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(ii) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(O) A single trip permit, as described in §28.12(a)(2)(A) of this title (relating to Single Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of §28.12 this paragraph. The department will indicate the annual permit number on any single trip permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of $30 for the single trip permit.

(4) Annual manufactured housing permit. The department may issue an annual permit for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation Code, §623.094.

(A) A permit shall contain the name of the company or person authorized to be issued permits by Transportation Code, Chapter 623, Subchapter E.

(B) The fee for a permit issued under this paragraph is $1,500. Fees are non-refundable.

(C) The time period will be for one year from the "movement to begin" date stated on the permit.

(D) A copy of the permit must be carried in the vehicle transporting a manufactured home.

(E) The permitted vehicle must not travel through any highway construction or maintenance area, and must travel in the outside traffic lane on multi-lane highways when the width of the load exceeds 12 feet.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502.

(G) Authorized movement for a vehicle permitted under this section shall be valid during daylight hours only as defined by Transportation Code, §541.401.

(H) The permitted load must not be moved during hazardous weather conditions, as described in §28.11(f)(4) of this title (relating to Permit Issuance Requirements and Procedures).

(I) The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(J) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or two five-inch flashing amber lights may be mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.

(i) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two-lane roadways and a rear escort vehicle on roadways of four or more lanes.

(ii) A manufactured home exceeding 18 feet in width must have a front and a rear escort on all roadways at all times.

(iii) The escort vehicle must have:

(I) one red 16 inch square flag mounted on each of the four corners of the vehicle;

(II) a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background; and

(III) an amber light or lights, visible from both front and rear, which is either two simultaneously flashing lights mounted on top of the vehicle or one rotating beacon of not less than eight inches in diameter.

(iv) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy may be considered one home for purposes of the escort vehicle requirements, provided the distance between the two units does not exceed 1000 feet.

(K) Permits issued under this section are non-transferable between permittees.

(5) Power line poles. An annual permit will be issued under Transportation Code, Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power transmission and distribution lines.

(A) The fee for the permit is $120.

(B) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(C) The maximum length of the permitted vehicle may not exceed 75 feet.

(D) The width, height and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) The permitted vehicle must not travel over a load restricted highway or bridge, and must not travel through any highway construction or maintenance area.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(G) Movement will be between the hours of sunrise and sunset; however, the limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.

(H) The speed of the permitted vehicle may not exceed 50 miles per hour.

(I) There must at all times be displayed at the extreme rear end of the permitted vehicle a red flag or cloth of not less than 12 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(6) Cylindrically shaped bales of hay. An annual permit may be issued under Transportation Code, §621.017, for the movement of vehicles transporting cylindrically shaped bales of hay.

(A) The permit fee is $10.

(B) The time period will be for one year, and will start with the "movement to begin" date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 144 inches.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) The permitted vehicle may travel over all highways including those that are load restricted; however, it must not travel over a load restricted bridge at weights in excess of axle or load posting or through any highway construction or maintenance area.

(F) Movement is restricted to daylight hours only.

(G) The permit will not be transferred from vehicle to vehicle or from owner to owner, and will not be amended.

(H) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

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.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716968
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: January 8, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 463–8630

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Tuesday, December 30, 1997, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Prehearing conference is scheduled to address scheduling and request for interim rates for the above date and time in: SOAH Docket Number 473–97–1561– Application of Texas- New Mexico Power Company for Approval of Transition Plan and Statement of Intent to Decrease Rates (PUC Docket Number 17751).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701–1649, (512) 936–0728.
Filed: December 19, 1997, 2:57 p.m.

TRD-9716998

Texas Department of Agriculture

Tuesday, January 6, 1998, 1:00 p.m.

Omni Bayfront, 900 North Shoreline Boulevard

Corpus Christi

Texas Grain Sorghum Producers Board

AGENDA:

Discussion and Action: Minutes of last meeting; Swearing in New Board Members; Financial Reports; New Building Plans/Update; Research/Marketing Proposals- Texas Crop Testing Program, Purdue University Agrobacterium-Mediated Transformation of Sorghum, Effect of Ergot Infested Grain Sorghum, Soil Test and Fertilization Correlation, Ergot: Is it Really a Problem, Development of White Food Sorghum, Benefits of a Crops Weather Station Network; Funding Request- Texas AgriFood Master Program; Officer/Representation Elections.

Discussion- Research/Marketing Updates; Other Business.

Adjourn

Contact: Travis Taylor, P.O. Box 560, Abernathy, Texas 79311–0560, (806) 298–4501.
Filed: December 19, 1997, 4:24 p.m.

TRD-9717009

Texas Commission on Alcohol and Drug Abuse

Friday, January 9, 1998, 11:00 a.m.

2616 South Clack, Suite 180, Abilene Regional MHMR Center

Abilene

Regional Advisory Consortium, (RAC), Region 2

REVISED AGENDA:

Rescheduled from Wednesday, January 7, 1998, 11:00 a.m.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78756, (512) 349–6609.
Filed: December 22, 1997, 1:56 p.m.

TRD-9717111

Advisory Board of Athletic Trainers

Tuesday, January 13, 1998, 8:00 a.m.

Exchange Building, Room S402, Texas Department of Health, 8407 Wall Street

Austin

Administrative Services Committee

AGENDA:

The committee will meet to discuss and possibly act on: athletic training curriculum forms submitted by universities and colleges; and update on application processing procedure.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD (512) 458–7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6615.
Filed: December 19, 1997, 9:18 a.m.

TRD-9716932

Tuesday, January 13, 1998, 9:00 a.m.

Exchange Building, Room S402, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

The board will recognize guests and discuss and possibly act on: open forum to receive input from interested parties; approval of the minutes of the July 22, 1997, board meeting; chairman's report; appointment of an executive secretary and associate executive secretary; financial report for fiscal years 1998 and 1998; program director's report; executive secretary's report; standing committee reports (Administrative Services Committee (applicant statistics; and the committee chair's report); Examination Committee (Fort Worth, Texas as a third examination site for future January examinations; and the Committee Chair's report); Continuing Education Committee Chair report); and the Education Committee (appointment of members to the committee; and the defining of the purposes, goals and objectives of the committee)); report to the board concerning closed complaints; Sunset review process; final adoption of proposed amendments to 25 Texas Administrative Code (TAC), Chapter 313, as published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10886); proposed amendments to 25 TAC, Chapter 313, to include (a possible fee increase; scope of practice issues, and guidelines for conduct); announcements and comments; and the setting of the next meeting date for the board.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD (512) 458–7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6615.
Filed: December 19, 1997, 9:19 a.m.

TRD-9716933

Texas Board of Chiropractic Examiners

Thursday, January 8, 1998, 9:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Licensure and Educational Standards Committee

AGENDA:

The Licensure and Educational Standards Committee to the Texas Board of Chiropractic Examiners will meet on Thursday, January 8, 1998 at 9:00 a.m. to consider, discuss, take any appropriate action/ or approve: B.1. Discuss purchase of Continuing Education video tapes for disability waiver applicants, 2. Request waiver of deadline for continuing education hours: Roxanne Cockerell, D.C. and Jeff Cockerell, D.C., Glenn Marr, D.C., Vu Bach Long, D.C., Arturo Espinoza, D.C., Brad A. Cudnik, D.C., Louis Patino, D.C., Kheim T. Ngo, D.C., Francis X. Murphy, D.C., Curtis J. Hall, D.C., John T. Rathjen, Jr., D.C., Allan G. Preddy, D.C., Tracie L. Steed, D.C., Gary W. Walker, D.C., David M. Mullican, D.C., Dino Palividas, D.C., Tracy Standridge, D.C., 3. Review licensees who passed October and December, 1997, jurisprudence examination, 4. Request for additional information regarding felony conviction: Christopher Hobbs, Charles A. Rublee, J., 5. Request for waiver of deadline for submitting continuing education seminars, 6. Review of surveys for inactive status, 7. Lack of 1996 Continuing Education hours. 8. Continuing Education — License Renewal Coordination.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 30–6709.
Filed: December 22, 1997, 2:10 p.m.

TRD-9717117

Thursday, January 8, 1998, 10:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Rules Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: E. 1. Ratify proposed amendment to Rule 73.4, Inactive Status, 2. Ratify proposed amendment to Rule 75.7, Fees, 3. Proposed amendment to 73.3(1)(E), audio tape option for Continuing Education, 4. Discussion of Plan of Review as required by Rider 167 Appropriations Act.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 30–6709.
Filed: December 22, 1997, 2:10 p.m.

TRD-9717116

Thursday, January 8, 1998, 10:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Technical Standards Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: D. 1. Acupuncture/Manipulation Under Anesthesia, R.J. Kelly, D.C., 2. Discussion of amendments to Texas Department of Health Radiation Certification Program.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 30–6709.
Filed: December 22, 1997, 2:10 p.m.

TRD-9717115

Thursday, January 8, 1998, 10:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Enforcement Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of A.1. 98–01 through 98–70, 95–05, 95–06, 95–08, 95–09, 95–10, 95–11.

Contact: John Zavala, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 30–6708.
Filed: December 22, 1997, 2:10 p.m.

TRD-9717114

Thursday, January 8, 1998, 11:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Executive Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: Executive Director's moving expenses.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 30–6709.
Filed: December 22, 1997, 2:11 p.m.

TRD-9717118

Thursday, January 8, 1998, 9:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Board

AGENDA:

The Texas Board of Chiropractic Examiners will meet on Thursday, January 8, 1998, to consider, discuss, take any appropriate action, and/or approve: I. Approval of minutes of last meeting. II. Introduction of guests III. Report of the President on activities since last Board meeting. IV. Report of the Executive Director. 1. Consideration of E-Mail for agency. 2. Report on additional space for agency. V.A. Enforcement Committee — 1. 98–01 through 98–70, 95–05, 95–06, 95–08, 95–09, 95–10, 95–11. VI. B. Licensure and Education Standards —1. Discuss purchase of Continuing Education video tapes for disability waiver applicants, 2. Request waiver of deadline for continuing education hours: Roxanne Cockerell, D.C. and Jeff Cockerell, D.C., Glenn Marr, D.C., Vu Bach Long, D.C., Arturo Espinoza, D.C., Brad A. Cudnik, D.C., Louis Patino, D.C., Kheim T. Ngo, D.C., Francis X. Murphy, D.C., Curtis J. Hall, D.C., John T. Tathjen, Jr., D.C., Allan G. Preddy, D.C., Tracie L. Steed, D.C., Gary W. Walker, D.C., David M. Mullican, D.C., Dino Palividas, D.C., Tracy Standridge, D.C., 3. Review licensees who passed October and December, 1997, jurisprudence examination, 4. Request for additional information regarding felony conviction: Christopher Hobbs, Charles A. Rublee, J., 5. Request for waiver of deadline for submitting continuing education seminars, 6. Review of surveys for inactive status, 7. Lack of 1996 Continuing on Thursday, January 8, 1998 at 9:00 a.m. to consider, discuss, take any appropriate action/or approve: 8. Continuing Education- License Renewal Coordination. VII. Executive Committee — 1. Board approval of Executive Director's moving expenses. VIII. D. Technical Standards —1. Acupuncture/Manipulation Under Anesthesia, R.J. Kelly, D.C., 2. Discussion of amendments to Texas Department of Health Radiation Certification Program. IX. E. Rules Committee — 1. Ratify proposed amendment to Rule 73.4, Inactive Status, 2. Ratify proposed amendment to Rule 75.7, Fees, 3. Proposed amendment to 73.3(1)(E), audio tape option for Continuing Education, 4. Discussion of Plan of Review as required by Rider 167 Appropriations Act. X. Items to be discussed for future agenda. The Board may meet from time to time in Executive Session with respect to the above items authorized by Chapter 551 of the Government Code.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 30–6709.
Filed: December 22, 1997, 2:10 p.m.

TRD-9717113

Texas State Board of Examiners of Professional Counselors

Friday, January 9, 1998, 10:00 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possible act on: list of disciplinary sanctions; pending complaints (93–C002; 93–C021; 95–C040; 96–C009; 96–C017; 96–C027; 96–C030; 96–C038; 96–C039; 96–C040; 96–C062; 96–C077; 96–C081; 97–C005; 97–C035; 97–C038; 97–C071; 97–C072; 97–C073; 97–C074; 97–C084; 97–C085; 97–C086; 97–C090; 97–C091; 97–C093; 97–C097; 97–C099; 97–C110; 97–C113; 97–C115; 98–C001; 98–C002; 98–C004; 98–C005; 98–C008; 98–C009;98–C010; 98–C012; 98–C013; 98–C014; 98–C016 ;983–C017; 98–C018; 98–C019; 98–C020; 98–C021 ;98–C022; 98–C023; 98–C024; 98–C025; 98–C026 ;98–C027; 98–C028; 98–C029; 98–C030; 98–C031; 98–C032; 98–C033; 98–C034; 98–C035; 98–C036; 98–C037; 98–C038; 98–C039; 98–C040; 98–C041; 98–C042; 98–C043; 98–C044); other business requiring no committee action.

To request ADA accommodatiohn, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512)

458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: John Luther, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6658.
Filed: December 22, 1997, 8:40 a.m.

TRD-9717041

Office of Court Administration

Tuesday, January 6, 1998, 9:30 a.m.

Criminal Courthouse, Eighth Floor, 301 San Jacinto

Houston

Judicial Committee on Information Technology (Trial Courts Subcommittee)

AGENDA:

1. Justice Information Management Systems
2. ATM's and Kiosks for access
3. Collections of fines, court costs, etc.
4. Reporting
5. Interfaces with criminal justice agencies
6. Training
7. Benchbook
8. Electronic filing
9. Foster care
10. Legal research
11. Telephonic/video hearings
12. Imaging
13. Funding sources
14. Revenue generation
15. Minimum hardware and software standards
16. Docket and public case data on the Internet
17. CD-ROM document filing and archiving
18. ADA compliance

Contact: Doug Rybacki, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1603.
Filed: December 22, 1997, 8:40 a.m.

TRD-9717036

Wednesday, January 7, 1998, 9:30 a.m.

Grand Jury Room, Third Floor, 501 South Sillmore

Amarillo

Judicial Committee on Information Technology

AGENDA:

1. Justice Information Management Systems
2. Electronic filing
3. Telecommunications/video conferencing
4. Legal research
5. Court staffing and support from OCA
6. Minimum hardware and software standards
7. Imaging
8. Revenue generation
9. Wide area network
10. Transfer of cases
11. Opinion search tool
12. Case data available on internet
13. Training
14. ADA Compliance

Contact: Doug Rybacki, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1625.
Filed: December 22, 1997, 8:40 a.m.

TRD-9717037

Thursday, January 8, 1998, 9:30 a.m.

1601 Elm Street, 30th Floor

Dallas

Judicial Committee on Information Technology (Justice of the Peace and Municipal Systems Subcommittee)

AGENDA:

1. Justice Information Management Systems
2. ATM's and Kiosks for access
3. Collections of fines, court costs, etc.
4. Reporting
5. Interface with criminal justice agencies
6. Training
7. County auditor inclusion for JP systems
8. Minimum hardware and software standards
9. Benchbook
10. Funding sources/collections/revenue generation
11. Internet access
12. Legal research
13. Electronic filing
14. Statewide network
15. ADA Compliance

Contact: Doug Rybacki, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1625.
Filed: December 22, 1997, 8:40 a.m.

TRD-9717038

Friday, January 9, 1998, 9:30 a.m.

Sam Houston Building, Room 210, 201 West 14th Street

Austin

Judicial Committee on Information Technology

AGENDA:

1. Security/Internet/extranet
2. Charging for access to judicial information
3. Benchbook
4. Connectivity for rural jurisdictions
5. Opinions
6. Docket information
7. Electronic filing
8. Providers
9. Legal research
10. Ex parte communications
11. Development of Web Pages- Statewide, District, Local
12. Confidentiality protection
13. E-mail acceptance for court purposes
14. Standards for voice storage and retrieval services
15. Statewide computer and communications network
16. Electronically based document system
17. Standards for website creation and admission
18. ADA compliance
19. Training

Contact: Denise Davis, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1625.
Filed: December 22, 1997, 8:40 a.m.

TRD-9717039

Monday, January 12, 1998, 10:00 a.m.

State Capitol Extension Room E1.028

Austin

Texas Judicial Council Committee on Court Records

AGENDA:

I. Commencement of Meeting /Opening Remarks — Judge Mike Wood

II. Attendance of Members

III. Overview of Background Materials

IV. Identify and Discuss Issues to be Addressed by Committee

V. Public Testimony/ Invited Testimony

VI. Set Objectives for Future Committee Action

VII. Other Business

VIII. Date of Next Meeting

IX. Adjourn

Contact: Denise Davis, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1625.
Filed: December 18, 1997, 1:55 p.m.

TRD-9716906

Thursday, January 15, 1998, 10:00 a.m.

State Capitol Extension Room E2.010

Austin

Texas Judicial Council Committee on Visiting Judges

AGENDA:

I. Commencement of Meeting — Chief Justice John Cayce

II. Attendance of Members

III. Overview of Background Resources

IV. Identify and Discuss Issues to be Addressed by Committee

V. Public Testimony

VI. Set Objectives for Future Committee Action

VII. Other Business

VIII. Date of Next Meeting (Calendar)

IX. Adjourn

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1625.
Filed: December 17, 1997, 2:30 p.m.

TRD-9716865

Monday, January 26, 1998, 9:30 a.m.

County Courthouse, Room L106, 500 East San Antonio

El Paso

Judicial Committee on Information Technology (County Government Subcommittee)

AGENDA:

1. Multi-county jurisdiction issues
2. Benchbook
3. Funding issues
4. Equipment standards
5. Educator/training
6. Imaging
7. Reporting information
8. Collections
9. ATM's and Kiosks for access
10. Training

Contact: Doug Rybacki, P.O. Box 12066, Austin, Texas 78711–2066, (512) 463–1625.
Filed: December 22, 1997, 8:40 a.m.

TRD-9717040

State Board of Dental Examiners

Thursday, January 15, 1998, 1:30 p.m.

333 Guadalupe Street, SBDE Offices, Tower 3, Suite 800, Eighth Floor

Austin

Credentials Review Committee

AGENDA:

I. Call to order

II. Roll Call

III. Review and approval of past minutes

IV. Review dental applications for licensure by credentials and make recommendations to the Board for approval or denial of said applications.

V. Review dental hygiene applications, for licensure by credentials and make recommendations to the Board for approval or denial of said applications.

VI. Announcements

VII. Adjourn.

Contact: Mei Ling Clendennen, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.
Filed: December 19, 1997, 10:07 a.m.

TRD-9716945

Thursday, January 15, 1998, 2:00 p.m.

333 Guadalupe Street, SBDE Offices, Tower 2, HPC Room II-225, Second Floor

Austin

Continuing Education Committee

AGENDA:

I. Call to order

II. Roll Call

III. Review and approval of past minutes

IV. Discuss and consider proposing amendments to rule 104.1, requirements

V. Discuss and consider the process for implementing audit procedures

VI. Announcements

VII. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.
Filed: December 19, 1997, 10:07 a.m.

TRD-9716947

Thursday, January 15, 1998, 2:30 p.m.

333 Guadalupe Street, Tower 3, Suite 800

Austin

Enforcement Committee

AGENDA:

I. Call to order

II. Roll Call

III. Review and approval of past minutes

IV. Rules — discuss and consider proposing amendments to rules 107,101, 109.144, 109.151, 109.152, 109. 153, 109.155. Discuss and consider proposing new rule 107.400, 109.156, 109. 157, 109.158.

V. Discuss and consider developing guidelines for fines and penalties for use at settlement conference hearings

VI. Discuss and consider developing a self-monitoring checklist of administrative requirements as defined in the DPA and SBDE rules and regulations for practitioners offices.

VII. Discussion on ADA guidelines for chemical and biological monitors.

VIII. Announcements

IX. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.
Filed: December 22, 1997, 8:43 a.m.

TRD-9717042

Friday, January 16, 1998, 8:00 a.m.

333 Guadalupe Street, Tower 2, HPC Room II-225, Second Floor

Austin

Board

AGENDA:

I. Call to order

II. Roll Call

III. Review and Approval of past minutes

IV. Rules- discuss and consider final adoption of rules 109.103, 109.204, discuss and consider publication of rules 104.1, 102.1

V. Licensing and Examination — discuss and consider sedation/ anesthesia permit applications; dental and dental hygiene applications for licensure by credentials; Examination report; CE report; Licensing activity report

VI. Enforcement — Enforcement report

VII. Administration — discuss DIR operating plan; transfer of peer assistance fees; LBB operating budget; budget review; LBB quarterly performance report; agency organizational chart

VIII. General Counsel report — discuss agreed settlement orders; review settlement conference meetings; discuss Cause 53,803, agreed final order; legal activity report.

IX. Executive Director report — discuss status of HPC issues, TDH issues, House Bill One, ADA issues, letter from DCDS

X. President's report — Discuss ADA, AADE, and TDA issues; discuss status report on Anesthesia Rules Committee meeting.

XI. Public Comment

XII. Announcements

XIII. Adjourn.

Contact: Mei Ling Clendennen, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.
Filed: December 22, 1997, 8:43 a.m.

TRD-9717043

Friday, January 16, 1998, 8:00 a.m.

333 Guadalupe Street, Tower 2, HPC Room II-225, Second Floor

Austin

Board

REVISED AGENDA:

ADD TO AGENDA ITEM IV.

E. Discuss, consider and vote on publication for comment proposed new rule 101.2, Staggered Dental Registrations: Proration of Fees

F. Discuss, consider and vote on publication for comment proposed new rule 103.4, Staggered Dental Hygiene Registrations; Proration of Fees.

Contact: Mei Ling Clendennen, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.
Filed: December 22, 1997, 8:43 a.m.

TRD-9717129

Friday, January 16, 1998, 1:00 p.m.

333 Guadalupe Street, SBDE Offices, Tower 2, HPC Room II-225

Austin

Anesthesia Rules Review Committee

AGENDA:

I. Call to order

II. Roll Call

III. Review and Approval of past minutes

IV. Discuss, review and consider proposing amendments to anesthesia rules 109.171, 109.172, 109.173, 109.174, and 109.175.

V. Announcements

VI. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.
Filed: December 19, 1997, 10:07 a.m.

TRD-9716944

Texas Education Agency

Friday, January 9, 1998, 8:30 a.m.

1701 North Congress Avenue, William B. Travis Building, Room 1–104

Austin

AGENDA:

The agenda for the Texas Environmental Education Advisory Committee meeting is as follows: (1) report on site appraisal program; (2) develop long-range action plan; (3) nominate members and officers; (5) report on environmental education materials review by the Texas House of Representatives Committee on Environmental Regulation; and (6) plan subcommittee sessions.

Contact: Irene Pickhardt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463–9556.
Filed: December 19, 1997, 1:57 p.m.

TRD-9717142

State Board for Educator Certification

Friday, January 9, 1998, 9:00 a.m.

Employment Retirement Systems Building, 1801 Brazos, First Floor Auditorium

Austin

AGENDA:

1. Call to Order. 2. Approve October 31, 1997, Minutes. 3. Executive Director's Update. a. Budget Report. b. Advisory Committee Update. c. Planning Update. d. Update on Investigations and Rules. e. Staff Update. f. Other 4. Election of Board Chairman and Vice-Chairman. 5. Amend 1997–98 Fiscal Year Budget. 6. Discuss the Recommendations of the Advisory Committee on the Superintendent Certificate. 8. Adopt New 19 TAC §230.512, Emergency Certificates. 9. Adopt New 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers. 10. Adopt the Repeal of 19 TAC §§ Chapter 230.1, General Provisions, 230.2, Purpose of Institutional Accountability System, 230.3, Criteria for Institutional Accountability, and 230.4, The Accreditation Process. 11. Update on Input Received on the Proposed Framework for Educator Preparation and Certification. 12. Discuss Proposed New 19 TAC, Chapter 232, Subchapter M, Types and Classes of Certificates Issued, and Subchapter R, Certificate Renewal and Continuing Professional Education Requirements, and Discuss the Repeal of 19 TAC Chapter 230, Subchapter Continuing Education. 13. Discuss Proposed Rules for Principal Certificate. 14. Discuss Report of Data on Employment of Certified Teachers in Texas Public Schools. 15. Approve Additional Programs at Entities Currently Approved to Deliver Educator Preparation. 16. Approval of the Permian Basin Center for the Professional Development of Teachers.

Contact: Denise Jones, State Board for Educator Certification, 1701 North Congress Avenue, Austin, Texas 78701, (512) 469–3005.
Filed: December 19, 1997, 1:57 p.m.

TRD-9716992

Division of Emergency Management

Friday, January 9, 1998, 9:30 p.m.

5805 North Lamar Boulevard, (Emergency Operating Center (EOC))

Austin

State Emergency Response Commission (SERC)

AGENDA:

Revision of SERC Operating Procedures — Chair

Update of SERC Committee Assignments — Chair

Changes in Harris County Local Emergency Planning Committee (LEPC) Structure — DEM Technology Hazards

Tier II hazardous material inventory reporting — TDH

Hazardous material spill reporting trends — TNRCC

Review of hazardous materials planning and training grants awarded or in progress pursuant to Hazardous Materials Emergency Planning (HMEP) program — DEM Training

Status of Implementation of Clean Air- Air/Section 112r (Risk Management Program) in Texas — Discussion

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are dear or hearing impaired, readers, large print, or Braille, are requested to contact Phillip Moore at (512) 424–2454 three days prior to the meeting so that appropriate arrangements can be made.

Contact: Phillip Moore, 5805 North Lamar Boulevard, Austin, Texas 78773–0226, (5120 424–2454.
Filed: December 18, 1997, 3:15 p.m.

TRD-9716920

Employees Retirement System of Texas

Tuesday, January 13, 1998, 1:30 p.m.

18th and Brazos, First Floor Auditorium

Austin

Group Benefits Advisory Committee

AGENDA:

1. Call to Order; 2. Introduction of GBAC Members; 3. Recognition of Visitors and Guests; 4. Approval of Minutes From Previous Meeting; 5. Announcements/Updates; 6. ERS Update; 7. Subcommittee Reports; 8. Other Related Benefit Business; 9. Adjourn.

Contact: James W. Sarver, 18th and Brazos, Austin, Texas 78701, (512) 856–3217.
Filed: December 22, 1997, 10:55 a.m.

TRD-9717065

Office of the Governor

Friday, January 9, 1998, 9:00 a.m.

Capitol Extension, Room E1.010, 1400 Congress Avenue

Austin

Governor's Committee on People with Disabilities

AGENDA:

1. Call to Order/Introductions/Housekeeping/Approval of Minutes
2. Public Comment
3. Invited Presentations
4. Committee Members/Ex Officio Representatives' Reports
5. Focus Groups (Work Session)
6. Executive Director's Report
7. Focus Group Reports
8. Invited Speaker- Ara Merjanian, Governor's Budget Office
9. "The Scoop on Disability Reporting"
10. Concurrent Subcommittee Meetings
11. Subcommittee Action Items and Reports
12. Adjournment

Governor's Committee on People with Disabilities

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, (512) 463–5742.
Filed: December 22, 1997, 10:52 a.m.

TRD-9717061

Friday, January 9, 1998, 2:45 p.m.

Capitol Extension, Room E1.022, 1400 Congress Avenue

Austin

Governor's Committee on People with Disabilitie, Programs Subcommittee

AGENDA:

1. Call to Order/Approval of Minutes
2. Member Reports
3. ExOfficio Representative Reports
4. Discussion/Possible Action: Training Program-"The Scoop on Disability Reporting"
5. Discussion: In Kind Volunteer Effort Form
6. Discussion: Possible Presentation of Scholarship Award in 1999
7. Staff Reports
8. Adjournment

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, (512) 463–5742.
Filed: December 22, 1997, 10:52 a.m.

TRD-9717062

Friday, January 9, 1998, 2:45 p.m.

Capitol Extension, Room E1.010, 1400 Congress Avenue

Austin

Governor's Committee on People with Disabilities, Long Range Planning and Policy Subcommittee

AGENDA:

1. Call to Order/Approval of Minutes
2. Member Reports
3. ExOfficio Representative Reports
4. Discussion/Possible Action: Revision of the Long-Range State Plan for Texans with Disabilities
5. Discussion/Possible Action: Compilation of State Laws and Revision of Resource Guide
6. Adjournment

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, (512) 463–5742.
Filed: December 22, 1997, 10:52 a.m.

TRD-9717063

Saturday, January 10, 1998, 9:00 a.m.

Capitol Extension, Room E1.010, 1400 Congress Avenue

Austin

Governor's Committee on People with Disabilities, Programs Subcommittee

AGENDA:

1. Call to Order/Introductions
2. Background
3. Presentations (Invited)
4. Public Comment
5. Subcommittee Discussion and Questions
6. Adjournment

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, (512) 463–5742.
Filed: December 22, 1997, 10:52 a.m.

TRD-9717064

Texas Department of Health

Friday, January 9, 1998, 9:30 a.m.

Moreton Building, Room M-653, Texas Department of Health, 1100 West 49th Street

Austin

Osteoporosis Advisory Committee

AGENDA:

The committee will discuss and possibly act on: review of the agenda; approval of the minutes of the October 3, 1997 meeting; Advisory Committee member updates; web page update; report to the Texas Board of Health (work session); appropriations/budget update; fund raising update; customized print bid material update; summit update; public comments/announcements; developnext meeting agenda; and an evaluation of the meeting.

To request accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Anne E. Williamson, 1100 West 49th Street, Austin, Texas 78756, (5123) 458–7324.
Filed: December 23, 1997, 12:00 p.m.

TRD-9717152

Monday, January 12, 1998, 9:30 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

Home and Community Support Services Advisory Committee

AGENDA:

The advisory committee will introduce guests and staff and discuss and possibly act on: approval of the minutes of the October 22, 1997 meeting; Enforcement Action Committee report; final adoption of proposed rules concerning home and community support services agencies (25 Texas Administrative Code, Chapter 115) as published in the December 5, 1997 issue of the Texas Register (22 TexReg 11941) to be presented to the Board of Health on February 8, 1998; other business not requiring action; and public comment.

To request accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Merrie Duflot, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6647.
Filed: December 22, 1997, 3:54 p.m.

TRD-9717128

Tuesday, January 13, 1998, 8:30 a.m.

Travis II Meeting Room, Holiday Inn-Austin Airport, 6691 North IH35

Austin

Asbestos Advisory Committee

AGENDA:

The committee will discuss and possibly act on: proposed Texas asbestos health protection rule changes (25 Texas Administrative Code, Chapter 295); current vacancies on the Asbestos Advisory Committee; and public comments (entertained at a prescribed time and to include individuals who wish to speak to sign up between the hours of 8:30 a.m. and 9:00 a.m.; time allotment to each speaker may be limited based on the number of persons registered to speak.)

To request accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Todd Wingler or Ms. Lindal Page, 1100 49th Street, Austin, Texas 78756, (512) 834–6600 or 1–800–572–5548.
Filed: December 22, 1997, 10:25 a.m.

TRD-9717058

Health and Human Services Commission

Thursday, January 8, 1998, 9:15 a.m.

Texas Department of Human Services Public Hearing Room, 701 West 51st Street

Austin

Medical Care Advisory Committee

AGENDA:

Opening Comments: State Medicaid Director's Comments; Approval of Minutes; Federal Legislative Update; Reimbursement for Telemedicine Services for the Texas Medicaid Program; Proposal of Additional Mental Retardation Local Authority Waiver Program Rules; Competitive Procurement of Durable Medical Equipment (DME) and Supplies; Provider Participation Requirement for Home Health Services; In home Total Parenteral Hyperalimentation and/ or Enteral Feeding Services; Proposed Rule Regarding Surety Bond Requirements; Coordination of Title XIX with Parts A and B of Title XVIII; Repeal Existing Rules and Propose New Rules Governing the THSteps (SPSDT) Dental Services; Updating Reference to Community-Based Alternatives Program; New Mandated Medicare Cost-Sharing Group; Revision to the Medicaid Reimbursement

Methodology Rules for Nursing Facilities (NFs) Regarding Special Needs Children; Managed Care Information and Training Plan; Medicaid Managed Care Report; Open Discussion by Members; Next Meeting/Adjournment.

Contact: Sherron Dobbs, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 424–6569.
Filed: December 23, 1997, 8:54 a.m.

TRD-9717138

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Texas Health Insurance Risk Pool ("Health Pool")

Tuesday, December 30, 1997, 9:00 a.m. (Audit Subcommittee); 9:30 a.m. (Board); Grievance Committee (immediately following Board meeting)

301 Congress, Suite 360, Third Floor Conference Room

Austin

Board, Audit Subcommittee and Grievance Committees

AGENDA:

Some members will participate via teleconference because it is difficult or impossible for such members to attend the meeting.

I. Subcommittees: Audit: Discussion and possible action on banking matters and line of credit. Discussion and possible action on TDI rules on financial reporting and assessments. Grievance: Discussion and possible action on grievance procedures.

II. Board. Discussion on subcommittee reports. Discussion and possible action on policy form, application form, outline of coverage, brochure and other publications, and actuarial projections. Discussion and possible action on liability insurance for the directors and officers of the Pool. Discussion and possible action on contract and fees for Third Party Administrator. Report on notice of Pool availability. Discuss assessment rule and issues. Discuss TDI rule on financial reporting. Public comment. Discussion and possible action on other management or administrative matters. Setting of next meeting.

Contact: Rhonda Myron, 333 Guadalupe Street, Austin, Texas 78701, (512) 463–6651.
Filed: December 22, 1997, 1:38 p.m.

TRD-9717110

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Health Professional Council

Tuesday, January 6, 1998, 9:30 a.m.

333 Guadalupe Street, Suite 2–225

Austin

AGENDA:

1. Call to Order, 9:30 a.m.

2. Roll Call and Introductions

3. Minutes of October 7, 1997

4. Report of Committees

4.1–Budget and Planning

4.2– Training

4.3– Toll Free Complaint Line

4.4–Copy/Mail Center

4.5–Risk Management

5. Old Business

6. New Business

7. Announcements

8. Comments from Audience

9. Next Meeting

10. Adjourn

Contact: Jane McFarland, 333 Guadalupe Street, Suite 2–220, Austin, Texas 78701, (512) 305–8550.
Filed: December 19, 1997, 11:59 a.m.

TRD-9716975

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Texas Statewide Health Coordinating Council

Monday, January 5, 1998, 11:00 a.m.

Moreton Building, Room M-721, Texas Department of Health, 1100 West 49th Street

Austin

ByLaws Committee

AGENDA:

The council's ByLaws Committee will discuss and possibly act on: selection of a committee chair; review of the current bylaws and suggested changes; implementing suggested changes to the bylaws.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Dennis Finuf, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7261.
Filed: December 23, 1997, 12:00 p.m.

TRD-9717151

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Monday, January 5, 1998, 10:00 a.m.

507 Sabine, Room 437

Austin

Low Income Housing Tax Credit Public Hearing

AGENDA:

The Texas Department of Housing and Community Affairs will hear public testimony on Proposed 1998 Qualified Allocation Plan for the Low Income Housing Tax Credit Program; Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 4755–3100, or Relay Texas at 1–800–735–2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Austin, Texas 78701, (512) 475–3934.
Filed: December 23, 1997, 11:29 a.m.

TRD-9717146

Texas Department of Human Services

Wednesday, January 14, 1998, 9:00 a.m.

701 West 51st Street, Public Hearing Room

Austin

Long Term Provider Networks Information

AGENDA:

Introduction and Background. Services to be included. Plans to use a consultant. Questions and Answers.

Contact: Pam Coleman, P.O. Box 149030, Austin, Texas 78714–9030, (512) 438–5067.
Filed: December 22, 1997, 3:09 p.m.

TRD-9717125

Texas Department of Insurance

Monday, January 5, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1715.D. In the Matter of SUMMIT FINANCIAL GROUP, INC.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:14 a.m.

TRD-9716898

Monday, January 5, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1629.C. To consider whether disciplinary action should be taken against MARK ALLEN DERR (LANDMARK INS. SERVICE OF TEXAS, INC.) Bedford, Texas, who holds Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:14 a.m.

TRD-9716897

Tuesday, January 6, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1282. In the matter of TEXAS FARMERS INSURANCE COMPANY AND MIDCENTURY INSURANCE COMPANIES OF TEXAS V. TEXAS DEPARTMENT OF INSURANCE (Reset from 11/12/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716896

Tuesday, January 6, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2040.C. To consider whether disciplinary action should be taken against ELEUTERIO GALVAN, JR., Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716895

Tuesday, January 6, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2011.C. To consider whether disciplinary action should be taken against JOSEPH C. DAVIES, Mesquite, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716893

Tuesday, January 6, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1598.C. To consider the application of GILBERT CASTILLO, San Antonio, Texas, for a Group I, Legal Reserve Life Insurance Agent's License and a Solicitor's License to be issued by the Texas Department of Insurance (reset from 11/5/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716894

Wednesday, January 7, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2049.C. To consider whether disciplinary action should be taken against CHARLES N. JONES, Carrollton, Texas, who holds an Adjuster's Licence issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716891

Wednesday, January 7, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1822.C. To consider whether disciplinary action should be taken against CHARLOTTE TOOL WALKER, Cypress, Texas, who holds an Insurance Adjuster's Licence issued by the Texas Department of Insurance (reset from 11/18/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716892

Wednesday, January 7, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2051.C. To consider disciplinary action against HARRY H. ROBINSON, San Antonio, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:13 a.m.

TRD-9716890

Thursday, January 8, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2095.C. To consider whether disciplinary action should be taken against JOHNNY L. GILBERT, Houston and Nassau Bay, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, a Group II Stipulated Premium Agent's License, and a Group V, Local Recording-Multiple Lines Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:12 a.m.

TRD-9716888

Thursday, January 8, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2107.G. Prehearing conference in the Matter of BENCHMARK RATES FOR RESIDENTIAL INSURANCE.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:12 a.m.

TRD-9716889

Friday, January 9, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2115.C. To consider whether disciplinary action should be taken against ANTHONY J. ROSS, Fort Worth, Texas, who holds a Solicitor's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: December 18, 1997, 10:12 a.m.

TRD-9716887

Texas Department of Licensing and Regulation

Friday, January 2, 1998, 1:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Consumer Protection Section, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against and revocations of license of the Respondent, George W. Burchfield, Jr., for failing to pay all amount due the seller within 15 banking days in violation of Texas Revised Civil Statutes Annotated Article 8700 (the Act) §7(a)(4) and 16 Texas Administrative Code (TAC) §67.101(4) and failing to pay public monies, including state sales tax, in violation of 16 TAC §67.103(3). The Department will also consider the complainant's claim against the Auctioneer Education and Recovery Fund in accordance with the Act §5C, pursuant to the Act and Texas Revised Civil Statutes Annotated Article 9100, Texas Government Code, Chapter 2001 (APA); and 16 TAC Chapter 67.

Contact: Allyson Lednicky, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: December 19, 1997, 10:21 a.m.

TRD-9716948

Tuesday, January 6, 1998, 10:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room

Austin

Enforcement Division

AGENDA:

To accept public comment on the proposal to adopt amendments to the following rules: Chapter 68– Architectural Barriers

Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (5120 463–7348 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Rachelle Martin, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–2907.
Filed: December 22, 1997, 11:59 a.m.

TRD-9717109

Texas Lottery Commission

Monday, January 5, 1998, 10:00 a.m.

611 East Sixth Street, Grant Building, Commission Auditorium

Austin

AGENDA:

According to the agenda summary, the Texas Lottery Commission will call the meeting to order; report, possible discussion, and/or action on an analysis of lottery sales for FY 98 and FY 99 and Marketing and Advertising efforts; consideration of and possible action on the Lottery's FY 98–99 advertising program; consideration of and possible action on the lottery advertising contract, such action may include whether to extend the contract or to issue a Request for Proposals for advertising services; status report, possible discussion, and possible action, including implementation and communication, on legislation, including House Bill 2086; report, possible discussion, and possible action on legislative interim committee hearings relating to the Texas Lottery Commission; report, possible discussion, and/or possible action including initiating rule-making, on the scope of use of automated bingo services provided by a system services provider to a bingo conductor; status report and possible action on the Lottery Operations and Services Request for Proposals; status report, possible discussion, and possible action on the audit of the lottery operator; status report, possible discussion, and possible action on a state audit report to the Texas Lottery Commission; status report, possible discussion, and/or possible action on agency planning and budget; Commission may meet in Executive Session; return to open session for further deliberation and possible action on any matter discussed in Executive Session, consideration of the status of possible entry of an order in any contested case if a proposal for decision has been received from the assigned administrative law judge and the time period has elapsed for the filing of exceptions and replies; report by Executive Director and possible discussion and/or action on the agency's financial status, budget and budget goals for FY 98 and 99, personnel practices and issues; HUB performance, FTE status, and retailer forums; report by the Acting Charitable Bingo Operations Director and possible discussion and/or action on the Charitable Bingo Operations Division's licensing and audit status and possible issued relating to the Bingo Advisory Committee; and adjournment.

For ADA assistance, call Michelle Guerrero at (512) 344–5113 at least two days prior to meeting.

Contact: Michelle Guerrero, P.O. Box 16630, Austin, Texas 78701, (512) 344–5113.
Filed: December 23, 1997, 2:48 p.m.

TRD-9717167

Texas Natural Resource Conservation Commission

Wednesday, January 7, 1998, 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attahced agenda: District matter; Public Water Supply Enforcement Default Order; Public Water Supply Enforcement Agreed Order; Air Enforcement Default Order; Air Enforcement Agreed Order; Petroleum Storage Tank Enforcment Agreed Orders; Municipal Solid Waste Enforcment Default Order; Industrial Hazardous Waste Enforcement AGreed Order; Designation of Single Property; Superfund; Rule; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety for for particular action at a future date or time, (Registration for 9:30 Agenda Starts 8:45 until 9:25). The Commission will consider the following matter at its 1:00 p.m. Agenda: Motion for Reconsideration. (Registration for the 1:00 p.m. Agenda Starts at 12:30 p.m.).

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3117.
Filed: December 23, 1997, 1:27 p.m.

TRD-9717153

Tuesday, January 27, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on applications filed by SOUTH NEWTON WATER SUPPLY CORPORATION for a sewer Certificate of Convenience and Necessity (CCN) in order to authorize the provision of sewer utility service in Newton and Orange Counties, Texas, and to amend, by adding and decertifying areas, its' water CCN Number 11563 which authorizes the provision of water utility service in Newton and Orange Counties, Texas. The proposed utility service area includes the Deweyville and Hartburg areas in southeast Newton County and northeast Orange County. The service area is generally bounded on the east by the county line, on the south by the Sabine River Authority Canal, on the east by the county line, and on the south by the Sabine River and Northern Railroad. The area

requested for decertification includes approximately 990 acres and no current customers. SOAH Docket Number 582–97–2242.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 19, 1997, 11:06 a.m.

TRD-9716950

Wednesday, January 28, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on applications filed by LILLY GROVE WATER SUPPLY CORPORATION to amend its Certificate of Convenience and Necessity (CCN) number 11010 which authorizes the provision of water utility service in Nacogdoches County, Texas. The proposed utility service area is located approximately 10 miles northwest of downtown Nacogdoches, Texas and is generally bounded on the south by State Highway 21, on the north by State Highway 204, on the west by State Highway 225 and on the east by U.S. Highway 259. The total area being requested includes approximately 43,600 acres and 655 current customers. SOAH Docket Number 582–97–2243.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 19, 1997, 11:06 a.m.

TRD-9716951

Wednesday, January 28, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582–97–2178: TNRCC Docket Number 96–1915–OSS-E; JAMES M. MYERS; The purpose of the hearing will be to consider the Executive Director's Preliminary report and petition mailed January 27, 1997 concerning assessing administrative penalties against and requiring certain actions of James M. Myers for Texas Health and Safety Code violations in McLennan County, Texas.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–6363.
Filed: December 18, 1997, 8:30 a.m.

TRD-9716875

Wednesday, January 28, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582–97–2179: TNRCC Docket Number 96–1916–OSS-E; LOUIS PATKE; The purpose of the hearing will be to consider the Executive Director's Preliminary report and petition mailed January 27, 1997 concerning assessing administrative penalties against and requiring certain actions of Louis Patke for Texas Health and Safety Code violations in McLennan County, Texas.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–6363.
Filed: December 18, 1997, 8:30 a.m.

TRD-9716876

Thursday, February 5, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582–97–2172: TNRCC Docket Number 96–1926–PSW-E; SUBURBAN UTILITIES COMPANY, INC.; C.W. HANKINS; G & H MANAGEMENT; WATER COMPANY MANAGEMENT, INC. AND W.C. HANKINS, INC.; The purpose of the hearing will be to consider the Executive Director's Preliminary report and petition mailed September 8, 1997 concerning assessing administrative penalties against and requiring certain actions of Suburban Utilities Company, Inc.; C.W. Hankins; G & H Management; Water Company Management, Inc.; and W.C. Hankins, Inc. for Texas Health and Safety code violations in Johnson County, Texas.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–6363.
Filed: December 18, 1997, 8:31 a.m.

TRD-9716877

Thursday, February 5, 1998, 1:00 p.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582–97–2173: TNRCC Docket Number 97–0084–PSW-E; HANCO UTILITIES INC.; W. C. HANKINS; G & H MANAGEMENT; WATER COMPANY MANAGEMENT, INC. AND W.C. HANKINS, INC.; The purpose of the hearing will be to consider the Executive Director's Preliminary report and petition mailed September 8, 1997 concerning assessing administrative penalties against and requiring certain actions of Hanco Utilities Company, Inc.; C.W. Hankins; G & H Management; Water Company Management, Inc.; and W.C. Hankins, Inc. for Texas Health and Safety code violations in Johnson County, Texas.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–6363.
Filed: December 18, 1997, 8:31 a.m.

TRD-9716878

Tuesday, February 10, 1998, 10:00 a.m.

Orange County Courthouse, 801 West Division, Room 303

Orange

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed by HANMAN INVESTMENTS, INC., dba CHASE HOLLOW WATER SYSTEM for an increase in water and sewer rates effective October 1, 1997, for its service area located in Orange County, Texas. SOAH Docket Number 582–97–2240.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 19, 1997, 11:06 a.m.

TRD-9716952

Tuesday, February 10, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed by H2M WATER SYSTEMS, INC. to amend its Certificate of Convenience and Necessity (CCN) Number 11908 which authorizes the provision of water utility service in Denton and Wise Counties, Texas. The proposed utility service area is located approximately 16 miles southwest of downtown Denton, Texas and is generally bounded on the east by FM 156, on the south by State Highway 114, and on the west by U.S. Highway 287. The total area being requested includes approximately 12,700 acres and no current customers. SOAH Docket Number 582–97–2244.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 19, 1997, 11:07 a.m.

TRD-9716953

Thursday, February 12, 1998, 10:00 a.m.

1700 North Congress Avenue, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed by Ratepayers of the RIO WATER SUPPLY CORPORATION appealing a rate change to the Texas Natural Resource Conservation Commission. The Board of Directors of the RIO WATER SUPPLY CORPORATION approved an increase in water rates effective August 1, 1997, for its service area located in Starr county, Texas. SOAH Docket Number 582–97–2241.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: December 19, 1997, 11:13 a.m.

TRD-9716954

Board of Nurse Examiners

Thursday, Friday, January 22, 23, 1998, 8:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

AGENDA:

The Board of Nurse Examiners will discuss and possibly act on: approval of the minutes from the November board meeting; consider operations including financial statements and annual financial report; consider education matters, including accreditation status changes. The Board will receive information from various board committees and advisory committees; consider approval of the Peer Assistance Contract, and hold an open forum from 11:30–2:00 p.m. on January 22, 1998 to allow interested parties an opportunity to address the board. The Board will consider Agreed Orders for Vivian Travis Alsup, #570853, Ruth Evelyn Boyd, #581586, Charles Michael Burns, #250941, Elizabeth Anne Chandler, #588670, Dale Amanda Cunningham, #548617, Sharon Alina Ellis, #594481, Diane Wilma Grant, #579515, Lenore Louise Grissom, #516872, Tony Lee Gross #620427, Denise Hinds, 3544416, Carla L. Johnson, #612789, Linda Louise Jones, #563112, Jo Ann Lackey, #249842, Irene Patterson Lamb, #455724, Linda Harmon Lewis, #244374, Tracie Leoma McCall, #558722, Katherine Castro Mettlen, #606744, Karin Lynne Orren, 3566970, Donna R. Rosson, #617688, Nilda Sanchez, 3632052, Kathryn Jewel Schulze, #241984, Donna Gail J. Sherman, #230777, Mary Jane Smart, #501942, Patrick D. Spence, #541593, Earl William Staeger, #578466, Donna L. Thurman, #624451, Myrna Uy Castro Vinalon, #462568, Jeanette Hellen Ward, #510405, and Michelle Williams #612982. The Board will take action on proposed ALJ Decisions for Stephen Darrell Burnham, #551079 and Gary C. Moore, #500517. On January 23, 1998, a workshop will be conducted.

Contact: Erlene Fisher, Box 430, Austin, Texas 78767, (512) 305–6811.
Filed: December 23, 1997, 8:47 a.m.

TRD-9717136

Texas Board of Occupational Therapy Examiners

Monday, December 29, 1997, 10:00 a.m.

University of Texas Health Science Center Downtown, 527 Leona Street

San Antonio

Application Review Committee

AGENDA:

I. Call to Order

II. Discussion and possible action regarding the following applicants: Susana Avila, Bessie Marie Busby, Jimmy Wayne McCullough, Ralph Anthony Fuentes

III. Adjournment

Contact: Alicia Dimmick Essary, 333 Guadalupe, Suite 2–510, Austin, Texas 78701–3942, (512) 305–6900.
Filed: December 18, 1997, 4:03 p.m.

TRD-9716921

Public Utility Commission of Texas

Friday, January 9, 1998, 10:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

A prehearing conference will be convened in Docket Number 18465–Application of Houston Lighting and Power Company for a Change in Accounting Procedures and Approval of Certain Base Rate Credits.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (5120 936–7308.
Filed: December 19, 1997, 2:47 p.m.

TRD-9716997

Railroad Commission of Texas

Tuesday, January 6, 1998, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1–111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or form the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: December 23, 1997, 12:00 p.m.

TRD-9717148

Texas Senate

Wednesday, January 14, 1998, 8:30 a.m.

McAllen City Hall, 1300 Houston Street

McAllen

Senate Interim Committee on NAFTA

AGENDA:

I. Call to Order

II. Roll Call

III. Approval of Committee Minutes from December 10, 1997 Committee Hearing

IV. Invited Testimony: Impact of NAFTA on Trade

V. Invited Testimony: Impact of NAFTA on Transportation

VI. Invited Testimony: Impact of NAFTA on Housing

VII. Invited Testimony: Rio Grande Natural Resources and Communities of Interest

VIII. Invited Testimony: Impact of NAFTA on Higher Education

IX. Invited Testimony: Impact of NAFTA on Job Training

X. Invited Testimony: Impact of NAFTA on Health and Human Services

XI. Public Testimony

XII. Adjournment

PURPOSE: The Committee is meeting to take testimony on Committee Charge #1: Evaluate the Impact of NAFTA on the Texas economy and determine how different segments of the economy are affected. Committee Charge #3: Assess the impact NAFTA is having on the state's infrastructure, including but not limited to transportation, education, housing, the environment, and health and human services.

Contact: Carla Buckner, P.O. Box 12068, Austin, Texas 78711, (512) 463–0989.
Filed: December 19, 1997, 3:45 p.m.

TRD-9717001

Texas State Technical College System

Monday, December 22, 1997, 11:00 a.m.

3801 Campus Drive, Building 32–01

Austin

Board of Regents

AGENDA:

The Board of Regents of Texas State Technical College System will meet to discuss duties and responsibilities of the Texas State Technical College Sytem Chancellor.

Press Conference

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: December 18, 1997, 10:49 a.m.

TRD-9716900

Monday, December 22, 1997, 11:05 a.m.

3801 Campus Drive, Building 32–01

Austin

Board of Regents Closed Meeting

AGENDA:

The Board of Regents will meet in closed session by telephone conference for the specific purpose provided in §§551.074 and 551.075 of Chapter 551 of the Texas Government Code to discuss the Chancellor of Texas State Technical College System.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: December 18, 1997, 10:49 a.m.

TRD-9716901

Texas Woman's University

Monday, January 12, 1998, 10:00 a.m.

Parkland Campus, 1810 Inwood Road, Room 102A

Dallas

Facility Usage Ad Hoc Committee of the Board of Regents

AGENDA:

This meeting will be held to discuss housing facilities of the Texas Woman's University President and to review data and information gathered from the Air Quallity, Pest Control and Engineering studies. Recommendaiton may be made on this subject to the Board at the next scheduled meeting.

Contact: Dr. Carol D. Surles, P.O. Box 425597, Denton, Texas 76204, (940) 898–3201.
Filed: December 18, 1997, 10:03 a.m.

TRD-9716886

Texas Department of Transportation

Thursday, January 15, 1998, 9:30 a.m.

200 East Riverside, First Floor

Austin

Motor Vehicle Board

AGENDA:

Call to order; roll call. Approval of Minutes of Motor Vehicle Board Meeting on November 6, 1997. Employee Recognition. Argument on Proposal for Decision on Complainant's Standing. Argument on Motion for Reconsideration. Argument on Proposal for Decision. Consideration of Proposals for Decision. Consideration of Motion for Rehearing. Agreed Orders. Orders of Dismissal — Licensing and Enforcement. Other: a. Litigation decisions made by examiners, division director and Board members; c. Enforcement Status Report; d. Division Operations Status Report. e. Information Center Update. Adjournment.

Contact: Brett Bray, 150 East Riverside, Second Floor, Austin, Texas 78704, (512) 416–4800.
Filed: December 18, 1997, 12:49 p.m.

TRD-9716905

Thursday, January 15, 1998, 9:30 a.m.

200 East Riverside, First Floor

Austin

Motor Vehicle Board

REVISED AGENDA:

Call to order; roll call. Approval of Minutes of Motor Vehicle Board Meeting on November 6, 1997. Employee Recognition. Argument on Proposal for Decision on Complainant's Standing. Argument on Motion for Reconsideration. Argument on Proposal for Decision. Consideration of Proposals for Decision. Consideration of Motion for Rehearing. Agreed Orders. Orders of Dismissal — Licensing and Enforcement. Consideration of Application of H&W Honda for Longview Sport and RV Show. Other: a. Litigation decisions made by examiners, division director and Board members; c. Enforcement Status Report; d. Division Operations Status Report. e. Information Center Update. Adjournment.

Contact: Brett Bray, 150 East Riverside, Second Floor, Austin, Texas 78704, (512) 416–4800.
Filed: December 22, 1997, 4:56 p.m.

TRD-9717133

The University of Texas at Arlington

Wednesday, January 21, 1998, 12:30 p.m.

501 South Nedeerman, Room 323, Life Science Building

Arlington

Institutional Animal Care and Use Committee

AGENDA:

1. Discussion of Protocol from NSF-sponsored review study.

Contact: Martha A. Mann, Box 19528, Arlington, Texas 76019, (817) 272–3239.
Filed: December 19, 1997, 2:38 p.m.

TRD-9716996

Texas Council on Workforce and Economic Competitiveness

Saturday, January 13, 1998, 10:00 a.m.

1100 San Jacinto, Room 100

Austin

Executive Committee

AGENDA:

10:00 a.m. — Call to Order, Announcements; Public Comment; Discussion, Consideration and Possible Action Regarding Recommendations to the Governor on Strategic and Operational Plans Submitted by Local Workforce Development Boards; Discussion, Consideration and Possible Action Regarding Redesignation of Service Delivery Areas; Adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 936–8103 (or Relay Texas 800–735–2988) at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, TCWEC, P.O. Box 2241, Austin, Texas 78768–(512) 936–8103.
Filed: December 17, 1997, 3:34 p.m.

TRD-9716872

Texas Workers' Compensation Commission

Wednesday January 7, 1997, 2:00 p.m.

4000 South IH35, Room 910–911, Southfield Building

Austin

Public Hearing

AGENDA:

1. CALL TO ORDER

2. PUBLIC COMMENTS ON THE FOLLOWING PROPOSED/AMENDED AND NEW RULES:

Chapter 164– EXTRA HAZARDOUS EMPLOYER PROGRAM

Rule 164.1 —Criteria for Identifying Extra-Hazardous Employers

Rule 164.2 —Notice to "Extra-Hazardous Employers"

Rule 164.3 —Safety Consultation for Public Employers

Rule 164.4 —Formulation of Accident Prevention Plan for Public Employers

Rule 164.5—Follow-up Inspection for Public Employers by the Division

Rule 164.6 —Report of Follow-up Inspection, Public Employers

Rule 164.7 —Removal of Public Employers from "Extra-Hazardous Employer" Status

Rule 164.8 — Continuation of Extra-Hazardous Employer Status, Public Employers

Rule 164.10—Removal from the List of Approved Professional Sources

Rule 164.11—Request for Safety Consultation from the Division

Rule 164.12—Reimbursement of Division for Services Provided to "Extra-Hazardous Employer"

Rule 164.14—Values Assigned for Computation of Extra-Hazardous Employer Identification

Rule 164.15—Administrative Reviews and Hearings Regarding Identification as an Extra-Hazardous Employer

Rule 164.16— Safety Consultation for Private Employers (new)

Rule 164.17—Division Follow-up Analysis and Report for Private Employers (new)

3. ADJOURNMENT

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440–5690.
Filed: December 18, 1997, 12:48 p.m.

TRD-9716903

Thursday January 8, 1997, 9:30 a.m.

4000 South IH35, Room 910–911, Southfield Building

Austin

Public Hearing

AGENDA:

1. Call to Order

2. Approval of Minutes for the Public Meetings of October 27, 1997 and November 6, 1997 and Public Hearing of November 6, 1997.

3. Discussion and Possible Action on Adoption of New Rule: Rule 126.11

4. Discussion and Possible Action on Adoption of Amendment to Rule: Rule 134.1002

5. Discussion and Possible Action on Approval of TWCCs Internal Audit Plan for 1998

6. Discussion and Possible Action on Designation of Chairman for the TWCC Medical Advisory Committee

7. Report regarding Testimony before January 21, 1998 Senate Finance Committee

8. Executive Session

9. Action on Matters considered in Executive Session

10. Discussion and Possible Action on National Search Firm for Executive Director and Status of Search and any related matters.

11. General Reports, Discussion, and Possible Action on Issues relating to commission activities

12. Confirmation of future public meeting dates

13. Adjournment.

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440–5690.
Filed: December 18, 1997, 12:48 p.m.

TRD-9716904

Regional Meetings

Meetings filed December 17, 1997

Fort Bend Parkway Association, Board, will meet at Lakepoint Plaza, Building D, Conference Room of Greater Fort Bend Economic Development Council, One Fluor Daniel Drive, Sugar Land, Texas 77478, January 8, 1998, at 5:30 p.m. Information may be obtained from Robert R. Randolph, 2701 First City Tower, 1001 Fannin, Houston, Teas 77002–6760, (713) 758–2380. TRD-9716858.

Hamilton County Appraisal District, Board, met at 119 East Henry, Hamilton, December 23, 1997 at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (254) 386–8945. TRD-9716868.

Harris County Appraisal District, Board of Directors, met at 2800 North Loop West, Eighth Floor, Houston, December 29, 1997 at 8:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 920975, Houston, Texas 77292–0975, (713) 957–5291. TRD-9716867.

Sharon Water Supply Corporation, Board of Directors, met at Office of Sharon Water Supply Corporation, Route 5, Box 50361, Winnsboro, December 22, 1997, 7:00 a.m. Information may be obtained from Gerald Brewer, Box 50361, Route Five, Winnsboro, Texas 75494, (903) 342–3525. TRD-9716862.

Meetings filed December 18, 1997

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Called Meeting/Public Hearing, met at 1124A Regal Row, Austin, December 22, 1997, at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9716915.

Education Service Center, Region V, Board, met with revised agenda at 2295 Delaware Street, Beaumont, (location changed), December 19, 1997 at 10:00 a.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703–4299, (409) 838–5555. TRD-9716879.

El Oso Water Supply Corporation, Board of Directors, met at FM 99, Karnes City, December 22, 1997, at 7:00 p.m. Information may be obtained from Charles (Punch) Humphries, P.O. Box 309, Karnes City, Texas 78118, (210) 780–3539. TRD-9716919.

Leon County Central Appraisal District, Board of Directors, met at 103 North Commerce, Corner of Highway 7 and 75 (Gresham Building), Centerville, December 22, 1997 at 7:00 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833–0536, (903) 536–2252. TRD-9716885.

Meetings filed December 19, 1997

Lee County Appraisal District, Board of Directors, met at 218 East Richmond Street, Giddings, December 31, 1997 at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542–9618. TRD-9716974.

North Texas Tollway Authority, Board of Directors, met at Administration Office, 3015 Raleigh Street, Dallas, December 23, 1997 at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522–6200. TRD-9717004.

Upshur County Appraisal District, Board of Directors, met at 1711 Latch Road, Gilmer, December 23, 1997 at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644–0280, (903) 843–3041. TRD-9716943.

Meetings filed December 30, 1997, 1:00 p.m.

Ark-Tex Council of Governments, (ATCOG), Northeast Texas Water Planning Area "D", will meet at Cass County Courthouse Annex, Highway 59, Daingerfield, January 8, 1998 at 6:00 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832–8636. TRD-9717112.

North Central Texas Council of Governments, JTPA Committee, will meet at 616 Six Flags Drive, Arlington, January 6, 1998 at 11:45 a.m. Information may be obtained from Mary Peters, MCTCOG, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 695–9176. TRD-9717066.

Riceland Regional Mental Health Authority, Executive Committee, met at 3007 North Richmond Road, Wharton, December 30, 1997 at 1:00 p.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532–3098. TRD-9717119.

Meetings filed December 23, 1997

50th Judicial District, Juvenile Board, will meet at District Courtroom, Baylor County Courthouse, Seymour, January 6, 1998 at Noon. Information may be obtained from David W. Hajek, (940) 888–2852. TRD-9717135.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board, will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, January 6, 1998, at 10:00 a.m. Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627–3200. TRD-9717134.

Nolan County Central Appraisal District, Appraisal Review Board, met at Nolan County Courthouse, 100 East Third Street, Sweetwater, December 30, 1997, 9:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235–8421. TRD-9717144.

Nolan County Central Appraisal District, Appraisal Review Board, met at Nolan County Courthouse, 100 East Third Street, Sweetwater, December 30, 1997, at Noon. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235–8421. TRD-9717145.

Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, December 29, 1997 at 10:00 a.m. Information may be obtained from W.T. Ballard, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639–7358. TRD-9717143.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act, §382.096 of the Texas Health and Safety Code provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court: Harris County and the State of Texas v. Thomas & Betts Corporation, Cause Number 97-59183; in the 215th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Thomas & Betts owns and operates a manufacturing facility located at 8700 Fairbanks N. Houston Road in Harris County, Texas, where the company fabricates utility poles. The property upon which the facility is located is adjacent to a residential neighborhood known as the Carriage Lane Subdivision. Dirt roads surround the manufacturing facility and a dirt surfaced storage area is located onsite. Painting, corrocoating, and sandblasting activities, when they occur onsite, have generally been conducted in the open. On several occasions dust from trucks and equipment traveling on the dirt surfaces and emissions from the painting, corrocoating, or sandblasting operations at the Thomas & Betts facility have caused nuisance conditions in the neighboring residential subdivision.

The Agreed Final Judgment calls for the Defendant to pave roads surrounding the site and the dirt storage area onsite. Sandblasting, coating, and painting, will be performed inside enclosed structures. Thomas & Betts will also install an acoustical wall barrier between the facility and the neighborhood, and install acoustical ventilation louvers in buildings. The company will also perform a Supplemental Environmental Project to plant trees and construct a hike and bike trial in a public park adjacent to the facility.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716914
Sara Shirley
Assistant Attorney General
Office of the Attorney General
Filed: December 18, 1997

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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 501. Requests for federal consistency review were received for the following projects(s) during the period of December 16, 1997, through December 22, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: Texas Eastern Transmission Corporation; Location: Line 14, from Station 1213+69 to 1223+04 in Orange County, Texas; Project No.: 97-0456-F1; Description of Proposed Action: The applicant proposes to abandon and replace a 935-foot section of its 30- inch natural gas Line 14 from Station 1213+69 to 1223+04 in Orange County, Texas, in order to comply with U.S. Department of Transportation (DOT) regulations. Texas Eastern is proposing to install new Class 3 natural gas pipe in order to be in compliance by October 1998. The new pipe will be offset 25 feet to the northwest of the existing Line 14 and will tie back in with the existing pipeline. The construction right-of-way for the project will be 100-feet wide, including 50 feet of existing permanent right-of-way, 25 feet of new

permanent right-of-way, and 25 feet of new temporary right-of-way. The old portion of the Line 14 will be removed from the ground following the installation of the new Class 3 natural gas pipe. Texas Eastern will also cap and fill the Highway 87 pipeline casing with cement prior to abandoning it in place.

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 should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on December 23, 1997.

TRD-9717140
Garry Mauro
Chairman
Coastal Coordination Council
Filed: December 23, 1997

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 Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 12/29/97 - 01/04/98 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 12/29/97 - 01/04/98 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 23, 1997.

TRD-9717137
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 23, 1997

Texas Department of Criminal Justice

Request for Proposal

Pursuant to Texas Government Code, §493.009 and §508.119 and the Texas Code of Criminal Procedure, Article 42.12, §14, the Texas Department of Criminal Justice (TDCJ) hereby requests all interested parties to submit a proposal for the location(s) (in the State of Texas) operation and management of Community Residential Facilities for Substance Abuse Treatment Programs. Applicant shall include in their proposals various options regarding types/levels of services, number of beds, and number of locations. The TDCJ reserves the right to make multiple awards to various public and/or private vendors and geographical locations throughout the State of Texas or award the total number of available beds to one location in the State of Texas and one public or private vendor. The TDCJ reserves the right to make no awards. TDCJ is requesting proposals be focused in the following areas: San Antonio, El Paso, the Panhandle and Corpus Christi area. The Contract as well as any extensions will be subject to appropriations for such purpose by the Texas Legislature.

The Texas Department of Criminal Justice is requesting proposals for residential substance abuse treatment services for the following adult offenders: offenders on parole, mandatory supervision and community supervision that have completed primary treatment at an In-prison Therapeutic Community (TC) or Substance Abuse Felony Punishment Facility (SAFP): offenders who have been released on parole or mandatory supervision that have not participated in or completed a therapeutic community program (FR).

A request for a copy of the Request For Proposal or questions relating to the Request For Proposal should be addressed to Marsha McLane (512) 406-5763. Sealed Proposals will be received by the Texas Department of Criminal Justice until 12:00 p.m. on March 18, 1998. Such proposals must be typed or printed on standard (8 1/2 inch by 11 inch) paper, pages numbered, a table of contents included in the required format and submitted to: Marsha McLane, Director, Specialized Supervision, Texas Department of Criminal Justice, Parole Division, 8610 Shoal Creek Boulevard, Austin, Texas 78757, Attention: Community Residential Facilities for Substance Abuse Treatment Programs.

The Texas Department of Criminal Justice reserves the right to reject any and all proposals or portions of proposals received in response to this Request For Proposal. Submission of proposal has the effect of waiving proprietary rights or confidentiality. TDCJ reserves the right to use for its benefit, ideas contained in the proposals submitted. TDCJ is not liable for any costs incurred by applicants or prospective applicants in the preparation, formulation, or presentation of proposals.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717126
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 22, 1997

Texas General Land Office

Corrections of Error

The Texas General Land Office proposed amendments to 31 TAC §9.7. The rule appeared in the December 12, 1997, issue of the *Texas Register*, (22 TexReg 12248).

In the preamble the comment period is showing to be January 12, 1997. The actual date for the comment period should have been January 12, 1998.

Request for Proposals

The General Land Office (GLO) has been designated by the legislature to be the state's lead agency for response to actual or threatened unauthorized discharges of oil into the coastal waters of the state and for cleanup of pollution from such unauthorized discharges of oil. The commissioner of the GLO is charged with the responsibility for administration and direction of all state discharge response and cleanup

operations resulting from unauthorized discharges of oil into coastal waters of the state. The GLO is requesting proposals for consultant services to study and analyze the GLO response program, policies and procedures, and to provide advice and make recommendations for fulfillment of these responsibilities in a manner best calculated to minimize the risks to response equipment and to the health and safety of response personnel.

In order to evaluate the GLO oil spill response program and responsibilities and to develop procedures and guidelines for the safest and most appropriate manner for the conduct of oil spill and other disaster response activities, the consultant must take into account the following issues and matters of concern:

(A) GLO responsibilities under Occupational Safety and Health Administration regulations, 29 Code of Federal Regulations §1910.120, et seq, and present procedures to ensure compliance;

(B) Safety procedures and measures which have been implemented by GLO to safeguard employees working with potentially hazardous equipment;

(C) Present strategies to avoid, prevent, reduce, segregate and/or allocate liability and risks during oil spill and disaster response activities.

(D) Comparison of risks and benefits associated with GLO sampling of discharged oil and contaminated media.

(E) Potential benefits of a þrisk auditþ program in the GLO efforts to monitor specific geographic areas with a history of unauthorized discharges.

(F) Present methods of securing and protecting oil spill response equipment and other state property, i.e., security and safety measures in place at the GLO and potential additional measures available to enhance protection of response equipment.

The consultant will make recommendations based on the above analysis for different or additional procedures or methodologies which may provide the following benefits to the GLO:

(A) Reduced risks and enhanced safety for state oil spill response personnel and property;

(B) A safer work environment for GLO employees and members of the public involved in response activities;

(C) Maximum protection and preservation of oil spill response equipment and other state property; and

)(D) Avoidance of GLO liability and risks with regard to oil spill response, disaster response, and other GLO activities required by OSPRA (including, but not limited to, liability for workers' compensation claims and property damage and replacement).

The chosen consultant must have demonstrable experience with risk management techniques and practices and a working knowledge of the oil and gas emergency response industry. The consultant must have knowledge of state and federal agencies, the duties and operation of such agencies, and the statutes and rules which govern relevant agency actions.

Historically Underutilized Businesses (HUBS) are encouraged to submit proposals and all businesses that submit proposals are encouraged to include HUBS as subcontractors and/or providers at the first tier. The State of Texas operates under the basic principles of free and vigorous competition; however, in accordance with §2161.181, Texas Government Code (Vernon Supp. 1998), all state agencies are required to make a good faith effort to assist HUBS to receive not less than 30% of the total value of all contract awards for the purchase of goods and services during a fiscal year. Achievement of the goal may be reached by contracting directly with HUB firms or by the state's general contractors establishing contracts with HUB firms as subcontractors to provide services, supplies or material.

Proposals, at a minimum, shall contain the following: (i) a cover letter, which should include company name, if any, and contact person, complete mailing address and telephone number, and any introductory, general, or supportive information; and (ii) proposed budget allocation and justification. Incomplete proposals may be summarily disqualified and eliminated from further consideration. Proposals shall be submitted to Felix Arambula III, General Land Office, 1700 N. Congress Avenue, Suite 740, Austin, Texas 78701-1495. To be considered, proposals must be postmarked no later than January 19, 1998, or hand delivered and received by 5:00 p.m. on January 19, 1998. Further information regarding this request for proposals may be obtained by contacting Felix Arambula III, General Land Office, at (512) 463-8365.

The GLO reserves the right to accept or reject any or all proposals. If further information is required from any prospective consultant, the GLO may request additional or clarifying information without notice to other responders.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717120
Garrry Mauro
Commissioner
General Land Office
Filed: December 22, 1997

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General Services Commission

Notice of Consultant Proposal Request

INTRODUCTION: Notice of Consultant Proposal Request (CPR) for selection of professional sustainability consulting services for the Sustainable School Design Demonstration Program. In accordance with the provisions of Texas Government Code, Chapter 2254, the State Energy Conservation Office (SECO) of the General Services Commission (GSC) invites proposals which contain statements of interest and qualifications relative to the selection of professional sustainability consulting services.

BACKGROUND: The GSC SECO administers and delivers a variety of energy efficiency programs which significantly impact energy cost and consumption in the institutional, industrial, transportation, and residential sectors. More specifically, these programs provide (1) technical resources to institutionalize energy efficiency, (2) financial assistance in completing energy retrofits, and (3) educational materials to make the public aware of the necessity for an energy efficient society. The GSC/SECO has received funding from federal grants and oil overcharge court settlements. These monies have funded a myriad of energy-related programs focusing on energy efficiency.

GOAL: The goal of the Sustainable School Design Demonstration Program (SSDDP) is to accelerate the implementation of sustainability in Texas Public School facilities. By increasing public awareness of and design professional's expertise and experience with sustainability, the GSC/SECO intends to develop the infrastructure necessary to replicate sustainability in future Texas Public Schools. In addition to demonstrating the multiple benefits of natural daylighting, improved indoor air quality and energy efficiency, the GSC/SECO intends to demonstrate that sustainability in school environments contributes to

healthier, happier and higher performing students. Through a Request For Proposals (RFP), the GSC/SECO intends to select an Independent School District or Public School to participate in and benefit from professional design assistance services of nationally recognized practitioners in sustainable school design selected through this CPR.

PAYMENT OF PROFESSIONAL SERVICES: Professional services provided under this contract will be paid by the General Services Commission, State Energy Conservation Office, through the selected school district's contract for Architectural/Engineering (A/E) services, for a period of 24 months, with a 12-month renewable option.

ANTICIPATED SERVICES: The following are examples of typical services requested: 1) Participate in conceptual design meetings, with the Architectural/Engineering team selected by the school district, to minimize the energy loads on the building by massing the building to take advantage of daylighting, shading and water minimization strategies. 2) Perform computer software modeling to analyze the basic thermal and daylighting performance and simultaneously act as a design massing tool to assist in the design process. 3) Promote an integrated design team approach which involves all disciplines during each stage of the design process to investigate alternatives, question assumptions and research approaches to optimize building performance. 4) Explore strategies to increase the performance of the glass to a reasonable, cost effective level, including investigation of sun shading options and examination of insulation values to optimize their effectiveness. 5) Prepare daylighting optimization studies, including the use of light shelves and clerestories, while maintaining cost efficiencies of the project. 6) Recommend options for selecting an HVAC configuration which meets functional requirements and cost effectively minimizes energy usage. 7) Recommend options to improve indoor air quality and maintain energy efficiency. 8) Recommend options for material selection to reduce or eliminate materials that break down into fine particles, off-gas toxic substances, and that might cause thermal bridging or allow heat gain or loss which would reduce the energy efficiency of the building. 9) Recommend options for material selection with regard to low-embodied energy, recycled content and potential for recycling in the future. 10) Prepare a life cycle cost analysis when all major building components have been identified to define the incremental capital cost (if any) over standard construction, the anticipated energy savings, and the payback period. 11) Prepare a commission plan for the project which involves the entire team to ensure the quality and integrity of the entire building. 12) Prepare written reports at the end of each major phase of the design process which evaluate the project status and recommend process improvements.

COPIES OF THE CPR: To receive an information packet containing the requirements and procedures regarding this CPR, contact Tracy Bryson, Administrative Technician, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047, Phone 512-463-9768, Facsimile 512-463-7806.

CLOSING DATE: Offers of consulting services must be postmarked or received by the GSC/SECO no later than 5:00 p.m., Central Standard Time, February 9, 1998. Offers received after that time, and offers submitted by facsimile will not be accepted.

SELECTION CRITERIA: Offers for consulting services will be reviewed by a committee of GSC/SECO staff and/or other technical advisors. Offers will be evaluated based on the following criteria: 1) Demonstrated Experience (40%) The consultant should describe the demonstrated competence of the team of sustainability professionals (team), knowledge and qualifications in the areas of anticipated services outlined above including professional registration. Familiarity with laws governing public school construction for the State of Texas is preferred. 2) Completed Projects (30%) The consultant should be able to clearly demonstrate his/her experience with sustainability in buildings through his/her previous projects. 3) Action Plan (20%) The consultant should effectively describe the course of action to be taken by all parties involved in order to maximize sustainable strategies for the school and for the State of Texas. 4) Consultant Availability (10%) The consultant should describe the team's current commitments and his/her ability to manage the time commitments of the individuals assigned to the project.

EQUAL OPPORTUNITY: Any contract resulting from this CPR shall contain provisions prescribed by the GSC/SECO which prohibit discrimination in employment.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717059
Judy Ponder
General Counsel
General Services Commission
Filed: December 22, 1997

Notice of Request for Proposals

INTRODUCTION: Notice of Request for Proposals (RFP) for the selection of an Independent School District or Public School to receive funding for professional design assistance services during the design and construction of a new sustainable school facility. In accordance with Texas Government Code, §2305.038, the State Energy Conservation Office (SECO) of the General Services Commission (GSC) invites proposals from qualified Independent School Districts and Public Schools with a demonstrated commitment to energy efficiency and sustainable design for selection to participate in a Sustainable School Design Demonstration Project for new construction.

The selected Independent School District or Public School shall be among the fastest growing schools in the state in order to qualify. The fastest growing schools shall be defined as those with a 5-year positive change in total student enrollment from the 1991-1992 school year to the 1996-1997 school year in excess of 1,000 students consistent with detailed statistics compiled by the Texas Education Agency. The entity selected shall receive funding of up to $400,000 for professional sustainable design assistance services and technical support during the design, construction, and commissioning phases of a new school facility that demonstrates exemplary sustainability features such as daylighting, energy efficiency, and regionally-sourced materials.

BACKGROUND: The GSC/SECO administers and delivers a variety of energy efficiency programs which significantly impact energy cost and consumption in the institutional, industrial, transportation, and residential sectors. More specifically, these programs provide (1) technical resources to institutionalize energy efficiency, (2) financial assistance in completing energy retrofits, and (3) educational materials to make the public aware of the necessity for an energy efficient society. The GSC/SECO has received funding from federal grants and oil overcharge court settlements. These monies have funded a myriad of energy-related programs focusing on energy efficiency.

GOAL: The goal of the Sustainable School Design Demonstration Program (SSDDP) is to accelerate the implementation of sustainability in Texas Public School facilities. By increasing public awareness of and design professional's expertise and experience with sustainability, the GSC/SECO intends to develop the infrastructure necessary to replicate sustainability in future Texas Public Schools. In addition to demonstrating the multiple benefits of natural daylighting, improved

indoor air quality and energy efficiency, the GSC/SECO intends to demonstrate that sustainability in school environments contributes to healthier, happier and higher performing students. Through this RFP, the GSC/SECO intends to select an Independent School District or Public School to participate in and benefit from professional design assistance services of nationally recognized practitioners in sustainable school design. Current projects demonstrating the benefits of sustainability in public buildings include the Robert E. Johnson State Office Building in Austin, Texas.

COPIES OF THE RFP: To receive an information packet containing the requirements and procedures regarding this RFP, contact Tracy Bryson, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047, Phone 512-463-9768, Facsimile 512-463-7806.

PRE-PROPOSAL CONFERENCE: All potential proposers are encouraged to attend a pre-proposal conference to be held on January 16, 1998, from 10:00 AM until 11:00 AM at the General Services Commission State Energy Conservation Office, located at 200 E. 10th Street, Suite 212, Austin, Texas. The purpose of this conference is to answer any questions regarding this RFP, the required format, the selection criteria or the evaluation process. IT IS NOT MANDATORY TO ATTEND THE PRE-PROPOSAL CONFERENCE.

WRITTEN QUESTIONS: All questions regarding this RFP that arise after the Pre-Proposal Conference must be submitted in writing to Lee Gros, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas, 78711-3047, or transmitted to facsimile number (512) 463-7806 by 5:00 p.m., Central Standard Time, January 23, 1998.

CLOSING DATE: Proposals must be postmarked or received by the GSC/SECO no later than 5:00 p.m., Central Standard Time, February 9, 1998. Proposals received after that time, and proposals submitted by facsimile will not be accepted.

SELECTION CRITERIA: Proposals will be reviewed by a committee of GSC/SECO staff and/or other technical advisors. Proposals will be evaluated based on the following criteria: *1) Demonstrated Commitment (30%)* The proposal should clearly demonstrate the level of commitment from the school district and the Architectural/Engineering (A/E) team to (1) incorporate sustainability into this and all future projects; (2) foster an integrated design approach; and (3) showcase this facility and transfer technology. *2) Proposed Facility/Timeline (15%)* The proposal should effectively describe the size and type of facility(ies) proposed and the anticipated project delivery schedule. *3) Adequacy of Budget (25%)* The proposal should include a detailed budget analysis including building cost, fixed equipment, site development, professional fees, and contingency. Provide a cost/square foot range for the proposed building construction. *4) Energy Management Efforts (15%)* The proposal should effectively demonstrate the school's effort to improve energy efficiency in existing facilities based on (1) quality of the energy management plan; (2) historical trends of EUI and ECI; and (3) level of student involvement in energy conservation practices. *5) Ability to Assign Experienced/Qualified Personnel (10%)* The proposal should clearly state the experience, qualifications, and time commitments of the individuals on the A/E team to deliver high quality, energy efficient school projects on time and within budget. Knowledge of sustainable design concepts, integrated design team approach, and whole building commissioning is preferred. *6) 5-Yr. Growth (5%)* The proposal should indicate the actual 5-year change in the total number of students from the 1991-92 school year to the 1996-97 school year.

EQUAL OPPORTUNITY: Any contract resulting from this RFP shall contain provisions prescribed by the GSC SECO prohibiting discrimination in employment.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717060
Judy Ponder
General Counsel
General Services Commission
Filed: December 22, 1997

Texas Department of Health

Corrections of Error

The Texas Department of Health proposed repeal to 25 TAC §289.122 and new 25 TAC §289.226. The rules appeared in the December 5, 1997, issue of the *Texas Register*, (22 TexReg 11982 and 11983).

On page 11986, §289.226(m)(2), the sentence was split after the word subsection, and should read:

"(2) No registrant shall engage any person for services described in subsection (e) of this section until such person provides evidence of registration with the agency"

Corrections of Error

The Texas Department of Health proposed amendments to 25 TAC §§115.1, 115.11, 115.12, 115.21, 115.25, 115.27, 115.28, 115.51, and 115.52. The rules appeared in the December 5, 1997, issue of the *Texas Register*, (22 TexReg 11941).

On page 11943, last paragraph of the preamble, a public hearing was posted for, "Thursday, December 19, 1997, at 10:00 a.m., in room K-100." The date, time, and location are correct; however the day, Thursday, is incorrect and should be "Friday".

On page 11945, concerning §115.21(b)(1)(A), "(relating to Rights of the Elderly)" is partially underlined, and should not be underlined at all.

On page 11945, concerning §115.21(b)(2)(G)(i), "(relating to Rights of the Elderly)" is partially unerlined, and should be completely underlined.

Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control, Texas Department of Health (department), filed complaints against the following registrants: Richard J. Montoya, D.D.S., El Paso, R22662; Al D. Lowe, D.D.S., Amarillo, R22601; Marion George Ford, Jr., D.D.S., Houston, R06268; Tanglewood Dental Group, Houston, R06298; John W. Fallis, D.D.S., Dallas, R09306; Mark E. Gannaway, D.D.S., Richardson, R11227; Charles L. Moughon, D.D.S., Mineral Wells, R14249; Brad Schoonover, D.D.S., Lancaster, R18889; Arthur W. Coleman, D.D.S. and Associates, Houston, R20380; Cornett Chiropractic, Houston, R18887; Eastside Family Chiropractic, Inc., El Paso, R18876; Tracy A. Sanders, D.C., Houston, R15127; Advanced Radiology, Inc., Houston, R22632; Quint/Stevens and Associates, Los Angeles, California, R22314; Comprehensive Foot Care, San Antonio, R21366; North Belt

East Medical Clinic, P.A., Houston, R10053; Sharpstown General Hospital, Houston, Z00310; BMC Software, Inc., Houston, R22564.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 22, 1997.

TRD-9717127
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1997

Notice of Request for Proposals for Examination of Medical Physicists

The Texas Board of Licensure for Professional Medical Physicists, Texas Department of Health (department), reissues the invitation for applications from applicants experienced in examination administration as published in the November 14, 1997, issue of the *Texas Register* (22 TxReg 11137). The applicant selected will be able to develop, generate, and score one or more of the specialty examinations for professional medical physicists. The specialty examinations cover the knowledge requirements for diagnostic radiological physics, therapeutic radiological physics, nuclear medicine physics, and medical health physics.

The written examination to be developed will consist of a minimum of 300 multiple-choice items, and will be administered by department personnel, under the direction of the department's psychometrician. Answers to examination items will be placed on machine-scannable answer sheets and scored in a mutually agreeable period of time. Approximately 20 candidates are expected to take the examination, scheduled twice a year in Austin, Texas. The applicant will develop, generate, and score examinations beginning in 1998, with the option of being considered for each calendar year thereafter.

Selection of the applicant will be based on the applicant's demonstration of competence in examination development, validation, generation, and score reporting. Applicants shall indicate total examination costs, as well as a breakdown, to reflect actual cost per candidate.

Applicants interested in submitting an application shall contact Jeanette Hilsabeck, Executive Secretary, Texas Board of Licensure for Professional Medical Physicists, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (512) 834-6655 or fax (512) 834-6677 for information regarding the full application. Applications are due in this office no later than February 5, 1998.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716916
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 18, 1997

Schedules of Controlled Substances

SCHEDULES OF CONTROLLED SUBSTANCES

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES, ESTABLISHED JANUARY 1, 1998, SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

January 1, 1998

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Texas Department of Health, Bureau of Food and Drug Safety, 1100 West 49th Street, Austin, Texas 78756. The telephone number is (512) 719-0237.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

- Schedule I opiates

the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Allylprodine;
(3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
(4) Alpha-methylfentanyl or any other derivative of Fentanyl;
(5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);
(6) Benzethidine;
(7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);

(8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]- N-phenylpropanamide);

(9) Betaprodine;

(10) Clonitazene;

(11) Diampromide;

(12) Diethylthiambutene;

(13) Difenoxin;

(14) Dimenoxadol;

(15) Dimethylthiambutene;

(16) Dioxaphetyl butyrate;

(17) Dipipanone;

(18) Ethylmethylthiambutene;

(19) Etonitazene;

(20) Etoxeridine;

(21) Furethidine;

(22) Hydroxypethidine;

(23) Ketobemidone;

(24) Levophenacylmorphan;

(25) Meprodine;

(26) Methadol;

(27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;

(28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(29) Moramide;

(30) Morpheridine;

(31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(32) Noracymethadol;

(33) Norlevorphanol;

(34) Normethadone;

(35) Norpipanone;

(36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);

(37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(38) Phenadoxone;

(39) Phenampromide;

(40) Phencyclidine;

(41) Phenomorphan;

(42) Phenoperidine;

(43) Piritramide;

(44) Proheptazine;

(45) Properidine;

(46) Propiram;

(47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(48) Tilidine; and

(49) Trimeperidine;

- Schedule I opium derivatives

the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon;

- Schedule I hallucinogenic substances

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(3) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(4) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(5) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(6) 5-methoxy-3,4-methylenedioxy-amphetamine;

(7) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methyl-phenethylamine; paramethoxyamphetamine; PMA);

(8) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(9) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(10) 3,4-methylenedioxy-amphetamine;

(11) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(12) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(13) 3,4,5-trimethoxy amphetamine;

(14) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(15) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(16) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(17) Dimethyltryptamine (some trade and other names: DMT);

(18) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(19) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; tabernanthe iboga);

(20) Lysergic acid diethylamide;

(21) Marihuana;

(22) Mescaline;

(23) N-ethyl-3-piperidyl benzilate;

(24) N-methyl-3-piperidyl benzilate;

(25) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) Psilocybin;

(28) Psilocin;

(29) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

(30) Tetrahydrocannabinols;

(31) Synthetic equivalents of the substances contained in the plant *Cannabis*, or in the resinous extractives of that plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as: delta-1 cis or trans tetrahydrocannabinol, and their optical isomers; delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers; (Compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized);

(32) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl)cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(33) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

- Schedule I stimulants

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine);

- Schedule I depressants

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone; and

(2) Methaqualone.

SCHEDULE II

Schedule II consists of:

- Schedule II substances, vegetable origin or chemical synthesis

the following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;
(1-2) Ethylmorphine;
(1-3) Etorphine hydrochloride;
(1-4) Granulated opium;
(1-5) Hydrocodone;
(1-6) Hydromorphone;
(1-7) Metopon;
(1-8) Morphine;
(1-9) Opium extracts;
(1-10) Opium fluid extracts;
(1-11) Oxycodone;
(1-12) Oxymorphone;
(1-13) Powdered opium;
(1-14) Raw opium;
(1-15) Thebaine; and
(1-16) Tincture of opium;

(2) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in

liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy;

- Opiates

the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

*(26) Remifentanil; and

(27) Sufentanil;

- Schedule II stimulants

unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts; and

(4) Phenmetrazine and its salts;

- Schedule II depressants

unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital;

- Schedule II hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol); and

(2) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one);

- Schedule II precursors

unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(2) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(3) Immediate precursor to amphetamine and methamphetamine:

(4) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(5) Immediate precursors to phencyclidine (PCP):

(6) 1-phenylcyclohexylamine; and

(7) 1-piperidinocyclohexanecarbonitrile (PCC).

SCHEDULE III

Schedule III consists of:

- Schedule III depressants

unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Lysergic acid;

(6) Lysergic acid amide;

(7) Methyprylon;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane; and

(11) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other

names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon;

- Nalorphine

- Schedule III narcotics

a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

- Schedule III stimulants

unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's

isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and
(4) Phendimetrazine;

- Schedule III anabolic steroids and hormones

anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes the following:

(1) Boldenone;
(2) Chlorotestosterone (4-chlortestosterone);
(3) Clostebol;
(4) Dehydrochlormethyltestosterone;
(5) Dihydrotestosterone (4-dihydrotestosterone);
(6) Drostanolone;
(7) Ethylestrenol;
(8) Fluoxymesterone;
(9) Formebolone;
(10) Mesterolone;
(11) Methandienone;
(12) Methandranone;
(13) Methandriol;
(14) Methandrostenolone;
(15) Methenolone;
(16) Methyltestosterone;
(17) Mibolerone;
(18) Nandrolone;
(19) Norethandrolone;
(20) Oxandrolone;
(21) Oxymesterone;
(22) Oxymetholone;
(23) Stanolone;

(24) Stanozolol;

(25) Testolactone;

(26) Testosterone; and

(27) Trenbolone.

SCHEDULE IV

Schedule IV consists of:

- Schedule IV depressants

except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Estazolam;

(16) Ethchlorvynol;

(17) Ethinamate;

(18) Ethyl loflazepate;

(19) Fludiazepam;

(20) Flunitrazepam;

(21) Flurazepam;

(22) Halazepam;

(23) Haloxazolam;

(24) Ketazolam;

(25) Loprazolam;

(26) Lorazepam;

(27) Lormetazepam;

(28) Mebutamate;

(29) Medazepam;

(30) Meprobamate;

(31) Methohexital;

(32) Methylphenobarbital (mephobarbital);

(33) Midazolam;

(34) Nimetazepam;

(35) Nitrazepam;

(36) Nordiazepam;

(37) Oxazepam;

(38) Oxazolam;

(39) Paraldehyde;

(40) Petrichloral;

(41) Phenobarbital;

(42) Pinazepam;

(43) Prazepam;

(44) Quazepam;

(45) Temazepam;

(46) Tetrazepam;

(47) Triazolam; and

(48) Zolpidem;

- Schedule IV stimulants

unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Pemoline (including organometallic complexes and their chelates);
(9) Phentermine;
(10) Pipradrol; and
(11) SPA [(-)-1-dimethylamino-1,2-diphenylethane];

- Schedule IV narcotics

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and
(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

- Schedule IV other substances

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances, including the substance's salts:

*(1) Butorphanol, including its optical isomers; and
(2) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

- Schedule V narcotics

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts:

(1) Buprenorphine;

- Schedule V narcotics containing non-narcotic active medicinal ingredients

a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

- Schedule V stimulants

unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

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Issued in Austin, Texas, on December 22, 1997.

TRD-9717130
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 22, 1997

♦ ♦ ♦

Health and Human Services Commission

Corrections of Error

The Health and Human Services Commission proposed new 1 TAC §§355.454, 355.456–355.458, 355.722, 355.723, and 355.771–355.773. The rules appeared in the December 19, 1997, issue of the *Texas Register*, (22 TexReg 12363–12369).

The notice incorrectly stated that a joint public hearing on the proposed rules would be conducted with MHMR on January 8, 1998.

The correct date for the hearing is January 7, 1998. The hearing will be held at 8:30 a.m. in the auditorium of the main TDMHMR Central Office Building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas. persons requiring an interpreter for the deaf or hearing impaired should notify Sheila Wilkins, Office of Policy development, at least 72 hours prior to the hearing by calling (512) 206–4516.

Texas Department of Housing and Community Affairs

Notice of Administrative Hearing (MHD1997000518-D)

Manufactured Housing Division

Wednesday, January 7, 1998, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Mack Lamar McGough dba McGough's Mobile Home Service to hear alleged violations of the Act, §7(d) and §17(b) and Rules, §80.125(e)(1) regarding obtaining, maintaining or possessing a valid certificate of registration. SOAH 332-97-2256. Department MHD1997000518-D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717131
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 22, 1997

Correction of Error

The Texas Department of Human Services (DHS) submitted a proposed amendment that was published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12449). Due to a formatting error by the *Texas Register*, the following item was printed incorrectly.

On page 12449, §15.455(e)(5)(D)(iii)(I) the following should be underlined to indicate new language: "prior to August 11, 1993, a..."

Corrections of Error

The Texas Department of Human Services proposed amendments to 40 TAC §§90.42, 90.60, 90.61, 90.65, 90.66, and 90.68. The rules appeared in the November 21, 1997, issue of the *Texas Register*, (22 TexReg 11302 and 11305).

On page 11302, §90.42(c) should include an underline in "Code of Federal Regulations, Part 483, Subpart I [(D)]."

On page 11304, §90.65(b)(6) should include underlining for new material as follows:

(6) The facility shall have a written contract with a fire alarm company or person licensed by the State Fire Marshall's Office [~~of Texas~~] to maintain the fire alarm system semiannually, and the system will be inspected as specified in the contract.

Texas Department of Insurance

Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be risk-assuming carriers under Texas Insurance Code, Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Medical Community Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716949
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 19, 1997

Texas Department of Mental Health and Mental Retardation

Notice of Cancellation of Public Hearing on Medicaid Rates

The Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Health and Human Services Commission hereby gives notice of the cancellation of the public hearing previously scheduled for 10:00 a.m., Friday, January 9, 1998, to receive comments on proposed reimbursements for the following Medicaid programs: state-operated campus-based Intermediate Care Facilities

for the Mentally Retarded (ICF/MR) rates effective January 1, 1998, through December 31, 1998; and, state-operated small ICF/MR rates effective January 1, 1998, through December 31, 1998.

The public hearing to address these Medicaid rates will be rescheduled for a later date and time.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716999
Ann K. Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: December 19, 1997

Texas Natural Resource Conservation Commission

Corrections of Error

The Texas Natural Resource Conservation Commission adopted amendments to 30 TAC §§335.6, 335.9, and 335.15. The rules appeared in the December 5, 1997, issue of the *Texas Register*, (22 TexReg 12060).

On page 12062, §335.9, the last sentence of subsection (a)(2)(C) states, "Upon written request by the generator, the executive director may authorize an extension to the report due date." This sentence should have been inserted into subsection (a)(2) as the fourth sentence instead.

Corrections of Error

The Texas Natural Resource Conservation Commission proposed new 30 TAC §§220.1–220.7. The rules appeared in the December 19, 1997, issue of the *Texas Register*, (22 TexReg 12363–12369).

Text was inadvertently omitted from the seventh paragraph of the proposal preamble. The paragraph should read as follows:

"Proposed §220.3, Responsibilities of the commission, describes the responsibilities of the commission to administer the program, including oversight, fee assessment, use of water quality data in development of agency policies and procedures, and reporting requirements."

Enforcement Orders

An agreed order was entered regarding SOUTHWESTERN WATER CORPORATION, Docket No. 96-0594-MLM-E (Permit No. 13293-001, PWS Nos. 2270166 & 2270054) on December 4, 1997 assessing $51,222. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at 239-3400 or Tom Napier, Enforcement Coordinator at 239-6063, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FISHER AUTO SALES, Docket No. 97-0137-AIR-E (Account No. TA-2219-U) on December 8, 1997 assessing $500. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Hodgson Eckel, Staff Attorney at (512) 239-2195 or David Edge, Enforcement Coordinator at (512) 239-1779, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MODERN, INCORPORATED, Docket No. 97-0371-AIR-E (Account No. HF-0057-V) on December 8, 1997 assessing $10,000. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIVE POINTS SALT WATER DISPOSAL, Docket No. 97-0573-AIR-E (Account No. ML-0181-B) on December 8, 1997 assessing $3,000. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kevin Cauble, Enforcement Coordinator at (512) 239-1874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUSTER CONCRETE AND MATERIALS, INCORPORATED, Docket No. 97-0705-AIR-E (Account No. HV-0044-C) on December 8, 1997 assessing $2,000. in administrative penalties with $400. deferred.

Information concerning any aspect of this order may be obtained by contacting David Edge, Enforcement Coordinator at (512) 239-1779, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HI-PLAINS TRUCK AND BODY, Docket No. 97-0401-AIR-E (Account No. PG-0151-J) on December 8, 1997 assessing $500. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kevin Cauble, Enforcement Coordinator at (512) 239-1874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WINDSOR PARK VETERINARY CLINIC, Docket No. 97-0740-AIR-E (Account No. TH-0674-V) on December 8, 1997.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUNTSMAN PETROCHEMICAL CORPORATION, Docket No. 97-0354-AIR-E (Account No. JE-0052-V) on December 8, 1997 assessing $7,000. in administrative penalties with $1,400. deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHERN CLAY PRODUCTS, INCORPORATED, Docket No. 97-0381-AIR-E (Account No. GG-0029-J) on December 8, 1997.

Information concerning any aspect of this order may be obtained by contacting William C Foster, Staff Attorney at (512) 239-3407 or Sabelyn A Pussman, Enforcement Coordinator at (512) 239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding L AND L MOTORS, INCORPORATED AND LEWIS MOON, Docket No. 97-0111-AIR-E (Account No. DB-1874-R) on December 8, 1997 assessing $500. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara Salmanson, Staff Attorney at (512) 239-1738 or Kevin Cauble, Enforcement Coordinator at (512) 239-1874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAINTAIN, INCORPORATED, Docket No. 96-1197-AIR-E (Account No. DB-3232-D) on December 8, 1997 assessing $4,000. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small, Staff Attorney at (512) 239-2940 or Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANGER, CITY OF, Docket No. 97-0334-MWD-E (Permit No. 11557-001) on December 8, 1997 assessing $15,200. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roxanne Cook, Enforcement Coordinator at (512) 239-4496, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIOGA, CITY OF, Docket No. 97-0580-MWD-E (Permit No. 13199-001) on December 8, 1997 assessing $2,100. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TORRES DICKERSON, Docket No. 97-0469-MSW-E (Unauthorized MSW Disposal Site No. 33477, Enforcement ID No. 2888) on December 8, 1997 assessing $9,200. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113 or Tim Haase, Enforcement Coordinator at (512) 239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THALIA WATER SUPPLY CORPORATION, Docket No. 96-0885-PWS-E (PWS No. 0780013, CCN No. 12491) on December 8, 1997 assessing $880. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHNNY BRADSHAW DBA RIDGE ROCK GROCERY & COACH'S BBQ PUBLIC WATER SYSTEM, Docket No. 96-1494-PWS-E (PWS No. 0480018) on December 8, 1997 assessing $8,146. in administrative penalties with $8,146. deferred.

Information concerning any aspect of this order may be obtained by contacting Claudia A Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FORD, MIKE DBA TOWN AND COUNTRY MOBILE HOME PARK, Docket No. 96-1652-PWS-E (PWS No. 0720022) on December 8, 1997 assessing $1,680. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding COMRADO, MATT DBA MATTYS PATTYS, INCORPORATED, Docket No. 96-1952-PWS-E (PWS No. 1012226) on December 8, 1997 assessing $1,030. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding WOLFE AIR PARK WATER SYSTEM, Docket No. 96-1610-PWS-E (PWS No. 0200409) on December 8, 1997 assessing $630. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DRAGOO, DONALD DBA UNION HILL WATER SYSTEM, Docket No. 96-1672-PWS-E (PWS No. 1260107, CCN No. 12047) on December 8, 1997 assessing $630. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOMMY MOSS CORPORATION AND MR. TAJDIN MOMIN, Docket No. 96-0751-PST-E (Facility No. 41857, Enforcement ID No. E11237) on December 11, 1997 assessing $15,400. in administrative penalties with $4,620. deferred.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0600 or Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717132
Eugenia K. Brumm, Ph. D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 22, 1997

Notice of Award

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of a consulting services contract award for the purpose of advising the Corpus Chrisiti Bay National Estuary Program (CCBNEP) in the development of a Public Access Plan

concerning the present condition of each existing public access site within the CCBNEP study area.

The notice for request for proposals was published in the September 12, 1997, issue of the Texas Register.

Description of Services. The consultant will provide information and advice to the Corpus Christi Bay National Estuary Program regarding the development of a public access plan. The public access plan will profile the present conditions of each existing public access site within the CCBNEP Study Area and include possible improvements to each site. The following major products will be produced: Project Work Plan, Progress Report; Final Report, March 31, 1998.

Effective Date and Value of Contract. The contract will be effective from November 1, 1997, until April 30, 1998. The total cost of the contract is $30,000.

Name of the Contractor. The contract has been awarded to Shiner, Moseley and Associates, Inc., 2820 South Padre Island Drive, Suite 210, Corpus Christi, Texas 78415.

Persons who have questions concerning this award may contact Richard Volk, Corpus Christi Bay National Estuary Program, Natural Resources Center, Suite 3300, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 980-3420.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717029
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 19, 1997

Notice of Public Hearing (Chapters 37 and 330)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992) and Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding the Used/Scrap Tire rules.

The proposed rules are needed because the 75th Texas Legislature did not pass a tire bill which would have prevented the sunset provisions of Health and Safety Code Chapter 361, Subchapter P from becoming effective. However, since a portion of the statute has no sunset provision, there will continue to be a tire program to address the requirements of this section, relating to the storage, transportation, and disposal of used or scrap tires. In addition, the agency was appropriated approximately $9 million to continue the cleanup of illegal waste tire dump sites. Remediation of these sites will be conducted through a competitive bid process. Thus, due to the sunset provisions of existing law, a repeal of certain portions of the current waste tire rules under 30 TAC Chapter 330, Subchapter R is needed as well as certain amendments and new sections to address new methods for the management of waste tires.

A public hearing on this proposal will be held in Austin on January 27, 1998 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97140-330-WS. Comments must be received by 5:00 p.m., February 2, 1998. For further information, please contact Debbie Bohl, Municipal Solid Waste Division, (512) 239-0044 or Ray Austin, Waste Policy and Regulations Division, (512) 239-6814.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716934
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 19, 1997

Notice of Public Hearing (Exemptions from Permitting)

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 106.

The commission proposes amendments to §106.2, concerning Applicability, §106.224, concerning Aerospace Equipment and Parts Manufacturing, §106.321, concerning Metal Melting and Holding Furnaces, §106.373, concerning Refrigeration Systems, §106.418, concerning Printing Presses, and §106.454, concerning Degreasing Units. The commission also proposes the repeal of §106.222, concerning Woodworking Shops.

The amendment to §106.321 would expand the scope of the section to allow additional facilities to use the exemption from permitting and the amendment to §106.373 would improve the human health protectiveness of the section. The other amendments would correct errors of reference in the existing rule language. Section 106.222 has been replaced by a more comprehensive section and is no longer needed.

A public hearing on the proposal will be held January 26, 1998, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97179-106-AI. Comments must be received by 5:00 p.m., February 2, 1998. For further information or questions concerning this proposal, please contact Kerry Drake, Office of Air Quality, (512) 239-1112 or Beecher Cameron, Office of Policy and Regulatory Development, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716923
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 19, 1997

Notice of Public Hearing

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 117 and the SIP.

The commission proposes amendments to §117.105, concerning Emission Specifications, §117.113, concerning Continuous Demonstration of Compliance, §117.205, concerning Emission Specifications, §117.211, concerning Initial Demonstration of Compliance, §117.213, concerning Continuous Demonstration of Compliance, §117.451, concerning Applicability, §117.510, concerning Compliance Schedule for Utility Electric Generation, §117.520, concerning Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources, §117.530, concerning Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources, §117.540, concerning Phased Reasonably Available Control Technology (RACT), and §117.601, concerning Gas-Fired Steam Generation. The proposed changes will extend the compliance date and make monitoring requirements more flexible in Chapter 117.

A public hearing on the proposal will be held February 9, 1998, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97181-117-AI. Comments must be received by 5:00 p.m., February 9, 1998. For further information, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 18, 1997.

TRD-9717044
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 22, 1997

Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Government Code, Subchapter B, Chapter 2001, and the Texas Health and Safety Code, §382.017, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning 30 TAC Chapter 309, relating to Domestic Wastewater Discharge and Effluent Limitations Plant Sitings.

The proposed amendments to §§309.1-309.4 and §;309.10-309.14 will update requirements relating to effluent limitations and facility location standards. The proposed changes will ease the administrative burden on the commission as well as provide added flexibility to those regulated by the rules by clarifying allowances for case-by-case reviews of modifications, allowing the use of smaller disinfection basins under certain conditions, and simplifying the methods used to meet the buffer zone requirements for the siting of wastewater treatment facilities to abate nuisance conditions. The proposed changes to the distance requirements from water wells and other sources of drinking water conform to other agency rules contained in Chapter 290 of this title (relating to Water Hygiene).

A public hearing on the proposal will be held in Austin on Monday, January 12, 1998, at 10:00 a.m. at the TNRCC Office Complex, Building F, Room 2210, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion among members of the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should refer to Rule Log Number 96107-309-WT and may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they are faxed. Written comments must be received by 5:00 p.m., January 26, 1998. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the Texas Register . For further information, please contact Randall B. Wilburn, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-5768.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 19, 1997.

TRD-9717032
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 22, 1997

Request for Proposal

The Texas Natural Resource Conservation Commission (TNRCC), under the authority granted in the Consulting Services Procurement Act, Texas Government Code, Section 2254, Chapter B, solicits qualified organizations to submit proposals to assist and advise the TNRCC's efforts to keep the shorelines of Texas lakes and rivers clean and educate the public on the importance of this issue.

Project Objective. The Clean Texas 2000 Lake and River Cleanup Program will include: 1) Propose an approach or program to continue action, 2) Organize and conduct approximately 100 lake or river cleanups throughout the State of Texas, 3) Develop an educational aspect to teach the importance of keeping lakes and rivers clean, and 4) Report on data collected from activities. Primary funding for this contract will be provided by State Fee Funds.

Proposal Contact Information. Prior to submitting proposals, proposers are encouraged to call Dana Macomb, Office of Pollution Prevention and Recycling, at (512) 239-4745, and request a Clean Texas 2000 Lake and River Cleanup Program Information Packet, which contains details concerning TNRCC's intended scope of work for this project. The Clean Texas 2000 Lake and River Cleanup Program Information Packet will be available for distribution after December 22, 1997.

Proposal Requirements. All proposers must describe the experience and professional qualifications they would bring to the proposed project. Proposers must also set forth clearly and specifically those procedures and methodologies they would use in the course of project design and development.

Submittal Procedures and Response Deadline. In order to be considered, proposals must be prepared and submitted in accordance with the request for proposals (RFP) as part of the Clean Texas 2000 Lake and River Cleanup Program Information Packet. Any qualified organization interested in submitting a proposal must provide one original and three copies of the proposal by certified mail, personal delivery, or express mail as specified in the RFP. Proposals must be received before 3:00 p.m. Central Standard time on January 16, 1998. In keeping with environmentally sound practices, proposals must be printed on recycled-content paper using both sides. Late proposals will not be accepted. Upon submittal, the proposals will become the property of the State of Texas. The contents of all proposals shall be considered public record, therefore no confidential, proprietary, or trade secret information should be submitted.

Contract Budget. The consulting contract to be established under this request for proposal will provide for compensation on the basis of invoices submitted by the Qualified Organization, up to the amount contracted for this project. The total budget for this project is $100,000 and it is not anticipated that appropriations will be made for this purpose in future years. This funding is intended primarily as "seed" money and the TNRCC hopes the AWARDED VENDOR will continue the project in future years using resources from alternative sources.

Procedure for Ranking Proposers. Proposals will be evaluated based on criteria established by the TNRCC. The Program Information Packet fully describes the criteria by which the Proposer's submission will be scored. This criteria focuses on the proposer's experience and qualifications relevant to this program, including: Verifiable experience designing and conducting simultaneous and statewide community events using a network of statewide members or affiliates; expertise in the organization of volunteer based events on a local or grassroots level; record of successfully obtaining funding and donations for community events; familiarity with state and federal environmental programs, including Clean Texas 2000; experience in developing public education campaigns and education program components, effectiveness of the proposal; and total fee of the proposal. The proposed schedule for completion and cost for services will also be considered.

Final Negotiations. After an initial evaluation of proposals, the TNRCC will choose the best qualified proposal based on the selection criteria and begin negotiating a contract. If the TNRCC is unable to negotiate a satisfactory contract with this proposer, the TNRCC will formally end negotiations with this proposer and begin negotiations with the next best qualified proposer. Negotiations will continue in this manner until a satisfactory contract is secured.

Issued in Austin, Texas, on December 23, 1997.

TRD-9717147
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: December 23, 1997

North Texas Tollway Authority

Request for Proposals

The following request for proposals for providing aerial photography and photogrammetry services is filed under the provisions of Texas Government Code, Chapter 2254, Subchapter A.

The North Texas Tollway Authority (the "NTTA") is soliciting statements of interest and qualifications for aerial photography and photogrammetry services for the Southwest Parkway Project in Fort Worth, Texas.

The services to be performed are described below:

1. Aerial photography of the proposed alignment

2. Photo Control

3. Analytical aerotriangulation required for digital mapping

4. Digital planimetric mapping of the proposed roadway alignment

5. Digital terrain model (DTM) mapping of the proposed roadway alignment

6. Edited contours (one foot intervals) from the digital terrain model mapping

7. Digital orthophoto rectification

A proposal packet has been prepared and will be issued to each firm filing a written notice that it desires to respond and which requests the packet in writing.

Each firm responding shall indicate its proven experience in producing quality digital mapping on similar projects and provide references including the name, address, and phone number of the person most closely associated with the work. Experience will be a factor in the selection process.

If a firm chooses to file its proposal, it shall include a statement regarding the affirmative action program of the firm and shall include a statement that the responding firm has familiarized itself with the NTTA Historically Underutilized Business Policy and will conform to that policy.

Proposals filed will be reviewed by a staff selection committee to identify those most qualified and experienced respondents who may be interviewed by the committee. The final selection will be made

following completion of the interviews, if any, and negotiation of a satisfactory fee.

Questions concerning this assignment shall be directed to James W. Griffin, Chief Engineer, North Texas Tollway Authority, (214) 522-6200.

Each interested consultant should submit four (4) copies of its proposal to perform the services being sought of a minimum number of pages, printed on both sides of recycled paper needed to provide the necessary information to the North Texas Tollway Authority, 3015 Raleigh Street, P.O. Box 190369, Dallas, Texas 75219-0639 (214) 522-6200. The deadline for receipt of qualifications will be 4:45 p.m., January 14, 1998.

Issued in Dallas, Texas, on December 23, 1997.

TRD-9717141
James W. Griffin, P.E.
Chief Engineer
North Texas Tollway Authority
Filed: December 23, 1997

Public Utility Commission of Texas

Notice of Application for Approval of Intralata Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule 23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas on December 11, 1997, an application for approval of intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103.

Project and Title Number. Application of W.T. Services, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to SUBSTANTIVE RULE 23.103. Project Number 18464.

The Application. W.T. Services, Inc. (WTS) requests approval of an implementation plan which provides a proposal that would provide customers the ability "to route automatically without the use of access codes, their telecommunications to the telecommunications services provider of their designation" for intraLATA toll calls. WTS will implement the full two-primary interexchange carrier (PIC) selection methodology as established in P.U.C. SUBSTANTIVE RULE 23.103. With the full two-PIC methodology, customers will be able to presubscribe to the same or a different participating telecommunications carrier for all intraLATA toll calls.

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 call the commission's Office of Customer Protection at (512) 936-7120 on or before January 12, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716941
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 1997

Notices of Application for Reciprocal Approval of Final Order Pursuant to P.U.C. Procedural Rule 22.263(d)

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 21, 1997, for approval of a final order of another state regulatory agency pursuant to P.U.C. Procedural Rule 22.263(d).

Docket Title and Number: Application of EagleNet, Inc. for Reciprocal Approval of a Final Order Pursuant to P.U.C. Procedural Rule 22.263(d). Docket Number 18386 before the Public Utility Commission of Texas.

The Application: In Docket Number 18386, EagleNet, Inc. requests approval of Final Order Number 416101 issued by the Oklahoma Corporation Commission on September 22, 1997. The order by the Oklahoma Corporation Commission approves revisions to EagleNet, Inc.'s tariffs which it finds are beneficial to the member subscribers and are in the public interest. There are 39 Texas customers affected by the order which represents less than 1% of EagleNet, Inc.'s total customer base.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before January 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716873
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 1997

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 21, 1997, for approval of a final order of another state regulatory agency pursuant to P.U.C. Procedural Rule 22.263(d).

Docket Title and Number: Application of Panhandle Telephone Cooperative, Inc. for Reciprocal Approval of a Final Order Pursuant to P.U.C. Procedural Rule 22.263(d). Docket Number 18385 before the Public Utility Commission of Texas.

The Application: In Docket Number 18385, Panhandle Telephone Cooperative, Inc. requests approval of Final Order Number 416102 issued by the Oklahoma Corporation Commission on September 22, 1997. The order by the Oklahoma Corporation Commission approves revisions to Panhandle Telephone Cooperative, Inc.'s tariffs which it finds are beneficial to the member subscribers and are in the public interest. There are 219 Texas customers affected by the order which represents 2% of Panhandle Telephone Cooperative, Inc.'s total customer base.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before January 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 17, 1997.

TRD-9716874
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: December 17, 1997

Notice of Application for Temporary Waiver of Requirements Under P.U.C. Substantive Rule 23.106(j)(3) and (4)

Notice is given to the public of the filing with the Public Utility Commission of Texas on December 11, 1997, a petition for exemption from the reporting requirements of P.U.C. SUBSTANTIVE RULE 23.106(j)(3) and (4).

Project and Title Number. Application of Industry Telephone Company for Temporary Waiver of Requirements Under P.U.C. SUBSTANTIVE RULE 23.106(j)(3) and (4). Project Number 18463.

The Application. Industry Telephone Company (Industry) requests an exemption from the requirements of P.U.C. SUBSTANTIVE RULE 23.106(j)(3) and (4) because of the technical incapability of its billing system. P.U.C. SUBSTANTIVE RULE 23.106(j)(3) requires telecommunications utilities providing local exchange service, that also provide billing services for a primary interexchange carrier ("PIC"), to print the name and telephone of both the local exchange and primary interexchange providers on the first page of the customer's combined bill for local and interexchange services. Subsection (j)(3), however, includes a good cause waiver provision in exchanges served by incumbent local exchange companies serving 31,000 access lines or less. Subsection (j)(4) requires that the applicant include a statement in the bill to inform the customer that if the customer believes that the interexchange carrier ("IXC") named in the bill is not the customer's chosen IXC, then the customer may contact the commission.

Industry serves approximately 1,845 access lines within the state of Texas. Because Industry is unable to comply with all the requirements contained in P.U.C. SUBSTANTIVE RULE 23.106(j)(3) and (j)(4) due to its billing system limitations, Industry requests a six month waiver until such time it is technically able to comply with the full requirements of the rule.

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 call the commission's Office of Customer Protection at (512) 936-7120 on or before January 12, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716917
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 1997

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 12, 1997, to amend a certificate of convenience and necessity pursuant to §§14.001, 52.002, 54.001, 54.005, 54.052 - 54.054, and 54.258 of the Public Utility Regulatory Act. A summary of the application follows.

Docket Title and Number: Application of Wes-Tex Telephone Cooperative, Inc. to Amend Certificate of Convenience and Necessity within Howard County, Docket Number 18468 before the Public Utility Commission of Texas.

The Application: In Docket Number 18468, Wes-Tex Telephone Cooperative, Inc. requests approval to amend the boundary between its Sandspring exchange and Southwestern Bell Telephone Company's Big Spring exchange. The proposed revision will transfer a small area of Southwestern Bell Telephone Company's Big Spring exchange to Wes-Tex Telephone Company's Sandspring exchange in order to allow Wes-Tex Telephone Cooperative, Inc. to serve the entire York Windpower Corporation facility.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before January 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on December 18, 1997.

TRD-9716918
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 1997

Notice of Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan

Notice is given to the public of the filing with the Public Utility Commission of Texas (the commission) on December 22, 1997, an order initiating a proceeding to determine the support amount available under the Texas High Cost Universal Service Plan (THCUSP).

Docket Title and Number: Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan. Docket Number 18515.

The Proceeding: Pursuant to the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. 11.001-63.063 (Vernon 1998) (PURA), Chapters 51 and 56; the federal Telecommunications Act of 1996, §254; and Public Utility Commission Substantive Rules 23.133 and 23.147(d)(2), a proceeding is hereby initiated for purposes of determining the base support amount available under THCUSP.

Issues to be addressed in this proceeding shall include but not be limited to: the per-line cost of providing services using a forward-looking economic cost methodology, determining Texas- specific cost inputs, determining the benchmark or the per-line amount above which THCUSP will be provided, and determining the appropriate rates for incumbent local exchange carriers (ILECs) to reduce in order to offset THCUSP, and considering issues related to customer mapping.

Parties interested in participating in this proceeding shall file a list of issues by January 13, 1998. Interested parties may file responsive comments to the list of issues on January 16, 1998.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936- 7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This proceeding has been assigned Docket Number 18515.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717122

Rhonda Dempsey
Rules Coordinator
Public Utility of Commission of Texas
Filed: December 22, 1997

Notice of Compliance Proceeding for Implementation of the Small and Rural Incumbent Local Exchange Companies Services Plan

Notice is given to the public of the filing with the Public Utility Commission of Texas (the commission) on December 22, 1997, an order initiating a proceeding to establish the recovery mechanism for Local Exchange Companies (LECs) serving the study areas of small or rural incumbent LECs (ILECs).

Docket Title and Number: Compliance Proceeding for Implementation of the Small and Rural Incumbent Local Exchange Companies Service Plan. Docket Number 18516.

The Proceeding: Pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated 11.001-63.063 (Vernon 1998) (PURA), Chapters 51 and 56; the federal Telecommunications Act of 1996, §254; and Public Utility Commission Substantive Rule 23.134, a proceeding is initiated for purposes of establishing the recovery mechanism for LECs serving the study areas of small or rural ILECs. Issues to be addressed in this proceeding shall include but not be limited to: the amount of perline support for each small and rural ILEC study area and the amount of areas and toll reductions available if any.

Parties interested in participating in this proceeding shall file a list of issues by January 13, 1998. Interested parties may file responsive comments to the list of issues on January 16, 1998.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This proceeding has been assigned Docket Number 18516.

Issued in Austin, Texas, on December 22, 1997.

TRD-9717124
Rhonda Dempsey
Rules Coordinator
Pulic Utility of Commission of Texas
Filed: December 22, 1997

Notice of Workshop and Request for Comments in Commission Inquiry Regarding Compliance with Competitive Safeguards by Incumbent Local Exchange Carriers

The Public Utility Commission of Texas (commission) has established an inquiry, designated as Project Number 18377, regarding compliance with competitive safeguards by incumbent local exchange carriers (ILECs) serving greater than 31,000 access lines and fewer than 5,000,000 access lines. The ILECs must comply with competitive safeguards set forth in the Public Utility Regulatory Act (PURA), Texas Utilities Code, Chapter 60, as well as with the federal Telecommunications Act of 1996, codified at 47 United States Code §§151 et seq. (FTA). The commission inquiry seeks to determine the existing level of competition in areas served by the ILECs and whether competitive safeguards are effectively eliminating barriers to competition in these areas. The ILECs subject to review are: Sugar Land Telephone Company; Central Telephone Company of Texas (Centel); Century Telephone of Lake Dallas, Inc.; Century Telephone of Port Aransas, Inc.; Century Telephone of San Marcos, Inc.; Contel of Texas, Inc. (formerly Continental Telephone Company of Texas); GTE Southwest, Inc.; Lufkin-Conroe Telephone Exchange, Inc.; United Telephone Company of Texas, Inc.; Texas Alltel; and any affiliates of these companies that hold a certificate of convenience and necessity (CCN) to provide telephone service within the state.

The commission will conduct a workshop on January 15, 1998, at 9:00 a.m., in the commissioners' hearing room, seventh floor, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The commission seeks public comment, at the workshop and/or in writing, by interested persons regarding the questions below (responses may include specific information regarding one or more ILECs subject to the inquiry). Written comments (16 copies) should be submitted to the Filing Clerk, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. The comments should refer to Project Number 18377 and should be filed no later than January 30, 1998.

1. Should the inquiry be conducted against each ILEC as a contested case proceeding or a less formal commission inquiry to gather information?

2. Should the commission permit other interested parties to participate in the inquiry or in subsequent related proceedings involving each of the ILECs? If so, to what extent?

3. Have the ILECs subject to the inquiry done any of the following as of January 1, 1998? Please comment on their performance in these areas, identifying specific facts and circumstances when possible.

3(a). Provided interconnection with competitors;

3(b). Provided nondiscriminatory access to network elements, including operation support systems (OSS);

3(c). Provided nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by the ILEC;

3(d). Provided local loop transmission from the central office to the customer's premises unbundled from local switching or other service;

3(e). Provided local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services;

3(f). Provided local switching unbundled from transport, local loop transmission, or other services;

3(g). Provided nondiscriminatory access to 911 and E911 services, directory assistance services to allow the other carrier's customers to obtain telephone numbers, and operator call completion services;

3(h). Provided white page directory listings for customers of the other carrier's telephone exchange service;

3(i). Provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion;

3(j). Provided interim or permanent number portability, as required;

3(k). Provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity;

3(l). Made any necessary reciprocal compensation arrangements; or

3(m). Made telecommunications services available for resale.

4. Have the ILECs subject to the inquiry taken any actions that facilitated competition in their service areas? Please identify any such actions.

5. Have the ILECs subject to the inquiry taken any actions that deterred competition or erected barriers to entry in their service areas in a manner that may violate PURA or the FTA? Please identify any such actions.

6. What additional actions should the commission take to ensure a speedy transition to a competitive marketplace in the areas served by the ILECs subject to this inquiry?

Issued in Austin, Texas, on December 22, 1997.

TRD-9717123
Rhonda Dempsey
Rules Coordinator
Public Utility of Commission of Texas
Filed: December 22, 1997

Notice of Proceeding to Modify ERCOT Transmission Rates For 1998 Pursuant To Substantive Rule 23.67

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on December 19, 1997, an order initiating a proceeding to modify the Electric Reliability Council of Texas (ERCOT) transmission rates for 1998 pursuant to Substantive Rule 23.67.

Docket Title and Number: Proceeding to Modify ERCOT Transmission Rates for 1998 Pursuant to Substantive Rule 23.67. Docket Number 18459.

The Proceeding: The commission's rule on transmission pricing calls for transmission rates to be based on the most-recent peak loads and the megawatt-mile impacts that are calculated from the projected loads and resources for the next summer season. Section 23.67(g) includes a transition mechanism that is to be adjusted each of the first three years that the transmission pricing under the rule is in effect. The pricing mechanism in Substantive Rule 23.67 was first applied in 1997, and the rule provides for an adjustment of the transition mechanism in 1998. This proceeding is being initiated to modify the transmission rates for transmission-owning utilities in ERCOT, in the manner provided in P.U.C. Substantive Rules 23.67 and 23.70, to be effective in calendar year 1998.

The order initiating the proceeding has been provided to persons that participated in Docket Number 15840. The parties to Docket Number 15840 are requested to file, no later than, January 12, 1998, statements of their intention to participate in this proceeding.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936- 7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline to intervene in this proceeding is January 12, 1998. This proceeding has been assigned Docket Number 18459.

Issued in Austin, Texas, on December 19, 1997.

TRD-9716942
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 1997

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Due to an error by the Texas Register, the text of the following miscellaneous document submitted by the Public Utility Commission of Texas was omitted from the December 19, 1997, issue (22 TexReg 12623). The text of another notice was inadvertently published in its place.

Public Notice of Interconnection Agreement

On December 4, 1997, Teligent, L.L.C., and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (PURA). The joint application has been designated Docket Number 18432. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18432. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 12, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the sub-

mission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18432.

Issued in Austin, Texas, on December 8, 1997.

TRD-9716501
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 1997

The University of Texas System

Award of Consultant Contract Notification

The University of Texas System, in accordance with the provisions of Government Code, Chapter 2254, awarded a contract to Kaludis Consulting Group, Inc., for consulting services to conduct the site selection process for locating a new regional academic health center in the Lower Rio Grande Valley as specified in U. T. System Administration RFP RE-01, dated July 30, 1997. This request was originally published in the *Texas Register* on August 8, 1997 (22 TexReg 7425).

Project Description: The consultant shall provide The University of Texas System with management and technical expertise for the following:

Development of the Request for Proposal

Information management during the RFP process

Evaluation of proposals submitted

Data analysis and maintenance of records all in accordance with the RFP and the consultant's response thereto.

Name and address of consultant:

Kaludis Consulting Group, Inc., 1055 Thomas Jefferson Street, N.W., Suite 400, Washington, D.C. 20007-1871, Attention: George Kaludis

Total value of the contract:

Three Hundred Seventy-Five Thousand and No/100 dollars ($375,000) fixed-fee lump sum inclusive of all expenses and disbursements.

Contract dates:

December 1, 1997 (contract executed December 12, 1997) through June 1, 1998.

Due dates for contract products:

Develop selection criteria and publication of notices in the *Texas Register* - December 17, 1997

Distribute RFP - January 5, 1998

Pre-proposal conference - January 20, 1998

Proposal submittal deadline - March 31, 1998

Submission of consultant's report and recommendations to the Board of Regents - April 30, 1998

Issued in Austin, Texas, on December 19, 1997.

TRD-9716960
Arthur H. Dilly
Executive Secretary to the Board of Regents
The University of Texas System
Filed: December 19, 1997

Texas Workforce Commission

Corrections of Error

The Texas Workforce Commission submitted Job Training Partnership Act. The act appeared in the November 28, 1997, issue of the *Texas Register*, (22 TexReg 11861).

Due to typographical error the Tier I statement reads incorrectly. It should read:

"Tier I: Above the adjusted 50th percentile of national performance."

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