TEXAS REGISTER

Volume 23 Number 25 June 19, 1998 *Pages 6367-6658*

This month's front cover artwork:

Artist: *Stephen Gandy*
Bullard High School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

Texas Register, **ISSN 0362-4781,** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $95, six month $75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at $7 per copy in printed or electronic format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

POSTMASTER: Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us

Secretary of State - Alberto R. Gonzales

Director - Dan Procter
Assistant Director - Dee Wright
Receptionist - Tricia Duron

Texas Administrative Code
Dana Blanton
John Cartwright

Texas Register
Carla Carter
Ann Franklin
Roberta Knight
Kelly Ramsey
Becca Williams

Circulation/Marketing
Jill S. Ledbetter
Liz Stern

RULE REVIEW

TABLES AND GRAPHICS

OPEN MEETINGS

IN ADDITION

OFFICE OF THE 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 records 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, please fax your reuqest to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 936-1730.

Letter Opinions

LO# 98-043. (ID# 39619). Request from Mr. John Laakso, Acting Executive Director, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, regarding interpretation of Senate Bill 667, establishing program to assist individuals with hearing or speech impairment to purchase specialized telecommunications device for telephone access.

Summary. Senate Bill 667 authorizes the Texas Commission for the Deaf and Hard of Hearing to determine what constitutes a basic telecommunications device for an individual eligible to participate in the voucher program established by the statute.

LO#98-044. (RQ-1053). Request from the Honorable Don Schnebly, District Attorney, Parker County, Weatherford, Texas 76086, regarding status of work performed by a county attorney while he simultaneously held the office of municipal judge.

Summary. The county attorney of Parker County vacated his office of municipal judge of the City of Willow Park when he assumed the former position, and none of his acts as county attorney are affected by his purported holding of the office of municipal judge.

LO#98-045. (RQ-1122). Request from the Honorable Senfronia Thompson, Chair, Committee on Judicial Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a private, nonprofit organization may administer scholarship monies to minority students.

Summary. The Hopwood decision does not affect the authority of a private, nonprofit organization to administer a privately funded, race-restricted scholarship program. A state university may provide information about students to such an organization and may inform students about the organization's scholarship program without transforming the organization's private activities into state action.

TRD-9809297

Filed: June 10, 1998

♦ ♦ ♦

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 text 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.

Advisory Opinion Requests

AOR-437. Whether an individual who lost a primary election for the office of district court judge may donate surplus campaign contributions to a candidate for a nonjudicial office.

AOR-438. Whether a candidate's use of personal funds to make payments on a campaign loan constitutes a political expenditure from the candidate's personal funds for purposes of Election Code, 253.042(a).

TRD-9808986
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: June 4, 1998

♦ ♦ ♦

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 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 80. Manufactured Housing

Subchapter C. Standards and Requirements

10 TAC §80.54

The Texas Department of Housing and Community Affairs is renewing the effectiveness of the emergency adoption amendment of §80.54, for a 60-day period. The text of the amendment to §80.54 was originally published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2641).

Issued in Austin, Texas, on June 4, 1998.

TRD–9809021
Larry Paul Manley
Executive Director
Texas Housing and Community Affairs
Effective date: June 26, 1998
Expiration date: August 25, 1998
For further information, please call: (512) 475–3726

♦ ♦ ♦

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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes an amendment to §33.140; and new §§33.601-33.609, concerning providers of durable medical equipment (DME), outpatient rehabilitation facilities, and private duty nursing services covered by the Early and Periodic Screening, Diagnosis, and Treatment Comprehensive Care Program (EPSDT-CCP). Specifically, the amendment to §33.140(5) will require DME providers in EPSDT-CCP to certify that the recipient has received the equipment as prescribed by the physician; that the equipment has been properly fitted for the recipient, and/or meets the recipient's needs; and that the recipient, or the parent or guardian of the recipient, has received training for the use and maintenance of the equipment. The amendment to §33.140(15) removes "outpatient rehabilitation facilities" as EPSDT-CCP providers to ensure consistency with terminology used by the federal Health Care Financing Administration.

The new Subchapter K, which contains §§33.601-33.609, will establish and standardize the department's policies for providing private duty nursing services to EPSDT-CCP clients. The new sections provide for definitions, client eligibility criteria, medical necessity criteria, benefits and limitations, plan of care, termination of private duty nursing services, and place of service for private duty nursing services.

Mr. Joe Moritz, Chief, Bureau of Budget and Support Services, and Ms. Lesa Ross Brown, Acting Division Director, Financial Management Division, have 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 amendments to §33.140(5) and §33.140(15) or new §§33.601-609 as proposed. Mr. Moritz and Ms. Brown have also determined there will be no fiscal impact on state government as a result of enforcing or administering the amendment and new sections as proposed. There will be no fiscal implications for local governments.

Mr. Moritz and Ms. Brown have also determined that for each year of the first five-year period the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be clarification of department policies for clients and providers. Mr. Moritz and Ms. Brown have determined that amending §33.140(5) and §33.140(15), and adding new §§33.601-33.609 will not affect small businesses or impose economic costs on persons required to comply with the sections as proposed. There is no anticipated impact on local employment as a result of the proposed amendment and new sections.

Comments on the proposal may be submitted to Susan C. Penfield, M.D., Director, Children with Special Health Care Needs Planning and Policy Development Division, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7111, extension 3104. Comments will be accepted for 60 days following publication of this proposal in the *Texas Register*. In addition, a public hearing on the proposed sections will be held at 10:00 a.m., Friday, July 17, 1998, in the Texas Department of Health Auditorium, Room K-100, 1100 West 49th Street, Austin, Texas.

Subchapter E. Medical Phase

25 TAC §33.140

The amendment is proposed under the Human Resources Code, §32.021 and Government Code, §531.021, which authorize the Health and Human Services Commission to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The amendment affects the Health and Safety Code, Chapter 33.

§33.140. Early and Periodic Screening, Diagnosis and Treatment–Comprehensive Care Program Providers (EPSDT-CCP).

The following are approved EPSDT-CCP provider types and the approved Texas Medical Assistance (Medicaid) Program reimbursement methodology for each provider type.

(1)-(4) (No change.)

(5) Reimbursement for durable medical equipment.

(A) Direct vendor payments. The department or its designee makes direct vendor payments to providers of durable medical equipment participating in the Medicaid program. Participating providers are reimbursed within the limits of the maximum allowable fee schedule established by the department. The maximum allowable fee schedule for durable medical equipment is based on the lesser of the following:

(i) the billed amount; [~~or~~]

(ii) the Medicare fee schedule, as defined in subparagraph (B)(ii) of this paragraph; [~~or~~]

(iii)-(iv) (No change.)

(B) (No change.)

(C) Providers of durable medical equipment to EPSDT-CCP recipients must sign the Texas Department of Health (department) Certification and Receipt prior to submitting any claim for payment for durable medical equipment. The durable medical equipment provider must maintain the durable medical equipment Certification and Receipt in the provider's office and must produce it upon request by the department or its designee. The signature of the durable medical equipment provider certifies that:

(i) the recipient has received the equipment as prescribed by the physician;

(ii) the equipment has been properly fitted to the recipient and/or meets the recipient's needs; and

(iii) the recipient, or the parent or guardian of the recipient, has received training and instruction regarding the equipment's proper use and maintenance.

(D) [~~(C)~~] Ventilator service agreements. If the Medicaid client currently owns a ventilator, the department may provide reimbursement for a service agreement, in accordance with the department's policy, and at the lesser of the billed amount or a fee schedule developed by the department.

(6)-(14) (No change.)

(15) Comprehensive outpatient rehabilitation facility[~~/ outpatient rehabilitation facility~~]. A comprehensive outpatient rehabilitation facility [~~or outpatient rehabilitation facility~~] must be enrolled and participating in Medicare. The department or its designee will reimburse comprehensive outpatient rehabilitation facilities [~~and outpatient rehabilitation facilities~~] according to Medicare reimbursement methodology.

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

Filed with the Office of the Secretary of State, on June 5, 1998.

TRD-9809061
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter K. Private Duty Nursing

25 TAC §§33.601–33.609

The new sections are proposed under the Human Resources Code, §32.021 and Government Code, §531.021, which authorize the Health and Human Services Commission to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The new sections affect the Health and Safety Code, Chapter 33.

§33.601. Purpose.

The purpose of this subchapter is to establish rules for private duty nursing services as a benefit in the Early and Periodic Screening, Diagnosis and Treatment Comprehensive Care Program (EPSDT-CCP). In Texas, EPSDT-CCP is called the Texas Health Steps Comprehensive Care Program (THSteps-CCP).

§33.602. Definitions.

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

(1) Alternate care giver - An individual identified by the primary care giver who agrees to be trained and to maintain the skills necessary to provide care competently for the client when the primary care giver is unable to do so. An alternate care giver living with the client is not eligible for Medicaid (Title XIX) reimbursement for rendering care to the client.

(2) Client - An individual who is eligible to receive private duty nursing services under THSteps-CCP from a provider enrolled in the Texas Medicaid program.

(3) Continuous - Ongoing throughout a 24-hour period.

(4) Department - The Texas Department of Health.

(5) Dependent on technology - Requiring medical devices to compensate for the loss or impairment of a vital body function.

(6) Early and Periodic Screening, Diagnosis and Treatment Comprehensive Care Program (EPSDT-CCP) - A mandatory Medicaid program for persons under 21 years of age who meet certain economic eligibility criteria. In Texas EPSDT-CCP is called the Texas Health Steps Comprehensive Care Program (THSteps-CCP).

(7) Home health agency - A public or private agency or organization licensed by the department under Chapter 115 of this title (relating to Home and Community Support Services Agencies) to provide licensed home health services. The specific license under which the agency is providing services to Medicaid clients must also be Medicare certified.

(8) Individualized comprehensive case management - A structured process by which the orderly provision of services and supports intended to facilitate individual well-being and functioning is planned by a provider other than the service provider.

(9) Plan of care - A written regimen established and periodically reviewed by a physician in consultation with the home health agency staff or an enrolled independently practicing nurse

provider which meets the plan of care standards at §33.607 of this title (relating to Plan of Care).

(10) Primary care giver - An individual(s) who has agreed to accept the responsibility for a client's routine daily care and the provision of food, shelter, clothing, health care, education, nurturing, and supervision. Primary care givers may include but are not limited to parents, foster parents, guardians, or other family members by birth or marriage. A primary care giver provides daily uncompensated care for the client, and participates in the development and implementation of the client's plan of care. The primary care giver or other person living with the client is not eligible for Medicaid (Title XIX) reimbursement for rendering care to the client.

(11) Primary physician - A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided, who in addition provides continuing medical care of the client and continuing medical supervision of the client's plan of care.

(12) Private duty nursing - Skilled nursing reimbursed hourly for clients who meet the THSteps-CCP medical necessity criteria and who require individualized, continuous skilled care beyond the level of skilled nursing visits normally authorized under §§29.301-29.307 of this title (relating to Medicaid Home Health Program). Skilled nursing services are provided by a registered nurse or licensed vocational nurse through a licensed and certified home health agency, by a registered nurse enrolled as an independent provider, or by a licensed vocational nurse enrolled as an independent provider in the Texas Medicaid Program.

(13) Provider - A home health agency enrolled in the Texas Medicaid Program as a licensed and certified home and community support services agency or an independently practicing registered nurse or licensed vocational nurse enrolled in the Texas Medicaid Program.

(14) Respite - Services provided for the purpose of relief to the primary care giver.

(15) Skilled nursing - Services provided by a registered nurse as authorized by the Texas Nursing Practice Act, Texas Civil Statutes, Article 4513 et seq., or by a licensed vocational nurse as authorized by the Vocational Nurse Act, Texas Civil Statutes, Article 4528c.

(16) Stable and predictable - A situation in which the client's clinical and behavioral status and nursing care needs are non-fluctuating and consistent, including settings where the client's deteriorating condition is expected.

(17) Texas Health Steps Comprehensive Care Program (THSteps-CCP) - A federal program known as EPSDT which is required of states by Medicaid for children under 21 years of age who meet certain economic criteria for eligibility. See definition for Early and Periodic Screening, Diagnosis, and Treatment Comprehensive Care Program (EPSDT-CCP).

§33.603. Provider Participation Requirements.

(a) Home health agencies. To participate in THSteps-CCP, a home health agency must:

(1) comply with provider participation requirements in §29.302(a) of this title (relating to Provider Participation Requirements);

(2) comply with Family Code, Chapter 261, and Human Resources Code, Chapter 48, concerning mandatory reporting of suspected abuse and neglect of children and adults with disabilities; and

(3) maintain written policies and procedures for obtaining consent for medical treatment for clients in the absence of the primary care giver that meet the standards of Family Code, §32.001.

(b) Independently practicing registered nurses. To participate in THSteps-CCP, an independently practicing registered nurse must:

(1) hold a valid license from the Board of Nurse Examiners for the State of Texas to practice as a registered nurse;

(2) be enrolled and approved for participation in the Texas Medicaid Program;

(3) comply with the terms of the Texas Medicaid Provider Agreement;

(4) agree to provide services in compliance with all applicable federal, state, and local laws and regulations, including the Texas Nurse Practice Act;

(5) comply with all state and federal regulations and rules relating to the Texas Medicaid Program;

(6) comply with the requirements of the Texas Medicaid Provider Procedures Manual; including all updates and revisions published bimonthly in the Texas Medicaid Bulletin; and all handbooks, standards, and guidelines published by the department;

(7) comply with accepted professional standards and principles of nursing practice;

(8) provide at least 30 days written notice to clients of his or her intent to voluntarily terminate services, except in situations of a potential threat to the nurse's personal safety; and

(9) comply with subsections (a)(2) and (a)(3) of this section.

(c) Independently practicing licensed vocational nurses. To participate in THSteps-CCP, an independently practicing licensed vocational nurse must:

(1) hold a valid license from the Board of Vocational Nurse Examiners for the State of Texas to practice as a licensed vocational nurse;

(2) be enrolled as a provider in the Texas Medicaid Program;

(3) comply with the terms of the Texas Medicaid Provider Agreement;

(4) agree to provide services in compliance with all applicable federal, state, and local laws and regulations, including the Texas Vocational Nurse Act;

(5) comply with all state and federal regulations and rules relating to the Texas Medicaid Program;

(6) comply with the requirements of the Texas Medicaid Provider Procedures Manual, including all updates and revisions published bimonthly in the Texas Medicaid Bulletin; and all handbooks, standards, and guidelines published by the department;

(7) comply with accepted standards and principles of nursing practice; and

(8) provide at least 30 days written notice to clients of his or her intent to voluntarily terminate services, except in situations of a potential threat to the nurse's personal safety; and

(9) comply with subsections (a)(2) and (a)(3) of this section.

§33.604. Client Eligibility Criteria.

(a) To be eligible for private duty nursing services, a client must:

(1) be under 21 years of age and eligible for THSteps-CCP;

(2) meet medical necessity criteria for private duty nursing;

(3) have a primary physician who:

(A) provides a prescription for private duty nursing services;

(B) establishes a plan of care;

(C) provides a statement that private duty nursing services as defined in this section are medically necessary for the client;

(D) provides a statement that the client's medical condition is sufficiently stable to permit safe delivery of private duty nursing as described in the plan of care;

(E) provides continuing care and medical supervision including but not limited to examination or treatment within 30 days prior to the start of private duty nursing services. For extensions of private duty nursing services, medical care must comply with the American Academy of Pediatrics recommended schedule of visits which are applicable to the client's age, or within six months, which ever is sooner; and

(F) provides specific written, dated orders for clients receiving private duty nursing services.

(4) require care beyond the level of services delivered under §§29.301-29.307 of this title (relating to Medicaid Home Health Services); and

(5) have an identified primary care giver residing in the client's residence and an identified alternate care giver who is or can be trained to provide part of the client's care, or if no alternate care giver is identified, a plan to enable the client to receive care in an alternate setting or situation if the primary care giver is unable to fulfill his or her role.

(b) The department may waive any client eligibility criteria in subsection (a)(3)(E) of this section upon review of a client's specific circumstances.

§33.605. Medical Necessity Criteria for Private Duty Nursing.

(a) Private duty nursing is considered medically necessary if a person requires continuous, skillful observation and judgment to maintain or improve health status; and

(1) is dependent on technology to sustain life; or

(2) requires ongoing and frequent skilled interventions to maintain or improve health status, and delayed skilled intervention is expected to result in:

(A) deterioration of a chronic condition;

(B) loss of function;

(C) imminent risk to health status due to medical fragility; or

(D) risk of death.

(b) Determining medical necessity for private duty nursing includes assessment of the following elements:

(1) complexity and intensity of the client's care;

(2) stability and predictability of the client's condition; and

(3) frequency of the client's need for skilled nursing care.

§33.606. Private Duty Nursing Benefits and Limitations.

(a) Private duty nursing benefits include the following.

(1) Services. Direct skilled nursing care and care giver training and education intended to:

(A) optimize client health status and outcomes; and

(B) promote family-centered, community-based care as a component of an array of service options by;

(i) preventing prolonged and/or frequent hospitalizations or institutionalization;

(ii) providing cost-effective, quality care in the most appropriate environment; and

(iii) providing training and education of care givers.

(2) Amount and duration.

(A) The amount and duration of private duty nursing services requested will be evaluated based upon review of the following documentation:

(i) frequency of skilled nursing interventions;

(ii) complexity and intensity of the client's care;

(iii) stability and predictability of the client's condition; and

(iv) identified problems and goals.

(B) The amount of private duty nursing may decrease when:

(i) one or more of the client's problems documented in the plan of care are resolved;

(ii) one or more of the goals documented in the plan of care are met;

(iii) there is a reduction in the frequency of skilled nursing interventions, or the complexity and intensity of the clients' care;

(iv) alternate resources for comparable care become available; or

(v) the primary care giver becomes able to meet more of the client's needs.

(C) 24-hour private duty nursing will be authorized only:

(i) for limited periods of time with defined end dates when medically necessary and appropriate based on the needs of the client;

(ii) for limited periods of time with defined end dates related to the medical needs of the primary care giver, only when the alternate care giver is not available; and

(iii) in the absence of both the primary care giver and the alternate care giver, if another alternate person is designated

who can legally make decisions on behalf of the client and who will reside in the client's home during the time 24-hour private duty nursing will be provided.

(b) Private duty nursing service limitations include the following:

(1) THSteps-CCP will not reimburse for private duty nursing services used for or intended to provide:

(A) respite care;

(B) child care;

(C) activities of daily living for the client;

(D) housekeeping service; or

(E) individualized, comprehensive case management beyond the service coordination required by the Texas Nursing Practice Act, Texas Civil Statutes, Article 4513 et seq.

(2) Private duty nursing shall neither replace parents or guardians as the primary care giver nor provide all the care that a client requires to live at home. Primary care givers remain responsible for a portion of a client's daily care, and private duty nursing is intended to support the care of the client living at home.

(3) Authorization of services.

(A) Authorization is required for payment of services.

(B) Only those services that are determined by the department or its designee to be medically necessary and appropriate will be reimbursed.

(C) No authorization for payment of private duty nursing services may be issued for a single service period exceeding six months. Specific authorizations may be limited to a time period less than the established maximum based on the stability and predictability of the client.

(D) The family will be notified in writing by the department or its designee of a reduction or denial of private duty nursing services.

(E) The provider will be notified in writing by the department or its designee of the authorization, or denial of private duty nursing services.

(F) The provider will notify the primary physician and family upon receipt of the authorization or denial of private duty nursing services.

(G) Authorization requests for private duty nursing services must include the following:

(i) current department authorization form, completed by the primary physician and provider;

(ii) plan of care, recommended, signed and dated by the client's primary physician. The primary physician reviews and revises the plan of care with each authorization, or more frequently as the physician deems necessary; and

(iii) current department form, THSteps-CCP Private Duty Nursing Addendum to Plan of Care.

(H) If inadequate or incomplete information is provided, the provider will be requested to furnish additional documentation to enable the department to make a decision on the request.

(I) For authorization of extensions beyond the initial authorization period or revisions to an existing authorization, the provider must submit requests in writing. Required documentation for extending or revising authorization includes:

(i) current department authorization form;

(ii) plan of care, recommended, signed and dated by the client's primary physician; and

(iii) current department form, THSteps-CCP Private Duty Nursing Addendum to Plan of Care, signed and dated by the client's primary physician.

(J) During the authorization process, providers are required to deliver the requested services from the start of care date. Providers are responsible for a safe transition of services when the authorization decision is a denial or reduction in the private duty nursing services being delivered.

§33.607. Plan of Care.

(a) A plan of care must be recommended, signed, and dated by the client's primary physician.

(b) A plan of care must meet the plan of care standards at Code of Federal Regulations, Title 42, §484.18, and §29.304 of this title (relating to Written Plan of Care) and must contain the following elements:

(1) all pertinent diagnoses;

(2) mental status;

(3) types of services, including amount, duration, and frequency;

(4) equipment required;

(5) prognosis;

(6) rehabilitation potential;

(7) functional limitations;

(8) activities permitted;

(9) nutritional requirements;

(10) medications;

(11) treatments, including amount and frequency;

(12) safety measures to protect against injury;

(13) instructions for timely discharge or referral;

(14) date the client was last seen by the primary physician;

(15) other medical orders; and

(16) current department form THSteps-CCP Private Duty Nursing Addendum to Plan of Care.

§33.608. Termination of Private Duty Nursing Services.

Private duty nursing will be terminated by the department or its designee when:

(1) the client is no longer eligible for THSteps-CCP;

(2) the client no longer meets the medical necessity criteria for private duty nursing;

(3) the place of service(s) can no longer accommodate the health and safety of the client; or

(4) the client or care giver refuses to comply with the primary physician's plan of care.

§33.609. Place of Service.

(a) Private duty nursing may be authorized for the following place(s) of service:

(1) home of the client;

(2) home of the primary or alternate care giver;

(3) home of the nurse;

(4) client's school; or

(5) day care facility.

(b) The place of service must be able to support the health and safety needs of the client.

(c) The place of service must be adequate to accommodate the use, maintenance, and cleaning of all medical devices, equipment, and supplies required by the client.

(d) Necessary primary and backup utility, communication, and fire safety systems must be available.

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

Filed with the Office of the Secretary of State, on June 5, 1998.

TRD-9809060
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 106. Exemptions From Permitting

Subchapter K. General

30 TAC §106.261, §106.262

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §106.261, concerning Facilities (Emission Limitations) and §106.262, concerning Facilities (Emission and Distance Limitations).

EXPLANATION OF PROPOSED RULES

The commission has conducted a protectiveness review of the exemptions in §106.261 and §106.262. This rule proposal addresses several areas of concern uncovered in that review.

The proposed amendment to §106.261 requires registration and submittal of documentation substantiating the claim of exemption. Currently, under §106.261, a facility can emit one pound per hour of any chemical not specified or referenced in §106.262. Because there is currently no requirement for the company to give the commission any information on what chemicals are actually being emitted under the exemption, the commission does not have the data to determine whether the exemption is protective in practice. Therefore, the commission proposes to require registration, with Form PI-7, for the use of the §106.261 exemption. This registration will enable the commission to collect sufficient information to more fully evaluate the protectiveness of the exemption.

The changes in §106.261 will provide increased scrutiny which should improve compliance with the rule, while allowing collection of data regarding its use. Subsequently, commission staff will review these registrations to assess how the exemption is used in practice, track multiple uses of the exemption at a facility, and gather information for future changes to the rule.

The American Conference of Governmental Industrial Hygienists (ACGIH) Guide establishes health threshold limits for occupational workers. The current §106.262 relies on the 1985 ACGIH Guide for toxicological data used to determine maximum emissions allowed under this exemption. These limits are combined with modeling data in a formula to calculate an emission rate that provides a higher level of conservativism so that sensitive individuals are protected. Beyond establishing a conservative formula, the exemption provides a table (Table 262) which identifies specific compounds that have odor, chronic, vegetation, or corrosive effects not accounted for in the 1985 ACGIH Guide.

Section 106.262 is amended in two ways. First, the toxicological data is updated to reference the 1997 ACGIH Guide rather than the 1985 Guide. Second, this amendment modifies the list of compounds specifically listed in Table 262. Sixteen compounds are deleted from the table since they are now referenced in the 1997 version and 32 compounds are modified or added to the table because they are not adequately addressed in the 1997 ACGIH guide. Since the guide is directed toward only health impacts, more conservative values have been included to address the effects of the 32 compounds on odor, corrosiveness, vegetation, and nuisance.

The commission also proposes amendments to the table to expand the categories of threshold limit values (TLVs) used in this exemption. The exemption originally referenced only the time-weighted average TLV, but will now allow use of the short-term exposure level (STEL) and the ceiling limit for compounds which do not have a time weighted average TLV listed.

Section 106.262(5) restricts storage of compounds with potential for disasters. This section is amended to rename two and add four compounds to the list. These revisions incorporate updates made in the disaster potential list since 1985.

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 improved protectiveness by improved tracking of actual use of the §106.261 exemption and by using more recent toxicological data. The effects on small businesses will be the added registration requirements for new authorizations. The proposed changes are not retroactive. Facilities previously authorized under this exemption will remain authorized. There is minimal economic cost to persons who are required to comply with the sections as proposed. Since persons must currently be able to demonstrate compliance with

the exemption, the additional burden will be the submittal of the registration information.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the 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 Code. The proposal 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. The proposal does not meet any of the four applicability requirements listed in §2001.0225(a).

This proposal does not exceed a standard set by federal law and is not specifically required by state law. Exemptions from permitting are not addressed in federal law.

This proposal falls within the commission's authority under Texas Health and Safety Code, §382.057, to establish conditions to allow an exemption from permitting.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning standard exemptions.

These rules are proposed under a specific state law. The commission has the statutory authority to propose and adopt rules concerning exemptions from permitting under Texas Health and Safety Code, §382.057.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of this proposal is to increase the ability of the commission to evaluate the protectiveness of the exemption in §106.261 and to increase protectiveness by reducing allowable emissions of more toxic compounds. This proposal does not constitute a taking of private, real property.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission'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. These amendments will not cause any increase in emissions.

The commission requests public comment on the consistency of this proposal with the Coastal Management Plan.

PUBLIC HEARING

A public hearing on this proposal will be held July 14, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission 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 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, 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 98019-106-AI. Comments must be received by 5:00 p.m., July 20, 1998. For further information, please contact Susana Hildebrand, New Source Review Permits Division, (512) 239-1562, Dale Beebe-Farrow, New Source Review Permitting Division, (512) 239-1310, or Jim Dodds, Air Policy and Regulations Division, (512) 239-0970.

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 amendments are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. 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 amendments implement Texas Health and Safety Code, §382.057.

§106.261. Facilities (Emission Limitations) (Previously SE 106).

Facilities, or physical or operational changes to a facility, are exempt provided that all of the following conditions of this section are satisfied.

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

(7) Notification must be provided using Form PI-7 within ten days following the installation of, or physical or operational changes requiring authorization under this section to, the facilities after October 1, 1998. The notification shall include a description of the project, calculations, and data identifying specific chemical names, L values, and a description of pollution control equipment, if any.

§106.262. Facilities (Emission and Distance Limitations) (Previously SE 118).

Facilities, or physical or operational changes to a facility, are exempt provided that all of the following conditions of this section are satisfied.

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

(3) New or increased emissions, including fugitives, of chemicals shall not be emitted in a quantity greater than five tons per

year nor in a quantity greater than E as determined using the equation E = L/K and the following table.
Figure: 30 TAC §106.262(3)

(4) (No change.)

(5) The facilities in which the following chemicals will be handled shall be located at least 300 feet from the nearest property line and 600 feet from any off-plant receptor and the cumulative amount of any of the following chemicals resulting from one or more authorizations under this section (but not including permit authorizations) shall not exceed 500 pounds on the plant property and all listed chemicals shall be handled only in unheated containers operated in compliance with the United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178): acrolein, allyl chloride, ammonia (anhydrous), arsine, boron trifluoride, bromine, carbon disulfide, chlorine, chlorine dioxide, chlorine trifluoride, chloroacetaldehyde, chloropicrin, chloroprene, diazomethane, diborane, diglycidyl ether, dimethylhydrazine, ethyleneimine, ethyl mercaptan, fluorine, formaldehyde (anhydrous), hydrogen bromide, hydrogen chloride, hydrogen cyanide, hydrogen fluoride, hydrogen selenide, hydrogen sulfide, ketene, methylamine, methyl bromide, methyl hydrazine, methyl isocyanate, methyl mercaptan, nickel carbonyl, nitric acid, nitric oxide, nitrogen dioxide, oxygen difluo- ride, ozone, pentaborane, perchloromethyl mercaptan, perchloryl fluoride, phosgene, phosphine, phosphorus trichloride, selenium hexafluoride, stibine, liquified sulfur dioxide, sulfur pentafluoride, and tellurium hexafluoride. Containers of these chemicals may not be vented or opened directly to the atmosphere at any time.

(6)-(7) (No change.)

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

Filed with the Office of the Secretary of State on June 3, 1998.

TRD-9808961
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 10, 1998
For further information, please call: (512) 239-1966

♦ ♦ ♦

Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

30 TAC §305.42

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.42, concerning consolidated permits.

EXPLANATION OF PROPOSED RULES The primary purpose of the proposed amendment is to revise the state rules to conform to a certain federal regulation. Establishing equivalency with federal regulations will enable the State of Texas to retain authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA).

The federal regulations to which the proposed rule is being conformed were promulgated by the EPA on June 29, 1995 at 60 FedReg 33911. The proposed rule states that, for applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 Code of Federal Regulations §270.10(g), as amended and adopted in the Code of Federal Regulations through June 29, 1995 (see 60 FedReg 33911).

FISCAL NOTE Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed 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 has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be enhanced consistency between federal and state waste regulatory requirements. The proposed amendment incorporates an existing federal regulation. There are no significant economic costs anticipated to any person, including any small business, required to comply with the sections as proposed because the regulation is a promulgation under the Hazardous and Solid Waste Amendments of 1984 (HSWA) and, as such, the U.S. EPA is implementing the regulation. Therefore, there are no additional costs incurred by affected owners and operators because they are already having to comply with this rule, if applicable to them.

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 proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rules will substantially advance this stated purpose by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rules because the proposed language consists of an amendment to bring the state hazardous waste regulations into equivalence with a certain federal regulation. The subject regulation does not affect a landowners rights in private real property.

COASTAL MANAGEMENT PROGRAM (CMP) The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking subject to the Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for the proposed rule pursuant to 31 TAC §505.22 and has found that 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 rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality,

quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed rule amendments will comply with the standards under the Solid Waste Disposal Act. The commission invites public comment on the consistency of the proposed rule.

The commission invites public comment on the consistency of the proposed rule.

SUBMITTAL OF COMMENTS Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by July 20, 1998 and should reference Rule Log No. 98008-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§305.42. Application Required.

(a)-(c) (No Change.)

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 Code of Federal Regulations §270.10(g), as amended and adopted in the Code of Federal Regulations through June 29, 1995 (see 60 FedReg 33911).

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809153
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter F. Permit Characteristics and Conditions

30 TAC §305.126

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.126, concerning Additional Standard Permit Conditions for Wastewater Discharge Permits.

EXPLANATION OF PROPOSED RULE

The purpose of the proposed rule is to give communities with permitted domestic wastewater treatment facilities more control over decisions concerning treatment capacity needs and reduce reporting requirements associated with administering the rule. The proposed revisions are being made in response to the regulated community's request for more local control over treatment capacity decisions. In the 1960s to early 1980s, expansion of wastewater treatment plants severely lagged behind population growth in Texas. The result was inadequate retention time for wastewater treatment during non-high flow periods, and plant flushing and/or plant overflows during rainfall events. The original rule was developed to assist community leaders by requiring them to plan ahead and position their community for expansion and/or upgrading of the existing wastewater treatment plant when effluent flows reached a specific level. The proposed amendments will allow this advance planning to continue while responding to the concerns of the regulated community.

Under the current rule, whenever a domestic wastewater treatment plant reaches 75 percent of the permitted daily average flow for three consecutive months, the permittee is required to initiate engineering and financial planning for expansion and/or upgrading of the treatment plant and/or collection facilities. Whenever flows at a domestic wastewater treatment plant reach 90 percent of the permitted daily average flow for three consecutive months, the permittee is required to obtain authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities. The permittee may obtain a waiver if the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility. In administering the current rule, the commission requires permittees to provide a written plan and an implementation schedule for action if a waiver is not applicable. In addition, at the 90 percent level the commission requires permittees to provide periodic reports in order to track their progress in making improvements.

The proposed rule amendments would accomplish the original objective of the rule by continuing to require permittees to evaluate their treatment capacity. At the same time the proposed rule injects needed flexibility into decisions over when action is required. The commission recognizes that many factors can influence when a facility should begin planning construction of additional treatment capacity, such as population growth rates or a need to sell bonds. For this reason, the commission is revising the rule to allow local communities to decide when to expand treatment capacity, rather than requiring them to begin expansion planning and obtain authorization to construct or obtain a waiver when they reach the 75 and 90 percent milestones.

The proposed rule amendments would no longer require permittees to commence development of engineering and financial planning when their domestic wastewater treatment plant

reaches 75 percent of flow capacity. Instead, upon notification from the commission that flows have reached 75 percent for three consecutive months, the permittee must respond in writing within 30 days acknowledging receipt of the notification. Under the revised rule, the 75 percent notification will simply advise permittees that they may need to begin evaluating future capacity needs. They will no longer be required to take specific actions.

In addition, the proposed rule amendments will no longer require permittees to obtain authorization for construction when their domestic wastewater treatment plant reaches 90 percent of flow capacity for three consecutive months. Upon notification from the commission that the 90 percent threshold has been reached, permittees that self-report flow will be required to respond to the commission within 90 days indicating their intention to either expand or upgrade the treatment and/or collection facilities or not to expand or upgrade. Permittees that do not self-report flow (land disposal facilities) will be required to notify the commission when flow measurements at their domestic wastewater treatment plant reach 90 percent of flow capacity for three consecutive months, and inform the commission of their plans to either expand or upgrade or not expand or upgrade. Permittees may choose not to expand or upgrade in cases where low or no growth is expected, because the quantity of waste produced is not expected to exceed the design limitations of the treatment facilities, or because they intend to combine operations and/or physical facilities with another system or systems that have the capacity to handle the waste.

The commission is also responding to concerns by permittees that they are expending limited resources to provide the reports that are currently required by the commission. In those cases where expansion and/or collection system upgrades are pursued, the commission will no longer track implementation schedules nor require the permittee to submit periodic progress reports. Additionally, the rule modifications will eliminate the need for waivers.

Finally, the proposed rule amendments are necessary to implement the commission's new permitting policy which specifies that any domestic wastewater discharge facility with one million gallons per day or greater permitted flow will receive an annual average flow limitation. Any domestic wastewater discharge facility with less than one million gallons per day of permitted flow will continue to receive a daily average flow limitation. The rule has been revised so that it applies to facilities with either daily average flow limitations or annual average flow limitations.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years in which this section as proposed is in effect, the enforcement and administration of the section will have fiscal implications. The effect of the proposed amendments to the rule and implementation procedures will be to change the reporting and action requirements for domestic wastewater treatment plants when they reach 75 percent and 90 percent of flow capacity. The effect on state government will be a reduction in costs typically incurred by the commission that are associated with the review and tracking of the improvement schedules, progress reports and requests for waivers that result from current rule requirements and rule implementation procedures.

There will be some cost savings to local governments as a result of the proposed rule. Management in these communities will experience savings in employee time costs due to the reduced reporting requirements proposed by this rule.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more local control over decisions concerning treatment capacity, reduced regulatory requirements for permittees and continued protection of the environment by promoting advanced planning by permittees for future treatment capacity requirements.

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, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rule is to give communities with permitted domestic wastewater treatment facilities more control over decisions concerning treatment capacity needs, and reduce reporting requirements associated with administering the rule. The rule will substantially advance this specific purpose by revising the requirements for domestic wastewater permittees when the flows reach 75 percent and 90 percent of flow capacity. Promulgation and enforcement of this rule will not affect private real property that is the subject of this rule because the change does not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. There is no burden over and above that burden already present under the rule in effect currently.

COASTAL MANAGEMENT PROGRAM (CMP)

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking subject to the Coastal Management Program and must be consistent with all applicable goals and policies of the Coastal Management Program (CMP).

The commission has prepared a consistency determination for the proposed rule pursuant to 31 TAC §505.22 and has found that 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 rulemaking 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 rule include the administrative policies and the policies for specific activities related to the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed rule amendments will continue to require permittees to evaluate their treatment capacity needs. In addition, the proposed rule does not violate

any applicable provisions of the CMP's stated goals and policies.

The commission invites public comment on the consistency of the proposed rule.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97138-305-WT and may be submitted 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 also be faxed to (512) 239-5687. Written comments must be received by 5:00 p.m. on July 20, 1998. For further information concerning this proposal, please contact Jan Sills, at (512) 239-4569.

STATUTORY AUTHORITY

These amendment is proposed under the Texas Water Code §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §5.103 and §5.105 which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission. Additionally, the amendments are proposed under Texas Water Code §26.042, which authorizes the commission to prescribe reasonable requirements for monitoring and reporting of waste collection, treatment and disposal activities.

There are no other codes or statutes that will be affected by this proposal.

§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.

(a) Upon notification from the commission that flow measurements at a domestic wastewater treatment plant have reached 75% of the daily average or annual average flow limit, as specified in the permit, for three consecutive months, a permittee shall respond to the commission, in writing, within 30 days of the notification indicating that the permittee has received the 75% flow notification. [~~Whenever flow measurements for any sewage treatment plant facility in the state reaches 75% of the permitted average daily flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily flow reaches 90 percent of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75% of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the water quality division of the commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.~~]

(b) Upon notification from the commission that flow measurements at a domestic wastewater treatment plant have reached 90% of the daily average or annual average flow limit, as specified in the permit, for three consecutive months, a permittee that is required to self-report flow shall respond to the commission, in writing, within 90 days of the notification. The response shall indicate:

(1) any plans the permittee has to expand and/or upgrade the wastewater treatment plant and/or collection facilities; or

(2) that expansion and/or upgrading is not necessary. Permittees may choose not to expand and/or upgrade for the following reasons:

(A) low growth or no growth is anticipated in the planned population to be served; or

(B) the quantity of waste produced is not expected to exceed the design limitations of the wastewater treatment plant; or

(C) the waste will be handled by combining operations and\or physical facilities with another system or systems that have the capacity to handle the waste.

(c) A permittee that is not required to self-report flow shall notify the commission, in writing, within 90 days of the third consecutive month that flow measurements at its domestic wastewater treatment plant reach 90 percent of the daily average or annual average flow limit, as specified in the permit. The notification shall indicate:

(1) any plans the permittee has to expand and/or upgrade the wastewater treatment plant and/or collection facilities; or

(2) that expansion and/or upgrading is not necessary. Permittees may choose not to expand and/or upgrade for the following reasons:

(A) low growth or no growth is anticipated in the planned population to be served; or

(B) the quantity of waste produced is not expected to exceed the design limitations of the wastewater treatment plant and/or collection facilities; or

(C) the waste will be handled by combining operations and\or physical facilities with another system or systems that have the capacity to handle the waste.

(d) [~~(b)~~] The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) 122.42(a)(1) as adopted by §305.531 of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported

during the permit application process or not reported pursuant to an approved land application plan.

(e) [~~(c)~~] If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §§122.21(h)(4)(I) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809123
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 20, 1998
For further information, please call: (512) 239-4640

♦ ♦ ♦

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§335.1, 335.2, 335.6, 335.11 - 335.13, 335.17 - 335.19, 335.21, 335.23, 335.24, 335.29, 335.31, 335.41, 335.61, 335.62, 335.76, 335.78, 335.91, 335.112, 335.114, 335.152, 335.154, 335.156, 335.211, 335.213, 335.214, 335.221, 335.241, 335.251, 335.261, and 335.431, concerning industrial solid waste and municipal hazardous waste.

EXPLANATION OF PROPOSED RULES The primary purpose of the proposed amendments is to revise the state rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the state rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to retain authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). Another purpose of the proposed rules is to reform certain state rules for purposes of streamlining, clarification, and correction. The proposed rules also include administrative revisions, such as changing "Texas Water Commission" to "Texas Natural Resource Conservation Commission," correcting internal cross references, and changing "his" and "he" to gender-neutral language.

Most of the federal regulations to which the proposed rules are being conformed were promulgated by the EPA between July 1, 1994 and June 30, 1996 under the authority of the federal Resource Conservation and Recovery Act (RCRA). Some of the federal regulations promulgated prior to July 1994 are proposed to be adopted where state rules need to be changed to appropriately adopt or reflect the requirements of the federal regulations. For instance, amendment to the state rules at §335.24(j) is proposed in order to appropriately reflect federal regulations concerning the applicability of the used oil standards promulgated on September 10, 1992 at 57 FedReg 41612. Also, proposed §335.24(k) is a conforming change to reflect federal regulations concerning the applicability of 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subparts AA and BB promulgated at 55 FedReg 25493 on June 21, 1990. Some of the federal regulations promulgated after June 1996 are proposed to be adopted in order that the state rules will have more up-to-date requirements. For instance, some of the referenced test methods have been updated, notably those within EPA Publication SW-846, and this proposal contains updates to adopt these test methods. Also, some of the federal regulations promulgated after June 1996 are proposed to be adopted to benefit stakeholders by providing certain streamlined requirements. For instance, the Land Disposal Restrictions (LDR) - Phase IV rule promulgated by the EPA on May 12, 1997 at 62 FedReg 25998, which is proposed to be adopted, contains streamlined LDR paperwork requirements and exclusions from the definition of "solid waste" for certain scrap metal and shredded circuit boards. Proposed §335.1 relates to definitions. In accordance with new requirements of the *Texas Register*, the definitions are proposed to be assigned numbers, in this case §335.1(1)-(149). A set of the definitions relating to the universal waste rule, as promulgated by the EPA at 60 FedReg 25492 on May 11, 1995, is proposed to be reformatted by providing the following as each of the definitions: "Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule)." In this way, any future changes to these definitions will necessitate that §335.261 be "opened" in the rulemaking process, as opposed to §335.1. This will minimize conflicts with other rulemaking efforts which involve §335.1. The following terms are proposed to be changed in such a way: "Battery" at §335.1(10); "Destination Facility" at §335.1(33); "Pesticide" at §335.1(98); "Thermostat" at §335.1(128); "Universal Waste Handler" at §335.1(141); and "Universal Waste Transporter" at §335.1(142). The meanings of these terms are described in the portion of this proposal addressing §335.261. The definition of "Universal Waste" is proposed to be amended to reflect the definition found under 40 CFR §260.10, with the resulting definition, if adopted, to be as follows: "Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) that are managed under the universal waste requirements of §335.261 of this title (relating to Universal Waste Rule)."

Section 335.1 is also proposed to be amended at the definition of "solid waste." There are three proposed new exclusions from the definition: certain recovered oil, scrap metal, and shredded circuit boards, which are proposed at §335.1(119)(A)(iv) by including the federal exclusions found under 40 CFR §261.4(a)(12)-(14). The recovered oil exclusion was published by the EPA at 59 FedReg 38536 on July 28, 1994. The scrap metal and shredded circuit board exclusions were published under the Land Disposal Restrictions - Phase IV promulgation at 62 FedReg 25998 on May 12, 1997. Another proposed amendment to the definition of "solid waste" to conform the state definition with changes to its federal counterpart is within Table 1, adding "other than excluded scrap metal (see §335.17(9))" in the scrap metal entries, and referring to excluded scrap metal in the note at the bottom of the table. Since Table 1 indicates materials that are solid wastes when recycled, this proposed amendment is for the purpose of clarity, so that it is shown that excluded scrap metal is clearly outside the scope of Table 1. Finally, the definition of "solid waste" is proposed to be amended at §335.1(119)(J) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.2 relates to permit required. Proposed §335.2(d)(6) is a nonsubstantive change from the word "section" to its symbol "§." Proposed §335.2(h)(7) is a correction

to "Texas Natural Resource Conservation Commission." Proposed §335.2(k) is a reference correction, adding the phrase "(relating to Notification Requirements)" after the reference to §335.6. Proposed §335.2(l) is a conforming change to reflect the federal hazardous waste permit exemption at 40 CFR §270.1(c)(2)(viii) for universal waste handlers and transporters managing universal wastes, as promulgated by the EPA at 60 FedReg 25492 on May 11, 1995.

Proposed §335.6 relates to notification requirements, and is proposed to be amended at §335.6(j) to correct the reference to Chapter 324 by adding the phrase "of this title," and at §335.6(k) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.11 relates to shipping requirements for transporters of hazardous waste or Class I waste. Proposed §335.11(a)(4) has a conforming change to reflect changes in the federal requirements concerning shipments for hazardous waste imports and exports, implementing an Organization for Economic Cooperation and Development (OECD) Council decision. This proposed change is to require transporters to know, in the case of hazardous waste exports, that the shipment conforms to the requirements set forth under 40 CFR §263.20(a), as amended and adopted through April 12, 1996 at 61 FedReg 16290, which added the requirement that a transporter may not accept hazardous waste subject to the requirements of 40 CFR Part 262, Subpart H without a tracking document that includes all information required by 40 CFR §262.84.

Proposed §335.12 relates to shipping requirements applicable to owners or operators of storage, processing, or disposal facilities. Proposed §335.12(c)(2) contains the added "(CFR)," and §335.12(d) is a conforming change to reflect changes in the federal requirements at 40 CFR §264.71(d) and §265.71(d) concerning transfrontier shipments of hazardous waste for recovery within the OECD, as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996. This proposed conforming change is to require the owner or operator of a facility receiving a shipment subject to 40 CFR Part 262, Subpart H to provide a copy of the tracking document to a specified EPA address and to certain other authorities within three working days of receipt of the shipment, and to maintain the original copy of the tracking document at the facility for at least three years from the date of signature.

Proposed §335.13 relates to recordkeeping and reporting procedures applicable to generators shipping hazardous waste or Class I waste and primary exporters of hazardous waste. Proposed §335.13(n) has a conforming amendment to reflect a change under 40 CFR §262.56(b) in the mailing address at the EPA to which annual reports should be sent by primary exporters of hazardous waste, as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996.

Proposed §335.17 relates to special definitions for recyclable materials and nonhazardous recyclable materials. Proposed §335.17(a)(9)-(12) spells out the definitions for "excluded scrap metal," "processed scrap metal," "home scrap metal," and "prompt scrap metal," which match the corresponding federal definitions under 40 CFR §261.1(c)(9)-(12), as published by the EPA in the land disposal restrictions Phase IV promulgation at 62 FedReg 25998 on May 12, 1997. Section 335.17 is also proposed to be amended at §335.17(b) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.18 relates to variances from classification as a solid waste, and is proposed to be amended at §335.18(b) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.19 relates to standards and criteria for variances from classification as a solid waste. Proposed §335.19(a) has a conforming amendment to reflect a change in 40 CFR §260.31(a), as published by the EPA in the land diposal restrictions Phase II promulgation at 59 FedReg 47980 on September 19, 1994, deleting the words "standards and." In addition, §335.19(d) contains a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.21 relates to procedures for variances from classification as a solid waste or variances to be classified as a boiler. To conform to the federal regulations at 40 CFR §260.33(a) published by the EPA in the land diposal restrictions Phase II promulgation at 59 FedReg 47980 on September 19, 1994, proposed §335.21(1) has the added sentence "The applicant must apply to the executive director for the variance." It also contains a correction of the conjunction in the second sentence of §335.21(1) from "and" to "or." Proposed §335.21(2) has the same conjunctive correction and also a correction to refer to filing with the chief clerk a motion for reconsideration of a final decision of the executive director, subject to §50.39.

Proposed §335.23 relates to procedures for case-by-case regulation of hazardous waste recycling activities, and contains corrections in the form of additional references to appropriate applicable chapters, under §335.23(2).

Proposed §335.24 relates to requirements for recyclable materials and nonhazardous recyclable materials, and contains conjunctive corrections, deletions of superfluous conjunctions, and under subsections (b), (c), and (e), corrections in the form of additional references to appropriate chapters. Section 335.24(c)(2) is proposed to be deleted to conform to the corresponding federal regulation. Under the Universal Waste Rule at 60 FedReg 25492 promulgated on May 11, 1995, EPA removed the exclusion for used batteries that are to be regenerated, under 40 CFR §261.6(a)(3)(ii), and added a provision in the Universal Waste Rules that facilities regenerating used batteries are subject to the 40 CFR Part 273 standards. This change by EPA was undertaken to eliminate confusion which could come from having multiple special provisions for batteries. The aforementioned deletion of paragraph (c)(2) conforms the state rule to this federal rule change. Section 335.24(c)(3) is proposed to be changed to paragraph (c)(2), and is also proposed to be modified to add after "scrap metal" the phrase "that is not already excluded under 40 Code of Federal Regulations §261.4(a)(13)." This would conform to the federal regulation at 40 CFR §261.6(a)(3)(ii) published by the EPA under the Land Disposal Restrictions - Phase IV promulgation at 62 FedReg 25998 on May 12, 1997. This proposed change is necessary because the excluded scrap metal would no longer be a solid waste under this proposal (see discussion under proposed changes to §335.1), and thus would not meet the definition of hazardous waste or a recyclable material. Consequently, the exclusion from the requirement for recyclable material is neither needed nor appropriate for scrap metal that is already excluded from the definition of "solid waste." Section 335.24(c)(4) is proposed to be renumbered to paragraph (c)(3) because of the aforementioned deletion of paragraph (c)(2), and is also proposed to be modified to conform to the federal regulations by adding "(this exemption does not apply to fuels produced from

oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 Code of Federal Regulations §261.4(a)(12))," as published by the EPA at 59 FedReg 38536 under the recovered oil exclusion promulgation on July 28, 1994. This proposed parenthetical phrase is a clarification that, since certain recovered oil would already be excluded from the definition of "solid waste" under this proposal, the exemption for fuels produced from such recovered oil is not needed. Also, §335.24(c)(5) is proposed to be deleted in order to conform to the federal regulations. Under the aforementioned recovered oil exclusion, EPA removed the exclusion for certain recovered used oils, under 40 CFR §261.6(a)(3)(v), because the recovered oil exclusion was rewritten as an exclusion from the definition of solid waste. In other words, since the recovered oil would no longer be a solid waste, it would not meet the definition of a hazardous waste or a recyclable material. Consequently, the exclusion from the requirements for recyclable materials is not needed, nor would it be appropriate. Section 335.24(c)(6) is proposed to be renumbered to paragraph (c)(4), and (c)(7) renumbered to (c)(5), because of the aforementioned deletions of paragraphs (c)(2) and (c)(5).

Proposed §335.24(g) contains reference corrections and a streamlining technical correction relating to spent lead-acid batteries being reclaimed. First, the phrase "except as provided in subsection (h) of this section," is proposed to be deleted and substituted with a sentence at the end of subsection (g) which has the same meaning, but is more straightforward, as follows: "Recyclable materials listed in subsections (b)(4) and (c)(2) remain subject to the requirements of subsection (h) of this section." Next, the proposed reference to (b)(4), which is a reference to spent lead-acid batteries being reclaimed, is added to the parenthetical phrase excluding certain recyclable materials from the requirements of subsection (g) to clarify what the commission believes is the intent of the existing rule. The current wording indicates that, except as provided in subsection (h), recyclable materials remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15. Then, existing subsection (h) provides that recyclable materials listed in subsection (b)(4) and subsection (c)(2) and (3) remain subject to the requirements of §§335.4 and 335.6. Without the proposed addition of (b)(4) to the parenthetical phrase excluding certain recyclable materials from subsection (g), it could be interpreted that subsection (g), as well as subsection (h) applies to spent lead-acid batteries being reclaimed. The intent of the existing rule is that the requirements of subsection (h), and not subsection (g), should apply to spent lead-acid batteries being reclaimed. Finally, §335.24(g) is proposed to be corrected by replacing the reference to subsection (c)(3) - (7) with (c)(2) - (5) to properly reflect the proposed deletions of subsections (c)(2) and (5). Proposed §335.24(h) contains a reference correction and a streamlining technical amendment relating to spent lead-acid batteries being reclaimed. First, the reference to recyclable materials listed in subsection (c)(2) and (3) is proposed to be changed to refer to only subsection (c)(2), because the existing subsection (c)(2) is proposed for deletion, and the "new" (i.e., proposed) subsection (c)(2) was the "old" (i.e., existing) subsection (c)(3). Next, the commission proposes changes to subsection (h) to limit the referenced requirements of this subsection to §335.4 (relating to General Prohibitions), for spent lead-acid batteries being reclaimed, by proposing to delete the requirement for notification under §335.6. This proposed change would align the state rules more closely with the corresponding federal regulation at 40 CFR §266.80(a) and its state analog under §335.251, which do not require such notification, except for owners and operators who store certain lead-acid batteries before reclaiming them. Proposed §335.24(j) is a conforming change to reflect the federal regulation at 40 CFR §261.6(a)(4), concerning the applicability of requirements for used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic, originally promulgated at 57 FedReg 41612 on September 10, 1992. In a simliar vein of updating state rules to appropriately address federal requirements, proposed §335.24(k) is a conforming change to reflect the federal regulation at 40 CFR §261.6(d), concerning the applicability of 40 CFR Parts 264 and 265, Subparts AA and BB to facilities subject to hazardous waste permitting requirements with hazardous waste recycling units, originally promulgated at 55 FedReg 25493 on June 21, 1990. Proposed §335.24(l) is a conforming change to reflect the federal requirements at 40 CFR §261.6(a)(5) concerning hazardous waste exports to or imports from designated member countries of the Organization for Economic Cooperation and Development, as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996. Finally, §335.24 is proposed to be amended at §335.24(m) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.29 relates to adoption of appendices by reference, and contains updates to the adoptions of 40 CFR Part 261 Appendices VII and VIII, under §335.29(4) and (5), as promulgated by the EPA in the regulations concerning carbamate production identification and listing of hazardous waste at 60 FedReg 7824 on February 9, 1995 and 60 FedReg 19165 on April 17, 1995, respectively.

Proposed §335.31 relates to incorporation of references, and contains updates to references contained in 40 CFR §260.11, as amended and adopted in the Code of Federal Regulations through June 13, 1997, at 62 FedReg 32452. This proposed amendment would incorporate by reference the addition of new and revised methods as updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition, and several deletions of obsolete methods.

Proposed §335.41(j) relates to applicability of hazardous waste rules to universal wastes, universal waste handlers, and universal waste transporters, and is a conforming change to reflect 40 CFR §§261.9, 264.1(g)(11), and 265.1(c)(14), promulgated by the EPA at 60 FedReg 25492 on May 11, 1995. This proposed subsection basically states that Subchapters B-F and O of Chapter 335, and Chapter 305 do not apply to universal wastes, universal waste handlers, or universal waste transporters, except as provided by §335.261 of this title (relating to Universal Waste Rule).

Proposed §335.61 in Subchapter C (relating to Standards Applicable to Generators of Hazardous Waste) provides rules concerning quantity determinations that must be used to determine the applicability of provisions of Subchapter C that are dependent on calculations of the quantity of hazardous waste generated per month, and is a conforming change to reflect 40 CFR §262.10(b), promulgated by the EPA at 60 FedReg 25492 on May 11, 1995.

Proposed §335.62 contains an added sentence which states that generators of hazardous waste must refer to Chapter 335 and to 40 CFR Parts 261, 264, 265, 266, 268, and 273 for possible exclusions or restrictions which may be applicable to management of the specific waste, which is a conforming

change to reflect 40 CFR §262.11(d), promulgated by the EPA at 60 FedReg 25492 on May 11, 1995.

Proposed §335.76 relates to additional requirements applicable to international shipments, and is proposed to be amended in several subsections to account for changes in the corresponding federal regulations, as published by the EPA in the OECD promulgation of April 12, 1996. Proposed§335.76(a) updates the reference to 40 CFR §262.58, as amended and adopted through April 12, 1996, at 61 FedReg 16289. Proposed §335.76(b)(1) updates the reference to 40 CFR §262.53, as amended and adopted through April 12, 1996, at 61 FedReg 16289. Proposed §335.76(f) updates the reference to 40 CFR §262.58, as amended and adopted through April 12, 1996, at 61 FedReg 16289. Proposed §335.76(h) states that transfrontier shipments of hazardous waste for recovery within the OECD are subject to 40 CFR Part 262, Subpart H, which is proposed to be adopted by reference as amended and adopted through April 12, 1996, at 61 FedReg 16289.

Proposed §335.78 relates to special requirements for hazardous waste generated by conditionally exempt small quantity generators. Proposed §335.78(b) contains corrections to refer to the appropriate chapters and correction of the conjunction from "and" to "or." Proposed §335.78(c) and §335.78(c)(1)-(6) contain changes conforming to the corresponding federal regulation, §261.5(c), as published by the EPA in the universal waste rule promulgation at 60 FedReg 25492 on May 11, 1995. Also, proposed §335.78(c)(1) has the added parenthetical abbreviation "CFR" for "Code of Federal Regulations," and "CFR" is proposed throughout the rest of §335.78 to replace the longer term, for the sake of brevity. Proposed §335.78(e) and §335.78(f)(2) contain corrections to refer to the appropriate chapters. Proposed §335.78(f)(3)(D) and (E) contain revisions to conform to the federal regulations concerning disposal options under Subtitle D for conditionally exempt small quantity generators of acute hazardous waste, promulgated by the EPA at 61 FedReg 34252 on July 1, 1996. These proposed changes would reflect changes to 40 CFR §261.5 which add requirements that, in order to be excluded from full regulation under this section, acute hazardous wastes generated in quantities equal to or less than one kilogram per month, or residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill in quantities equal to or less than 100 kilograms per month, or hazardous waste generated in quantities of less than 100 kilograms per month, the generator must ensure delivery of the wastes to a municipal solid waste landfill that is subject to 40 CFR Part 258 or equivalent or more stringent rules under 30 TAC Chapter 330, concerning municipal solid waste; or to a non-municipal or industrial non-hazardous solid waste landfill that is subject to the requirements of §257.5 through §257.30 of 40 CFR Part 257 or equivalent or more stringent counterpart regulations that may be adopted by the commission concerning additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators. Proposed §335.78(f)(3)(F) is the newly designated subparagraph for existing subparagraph (E). Proposed §335.78(f)(3)(G) is a revision to conform to the federal regulations requiring conditionally exempt small quantity generators, who generate acute hazardous waste that is universal waste managed under the universal waste rules, to ensure that the waste is managed by or delivered to a universal waste handler or destination facility subject to the requirements of the universal waste rule. Proposed §335.78(g)(2) contains corrections to refer to the appropriate chapters. Proposed §335.78(g)(3)(D) and (E) contain revisions to conform to the federal regulations concerning disposal options under Subtitle D for conditionally exempt small quantity generators of hazardous waste, promulgated by the EPA at 61 FedReg 34252 on July 1, 1996. Proposed §335.78(g)(3)(G) is a revision to conform to the federal regulations requiring conditionally exempt small quantity generators, who generate hazardous waste that is universal waste managed under the universal waste rules, to ensure that the waste is managed by or delivered to a universal waste handler or destination facility subject to the requirements of the universal waste rule.

Proposed §335.91(e) relates to the scope of standards applicable to transporters of hazardous waste, and contains language reflecting the federal regulations requiring compliance with 40 CFR Part 262, Subpart H for certain transporters of hazardous waste that is being imported from or exported to any of the member countries of the OECD for purposes of recovery, reflecting 40 CFR §263.10(d) as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996.

Proposed §335.112 relates to interim standards for owners and operators of hazardous waste storage, processing, or disposal facilities. The proposed revision to §335.112(a)(1) concerns the OECD rules promulgated by the EPA, and is proposed to be updated to include adoption by reference of the 40 CFR Part 265, Subpart B general facility standards, as amended through April 12, 1996, at 61 FedReg 16290. This proposed revision incorporates changes at 40 CFR §265.12(a) concerning required notices. Proposed §335.112(a)(19) contains an update to the adoption by reference of the 40 CFR Part 265, Subpart AA air emission standards for process vents, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §265.1034 concerning test methods and procedures, replacing references to Method 8240 with references to Method 8260 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. Proposed §335.112(a)(20) contains an update to the adoption by reference of the 40 CFR Part 265, Subpart BB air emission standards for equipment leaks, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §265.1063 concerning test methods and procedures, replacing the reference to Method 8240 with reference to Method 8260 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

Proposed §335.114 relates to reporting requirements. Proposed §335.114(a)(3) contains a correction of the name of the agency from "TWC" to "TNRCC." Proposed §335.114(a)(6) contains the added "(CFR)" and corrections to update the reference to 40 CFR §265.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194, concerning closure cost estimates. In addition, §335.114(a)(6) contains a revised and more precise reference to the Federal Register promulgation of regulations under 40 CFR §265.144 concerning post-closure cost estimates.

Proposed §335.152 relates to permitting standards for owners and operators of hazardous waste management facilities. The proposed revision to §335.152(a)(1) concerns the OECD rules promulgated by the EPA, and is proposed to be updated to include adoption by reference of the 40 CFR Part 264, Subpart B general facility standards, as amended through April 12, 1996, at 61 FedReg 16290. This proposed revision incorporates changes at 40 CFR §265.12(a) concerning required notices.

Proposed §335.152(a)(17) contains an update to the adoption by reference of the 40 CFR Part 264, Subpart AA air emission standards for process vents, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §264.1034 concerning test methods and procedures, replacing references to Method 8240 with references to Method 8260 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. Proposed §335.152(a)(18) contains an update to the adoption by reference of the 40 CFR Part 264, Subpart BB air emission standards for equipment leaks, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §264.1063 concerning test methods and procedures, replacing the reference to Method 8240 with reference to Method 8260 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. Section 335.152(a)(20) is a proposed amendment to the adoption by reference of 40 CFR Part 264, Appendix IX, incorporating revisions to Footnote No. 5, as amended through June 13, 1997, at 62 FedReg 32452.

Proposed §335.154 relates to reporting requirements for owners and operators. Proposed §335.154(a)(5) contains the added "(CFR)" and corrections to update the reference to 40 CFR §264.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194, concerning closure cost estimates, and the reference to 40 CFR §264.144, as amended and adopted through December 10, 1987, at 52 FedReg 46946, concerning post-closure cost estimates.

Proposed §335.156 relates to applicability of groundwater monitoring and response. Proposed §335.156(a)(2) contains a correction to reinstate the following language previously inadvertently striken: "for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units)." This proposed change would reflect the federal regulations under 40 CFR §264.90(a)(2).

Proposed §335.211 relates to applicability of standards for the management of recyclable materials used in a manner constituting disposal. Proposed §335.211(c) contains an exception to the exemption under §335.211(b), stating that the following uses remain subject to regulation: "Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal." This proposed amendment reflects the removal of the conditional exemption for certain slag residues under 40 CFR §266.20(c), as promulgated by the EPA at 59 FedReg 43496 on August 24, 1994.

Proposed §335.213 and §335.214(a) contain corrections to refer to the appropriate chapters.

Proposed §335.221 relates to applicability and standards concerning hazardous waste burned for energy recovery. Proposed §335.221(a) contains an update to the adoption by reference of 40 CFR Part 266, as amended and adopted in the CFR through June 13, 1997, at 62 FedReg 32452. This proposed update reflects certain federal regulations published at 59 FedReg 47980 on September 19, 1994; 60 FedReg 33912 on June 29, 1995; and 62 FedReg 32451 on June 13, 1997. The changes proposed to be incorporated from the September 19, 1994 promulgation conform to the land disposal restrictions Phase II in 40 CFR §266.100(c) and 40 CFR Part 266, Appendix XIII. The changes proposed to be incorporated from the June 29, 1995 promulgation relate to the removal of certain legally obsolete rules. Legally obsolete rule at 40 CFR §266.104(f) were removed, relating to alternative hydrocarbon limit for furnaces with organic matter in raw material. On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards, set forth in 40 CFR §266.104(f), was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it difficult for the facility to meet one of the other two alternatives. On February 22, 1994, in *Horsehead Resource Development Co. v. Browner* , 16 F.3d 1246 (D.C. Cir. 1994), *cert. denied sub nom. Cement Kiln Recycling Coalition v. Browner* , 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking prodedures in issuing this standard and vacated. Accordingly, EPA has removed this standard and all references to this standard from the Code of Federal Regulations. This proposal reflects that removal. The proposed change at §335.221(a)(15) reflects the removal of 40 CFR §266.104(f), insofar as the existing reference to §266.104(i) is proposed to be corrected to §266.104(h). The changes proposed to be incorporated from the July 13, 1997 promulgation relate to testing and monitoring regulations at 40 CFR §§266.104(e), 266.106(g), 266.107(f), and Part 266 Appendix IX. Proposed §335.221(b)(2) contains a reference correction from §335.24(c)(4)-(7) to §335.24(c)(3)-(5) for the following reasons. Under the recovered oil exclusion at 59 FedReg 38536 (July 28, 1994), EPA removed the exclusion from the requirements for recyclable materials for certain recovered used oils (i.e., 40 CFR §261.6(a)(3)(v)), because the recovered oil exclusion was rewritten as an exclusion from the definition of solid waste. In other words, since the recovered oil is no longer a solid waste, it does not meet the definition of a hazardous waste or a recyclable material. Consequently, the exclusion from the requirements for recyclable materials is not needed. Then, under the universal waste rule at 60 FedReg 25492 (May 11, 1995), EPA removed the exclusion for used batteries that are to be regenerated (i.e., 40 CFR §261.6(a)(3)(ii)), and added a provision in the universal waste rules that facilities regenerating used batteries are subject to the part 273 standards. The impact of these changes on the state rules is that, since the recovered oil exclusion necessitated the removal of §335.24(c)(5) and the universal waste rules necessitated the removal of §335.24(c)(2), what was §335.24(c)(4)-(7) is now §335.24(c)(3)-(5) under this proposal.

Proposed §335.241 relates to applicability and requirements concerning recyclable materials utilized for precious metal recovery. Proposed §335.241(b)(4) contains referenced requirements for precious metals that are exported or imported for recovery, and reflects the federal regulation at 40 CFR §266.70(b)(3) as published by the EPA at 61 FedReg 16290 on April 12, 1996. Proposed §335.241(d) contains corrections to refer to the appropriate chapters.

Proposed §335.251 relates to applicability and requirements concerning spent lead-acid batteries being reclaimed. Proposed §335.251(a) contains corrections to refer to the appropriate chapters, and contains conforming changes to reflect the federal universal waste rule promulgation at 60 FedReg 25492 on May 11, 1995 concerning the 40 CFR §266.80(a) exemption for persons who regenerate spent batteries or who store spent batteries that are to be regenerated. Proposed §335.251(b)

shows a similar exemption, reflecting 40 CFR §266.80(b), for persons who store spent batteries that are to be regenerated. Proposed §335.251(b)(2) contains corrections to refer to the appropriate chapters.

Proposed §335.261 relates to the Universal Waste Rule. Certain proposed amendments to §335.261 are conforming changes necessary to reflect the federal regulations as promulgated at 60 FedReg 25492 on May 11, 1995. One such conforming change is the proposed amended language within §335.261(a) which state that "This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under Title 30 Texas Administrative Code." This conforming change is necessary to appropriately reflect 40 CFR §273.1, relating to scope. Proposed §335.261(a) also contains an update to the adoption by reference of 40 CFR Part 273, as amended and adopted through April 12, 1996, at 61 FedReg 16289, which would adopt changes in the universal waste rule concerning exports and imports of hazardous waste to or from designated member countries of the OECD. Specifically, this proposed update would incorporate changes to 40 CFR §273.20, §273.40, §273.56, and §273.70. Under 40 CFR §273.20 and §273.40, the phrase "other than to those OECD countries specified in 40 CFR §262.58(a)(1) (in which case the handler is subject to the requirements of 40 CFR part 262, subpart H)" is inserted after "sends universal waste to a foreign destination." Under 40 CFR §273.56, the phrase "other than to those OECD countries specified in 40 CFR §262.58(a)(1) (in which case the transporter is subject to the requirements of 40 CFR Part 262, subpart H)" is inserted after "transporting a shipment of universal waste to a foreign destination." Under 40 CFR §273.70, the phrase "as indicated in paragraphs (a) through (c) of this section" is added to the introductory text, and a new subsection (d) is added, which states "Persons managing universal waste that is imported from an OECD country as specified in 40 CFR §262.58(a)(1) are subject to paragraphs (a) through (c) of this section, in addition to the requirements of 40 CFR Part 262, subpart H."

Proposed §335.261(b) contains an exception from the adoption by reference of §273.1, because the requirements of this section relating to scope have been proposed in §335.261(a), written in language to accomodate or "fit" the state rules. Proposed §335.261(b)(13) contains amendments to incorporate the following definitions, which are essentially equivalent to the corresponding federal regulations under 40 CFR §273.6, but which need to be proposed with changes to the wording of the corresponding federal definitions to in order to properly "fit" the state rules: "Destination Facility;" "Generator;" "Large Quantity Handler of Universal Waste;" "Small Quantity Handler of Universal Waste;" "Thermostat;" and "Universal Waste." Under the proposed definition of "Destination Facility," compared to the federal definition, the phrase "as adopted by reference in this section" has been added immediately following "40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c)." The proposed definition of "Generator" is essentially the same as the federal definition, except that "40 CFR Part 261" is substituted for "part 261 of this chapter." Under "Large Quantity Handler of Universal Waste,"compared to the federal definition, the proposed definition has minor editorial changes to make the definition more understandable and substitutes the phrase "as defined in this section" for the phrase "batteries, pesticides, or thermostats" after the term "universal waste." Under "Small Quantity Handler of Universal Waste," compared to the federal definition, the proposed definition has minor editorial changes to make the definition more understandable and substitutes the phrase "as defined in this section" for the phrase "batteries, pesticides, or thermostats" after the term "universal waste." Under "Thermostat," compared to the federal definition, the phrase "as adopted by reference in this section" has been added in the proposed definition immediately following "40 CFR §273.13(c)(2) or 40 CFR §273.33(c)(2)." Under "Universal Waste," compared to the federal definition, the phrase "of this section" is substituted in the proposed definition for the phrase "40 CFR part 273." Note that the federal definitions for "Battery;" "FIFRA;" "On-site;" "Pesticide;" "Universal Waste Transfer Facility;" "Universal Waste Handler;" and "Universal Waste Transporter" do not need revision to accomodate state rules, and thus are proposed to be adopted by reference under §335.261(a) with no changes spelled out under proposed §335.261(b) concerning adoption with changes.

Proposed §335.261(d) contains a change of the phrase "40 CFR part 273, as adopted by reference in this section" to "this section" to be more concise and accurate.

Proposed §335.431 relates to purpose, scope, and applicability of land disposal restrictions. Section 335.431(b)(3) is proposed as a conforming change to reflect 40 CFR §268.1(f), as promulgated in the universal waste rule 60 FedReg 25492 on May 11, 1995, and is an exemption from the requirements of 40 CFR §268.7 and §268.50 for universal waste handlers and universal waste transporters. Proposed §335.431(c)(1) and (3) are conforming changes to adopt the federal land disposal restrictions by reference, except as provided in proposed §335.431(c)(2) and subject to the changes indicated in §335.431(d), as amended through May 12, 1997, in 62 FedReg 25998. Proposed §335.431(c)(2) excepts out 40 CFR §268.1(f) because it has been proposed as an exemption under §335.431(b)(3), and adoption by reference is neither needed nor appropriate. Proposed §335.431(c)(2) also contains the deletion of the exceptions for 40 CFR §§268.10-12 because these sections were deleted from the CFR at 61 FedReg 15566. The following are descriptions of the federal regulations which would be adopted by the aforementioned proposal to adopt the federal land disposal restrictions (LDRs) by reference, as amended through May 12, 1997. Phase III of the federal LDRs is included, and this phase as proposed for adoption was promulgated by the EPA on five different dates in the Federal Register. First, at 61 FedReg 15566, published on April 8, 1996, the following sections, tables, and appendix were revised or removed as follows: 40 CFR §§268.1(e), 268.2, 268.3, 268.7(a)(1)-(3), 268.7(b); removal of §§268.8, 268.10, 268.11, and 268.12; §§268.39, 268.40, 268.42 Table 1, 268.48(a) Table UTS, and Appendix XI. Second, at 61 FedReg 19117, published on April 30, 1996, 40 CFR §268.39 was revised. Third, at 61 FedReg 33680, published on June 28, 1996, the following sections were revised: 40 CFR §§268.1(c), 268.2, 268.3, 268.39, 268.40, and 268.48. Fourth, at 61 FedReg 36419, published on July 10, 1996, 40 CFR §268.40 was revised. Fifth, at 62 FedReg 7502, published February 19, 1997, 40 CFR §268.40 and §268.48 were revised. Phase IV of the federal LDRs is also included and this phase as proposed for adoption was published on May 12, 1997 in the Federal Register. The following sections and appendices were revised or removed at 62 FedReg 25998: 40 CFR §§268.1(e), 268.4, 268.7(a)(1)-(9), 268.7(b)-(c), 268.9, 268.30; removal of

§§268.32-36; §268.40, Part 268 Appendices VI, VII, VIII, and removal of Part 268 Appendices I, II, III, and X.

FISCAL NOTE Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed 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 has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be simplification of existing regulations, enhanced consistency between federal and state waste regulatory requirements, more cost-effective regulation of waste management activities, and improvements in the management of hazardous waste and hazardous waste facilities. The proposed amendments generally incorporate existing federal regulations and certain streamlining and administrative provisions and correct typographical and cross-reference errors. There are no significant economic costs anticipated to any person, including any small business, required to comply with the sections as proposed because the regulation is a promulgation under the Hazardous and Solid Waste Amendments of 1984 (HSWA) and, as such, the U.S. EPA is implementing the regulation. Therefore, there are no additional costs incurred by affected owners and operators because they are already having to comply with this rule, if applicable to them.

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. Furthermore, 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 proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program; to provide streamlining and regulatory reform provisions; and to make typographical and administrative revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations, and to correct other technical errors within the rules, including reinstating rule language which was previously inadvertently deleted and correcting cross references. The proposed rules will substantially advance this stated purpose by adopting federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations; by incorporating certain streamlining and regulatory reform elements such as the proposed changes to subsection §335.24(h) to limit the referenced requirements of this subsection to §335.4 (relating to General Prohibitions) for spent lead-acid batteries being reclaimed; by reforming the rules in several areas by adding references to portions of Chapter 335 that relate to solid wastes that are recycled; and by making administrative corrections, including reinstatement of rule language and cross-reference corrections. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, as well as language which represents rule reform or streamlining of certain requirements. The subject regulations do not affect a landowners rights in private real property.

COASTAL MANAGEMENT PROGRAM The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking subject to the Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for the proposed rule pursuant to 31 TAC §505.22 and has found that 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 rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed rule amendments will comply with the standards under the Solid Waste Disposal Act. The commission invites public comment on the consistency of the proposed rule.

SUBMITTAL OF COMMENTS Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by July 20, 1998 and should reference Rule Log No. 98008-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

30 TAC §§335.1, 335.2, 335.6, 335.11-335.13, 335.17-335.19, 335.21, 335.23, 335.24, 335.29, 335.31

STATUTORY AUTHORITY The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§335.1. Definitions.

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

(1) Aboveground tank - A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act - The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992).

(3) Active life - The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion - That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(5) Activities associated with the exploration, development, and protection of oil or gas or geothermal resources - Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended (42 United States Code, §6901 et seq.).

(6) Administrator - The administrator of the United States Environmental Protection Agency or his designee.

(7) Ancillary equipment - Any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or processing tank(s), between hazardous waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

(8) Aquifer - A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) Authorized representative - The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(10) Battery - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [~~A device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.~~]

(11) Boiler - An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance to be Classified as a Boiler).

(12) Carbon regeneration unit - Any enclosed thermal treatment device used to regenerate spent activated carbon.

(13) Certification - A statement of professional opinion based upon knowledge and belief.

(14) Class 1 wastes - Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination). Class 1 waste is also referred to throughout this chapter as Class I waste.

(15) Class 2 wastes - Any individual solid waste or combination of industrial solid waste which cannot be described as Hazardous, Class 1 or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination). Class 2 waste is also referred to throughout this chapter as Class II waste.

(16) Class 3 wastes - Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination). Class 3 waste is also referred to throughout this chapter as Class III waste.

(17) Closed portion - That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(18) Closure - The act of permanently taking a waste management unit or facility out of service.

(19) Commercial hazardous waste management facility - Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(20) Component - Either the tank or ancillary equipment of a tank system.

(21) Confined aquifer - An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(22) Consignee - The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(23) Container - Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(24) Containment building - A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(25) Contaminant - Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter, "pollutant" as defined in the Texas Water Code, §26.001, and Texas Health and Safety Code, §361.431, "hazardous substance" as defined in the Texas Health and Safety Code, §361.003, and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §§26.261-26.268.

(26) Contaminated medium/media - A portion or portions of the physical environment to include soil, sediment, surface water, ground water or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(27) Contingency plan - A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(28) Control - To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(29) Corrective action management unit or CAMU - An area within a facility that is designated by the commission under 40 Code of Federal Regulations (CFR) Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(30) Corrosion expert - A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(31) Decontaminate - To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(32) Designated facility - A Class I or hazardous waste storage, processing, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations, Parts 270 and 124; a permit from a state authorized in accordance with 40 Code of Federal Regulations Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures

Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

(33) Destination facility - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [~~A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR 273.13(a) and (c) and 40 CFR 273.33(a) and (c) as adopted by reference in §335.261 of this title (relating to Universal Waste Rule). A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.~~]

(34) Dike - An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(35) Discharge or hazardous waste discharge - The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(36) Disposal - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(37) Disposal facility - A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(38) Drip pad - An engineered structure consisting of a curbed, free-draining base, constructed of a non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(39) Elementary neutralization unit - A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 CFR §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(40) Environmental Protection Agency acknowledgment of consent - The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(41) Environmental Protection Agency hazardous waste number - The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations, Part 26l, Subpart D and to each characteristic identified in 40 Code of Federal Regulations, Part 26l, Subpart C.

(42) Environmental Protection Agency identification number - The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(43) Essentially insoluble - Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or EPA limits for drinking water as published in the *Federal Register* .

(44) Equivalent method - Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(45) Existing portion - That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(46) Existing tank system or existing component - A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations–which cannot be canceled or modified without substantial loss–for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(47) Facility - Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action).

(48) Final closure - The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(49) Food-chain crops - Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(50) Freeboard - The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(51) Free liquids - Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(52) Generator - Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class III wastes only shall not be considered a generator.

(53) Groundwater - Water below the land surface in a zone of saturation.

(54) Hazardous industrial waste - Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 26l. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(55) Hazardous substance - Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 Code of Federal Regulations, Part 302.

(56) Hazardous waste - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

(57) Hazardous waste constituent - A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D or a constituent listed in Table 1 of 40 Code of Federal Regulations §261.24.

(58) Hazardous waste management facility - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(59) Hazardous waste management unit - A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(60) In operation - Refers to a facility which is processing, storing, or disposing of hazardous waste.

(61) Inactive portion - That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

(62) Incinerator - Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(63) Incompatible waste - A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(64) Individual generation site - The contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(65) Industrial furnace - Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(66) Industrial solid waste - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(67) Infrared incinerator - Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(68) Inground tank - A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(69) Injection well - A well into which fluids are injected. (See also "underground injection.")

(70) Inner liner - A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(71) Installation inspector - A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(72) International shipment - The transportation of hazardous waste into or out of the jurisdiction of the United States.

(73) Land treatment facility - A facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(74) Landfill - A disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(75) Landfill cell - A discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(76) Leachate - Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(77) Leak-detection system - A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(78) Liner - A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(79) Management or hazardous waste management - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(80) Manifest - The uniform hazardous waste manifest form, Form TWC-0311, and, if necessary, TWC-0311B, furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

(81) Manifest document number - A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(82) Miscellaneous unit - A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

(83) Movement - That hazardous waste transported to a facility in an individual vehicle.

(84) Municipal hazardous waste - A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(85) Municipal solid waste - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(86) New tank system or new tank component - A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 Code of Federal Regulations §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986 (see also existing tank system.")

(87) Off-site - Property which cannot be characterized as on-site.

(88) Onground tank - A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(89) On-site - The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(90) Open burning - The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(91) Operator - The person responsible for the overall operation of a facility.

(92) Owner - The person who owns a facility or part of a facility.

(93) Partial closure - The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(94) PCBs or polychlorinated biphenyl compounds - Compounds subject to Title 40, Code of Federal Regulations, Part 761.

(95) Permit - A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

(96) Person - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(97) Personnel or facility personnel - All persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(98) Pesticide - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [~~Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:~~]

[~~(A) is a new animal drug under Federal Food, Drug, and Cosmetic Act (FFDCA), §201(w), or~~]

[~~(B) is an animal drug that has been determined by regulation of the United States Secretary of Health and Human Services not to be a new animal drug, or~~]

[~~(C) is an animal feed under FFDCA, §201(x) that bears or contains any substances described by subparagraph (A) or (B) of this paragraph.~~]

(99) Petroleum substance - A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this definition for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances - i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels - a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes but is not limited to stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines - i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels - i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils - i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils - i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils - i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils - i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants - i.e., automotive and industrial lubricants;

(x) building materials - i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials - i.e., transformer oils and cable oils;

(xii) used oils - (See definition for "used oil" in this section); and

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) -i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(100) Pile - Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(101) Plasma arc incinerator - Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(102) Primary exporter - Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations, Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(103) Processing - The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq ., as amended.

(104) Publicly-owned treatment works (POTW) - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

(105) Qualified groundwater scientist - A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(106) Receiving country - a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(107) Regional administrator - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

(108) Remediation - The act of eliminating or reducing the concentration of contaminants in contaminated media.

(109) Remediation waste - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(110) Remove - To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for storage, processing, or disposal.

(111) Replacement unit - A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

(112) Representative sample - A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(113) Run-off - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(114) Run-On - Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(115) Saturated zone or zone of saturation - That part of the earth's crust in which all voids are filled with water.

(116) Shipment - Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(117) Sludge dryer - Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(118) Small quantity generator - A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(119) Solid Waste -

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq ., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations §261.4(a)(1)-[~~(11)~~] (14), as amended through May 12, 1997, at 62 FedReg 25998, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 Code of Federal Regulations §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.
Figure: 30 TAC §335.1(119)(D)(iv)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 Code of Federal Regulations §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land.

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the Environmental Protection Agency, as described in 40 Code of Federal Regulations §261.2(d)(1) - §261.2(d)(2).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(J) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(120) Sorbent - A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(121) Spill - The accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(122) Storage - The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled or stored elsewhere.

(123) Sump - Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, processing, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(124) Surface impoundment or impoundment - A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(125) Tank - A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(126) Tank system - A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(127) Thermal processing - The processing of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

(128) Thermostat - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [~~A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2) as adopted by reference in §335.261 of this title.~~]

(129) Totally enclosed treatment facility - A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(130) Transfer facility - Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(131) Transit country - Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(132) Transport vehicle - A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(133) Transporter - Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(134) Treatability study - A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 CFR §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(135) Treatment - To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(136) Treatment zone - A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(137) Underground injection - The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(138) Underground tank - A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(139) Unfit-for-use tank system - A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing hazardous waste without posing a threat of release of hazardous waste to the environment. Waste and Municipal Hazardous Waste) except as otherwise specified in §335.261 of this title

(140) Universal waste - Any of the [~~following~~] hazardous wastes defined as universal waste under §335.261(b)(13)(F) that are managed under the universal waste requirements of [~~40 CFR Part 273, the Universal Waste Rule, as adopted by reference in~~] §335.261 of this title (relating to Universal Waste Rule) .[~~The following wastes are exempt from regulation under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) except as otherwise specified in §335.261 of this title:~~]

~~[(A) Batteries as described in 40 CFR 273.2;]~~

~~[(B) Pesticides as described in 40 CFR 273.3; and]~~

~~[(C) Thermostats as described in 40 CFR 273.4.]~~

(141) Universal waste handler - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [~~A generator of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 273.33(a) or (c), as adopted by reference in §335.261 of this title), disposes, or recycles universal waste; or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.~~]

(142) Universal waste transporter - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [~~A person engaged in the off-site transportation of universal waste by air, rail, highway, or water.~~]

(143) Unsaturated zone or zone of aeration - The zone between the land surface and the water table.

(144) Uppermost aquifer - The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(145) Used oil - Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, Conditionally Exempt Small Quantity Generator (CESQG) hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil) and 40 CFR Part 279 (relating to Standards for Management of Used Oil).

(146) Wastewater treatment unit - A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code §466 et seq., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(147) Water (bulk shipment) - The bulk transportation of municipal hazardous waste or Class I industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(148) Well - Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(149) Zone of engineering control - An area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

§335.2. Permit Required.

(a)-(c) (No change.)

(d) No permit shall be required for:

(1)-(5) (No change.)

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Water Act, [~~Section~~] §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of that permit.

(e)-(g) (No change.)

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), by complying with the notification and information requirements as set forth in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of Title 40, Code of Federal Regulations, §265.301(a). In accordance with §335.6 of this title (relating to Notification Requirement), such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

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

(7) radioactive or nuclear waste materials, receipt of which would require a license from the Texas Department of Health or Texas Natural Resource Conservation [~~Water~~] Commission or any other successor agency; and

(8) (No change.)

(i)-(j) (No change.)

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title (relating to Notification Requirements) .

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of §335.261 of this title (relating to Universal Waste Rule).

§335.6. Notification Requirements.

(a)-(i) (No change.)

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil).

(k) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class I Waste.

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary exporters of hazardous waste) to an off-site storage, processing, or disposal facility, unless the transporter:

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

(4) in the case of hazardous waste exports, knows that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations §263.20(a), as amended and adopted through April 12, 1996, at 61 FedReg 16290 [~~which are in effect as of November 8, 1986~~].

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

§335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

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

(c) If a facility receives hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) (No change.)

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations (CFR) §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

(d) Within three working days of the receipt of a shipment subject to 40 CFR Part 262, Subpart H, concerning transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries, as defined under 40 CFR §262.81. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a)-(m)

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR)[~~,~~] §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR[~~,~~] §262.56, as amended and adopted through April 12, 1996, at 61 FedReg 16290 [~~which are in effect as of November 8, 1986~~].

§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) sludge has the same meaning used in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2;

(3) a by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process;

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents;

(5) a material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment);

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled;

(7) a material is recycled if it is used, reused, or reclaimed;

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) Excluded scrap metal is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 Code of Federal Regulations §261.4(a)(13)).

(11) Home scrap metal is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) Prompt scrap metal is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

§335.18. Variances from Classification as a Solid Waste.

(a) In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated; or

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions),

under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following [~~standards and~~] criteria:

(1)-(5) (No change.)

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

(d) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

§335.21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The applicant must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or [~~and~~] §335.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or [~~and~~] radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion for reconsideration, subject to §50.39(b)-(f) of this title (relating to Motion for Reconsideration) [~~petition the commission to review the decision. Any person affected by the final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a~~].

§335.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities.

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing Recyclable Materials Utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) (No change.)

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); [~~and~~] Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) . The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

(a) (No change.)

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); [~~and~~] Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to

Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) .

(1)-(4) (No change.)

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or [~~and~~] O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); [~~or~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) or [~~and~~] Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) (No change.)

[~~(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;~~]

(2) [~~(3)~~] scrap metal that is not already excluded under 40 Code of Federal Regulations §261.4(a)(13) ;

(3) [~~(4)~~] fuels produced from the refining of oil-bearing hazardous waste[~~s~~] along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 Code of Federal Regulations §261.4(a)(12)) ;

[~~(5) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;~~]

(4) [~~(6)~~] the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11; and

(5) [~~(7)~~] petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C.

(d) (No change.)

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); [~~and~~] Chapter 80 of this title (relating to Contested Case Hearings), Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and the notification requirements under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) (No change.)

(g) Recyclable [~~Except as provided in subsection (h) of this section, recyclable~~] materials (excluding those listed in subsections [~~subsection~~] (b)(4), (c)(1), and (2) -(5) [~~(3) -(7)~~] of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials[~~;~~] and recyclable materials listed in subsection (b)(4) and subsection (c)(2) [~~and (3)~~] of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) [~~and §335.6 of this title (relating to Notification Requirements)~~]. In addition, recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6

of this title (relating to Notification Requirements). Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section [~~Such wastes~~] may also be subject to the requirements of §§335.10 - 335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1)-(9) (No change.)

(i) (No change.)

(j) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A-I or O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions), but is regulated under Chapter 324 of this title (relating to Used Oil). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(k) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 Code of Federal Regulations Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17)-(18) and §335.112(a)(19)-(20).

(l) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 Code of Federal Regulations (CFR) §262.58(a)(1), for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if it is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to §335.261 of this title (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

§335.29. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

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

(4) Appendix VII - Basis for Listing Hazardous Waste (as amended through February 9, 1995, at 60 FedReg 7824 [~~October 15, 1992, at 57 FedReg 47376~~]);

(5) Appendix VIII–Hazardous Constituents (as amended through April 17, 1995, at 60 FedReg 19165 [~~June 20, 1994, at 59 FedReg 31551~~]); and

(6) (No change.)

§335.31. Incorporation of References.

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 13, 1997, at 62 FedReg 32451 [~~2, 1994, at 59 FedReg 28484~~].

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809154
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter B. Hazardous Waste Management General Provisions

30 TAC §335.41

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.41. Purpose, Scope and Applicability.

(a)-(i) (No change.)

(j) Except as specified in §335.261 of this title (relating to Universal Waste Rule), Subchapters B-F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards

Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Land Disposal Restrictions) and Chapter 305 of this title (relating to Consolidated Permits) do not apply to universal wastes, universal waste handlers, or universal waste transporters as defined in §335.261 of this title (relating to Universal Waste Rule). Universal wastes are not fully regulated hazardous wastes, but are subject to regulation under §335.261 of this title (relating to Universal Waste Rule).

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809155
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter C. Standards Applicable to Generators of Hazardous Waste

30 TAC §§335.61, 335.62, 335.76, 335.78

STATUTORY AUTHORITY The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§335.61. Purpose, Scope and Applicability.

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

(g) Section 335.78(c) and (d) of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) must be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.

§335.62. Hazardous Waste Determination and Waste Classification.

A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, as amended and adopted through April 12, 1996, at 61 FedReg 16290 [~~which are in effect as of November 8, 1986~~], provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996, at 61 FedReg 16290 [~~which are in effect as of November 8, 1986~~], has been provided;

(2)-(5) (No change.)

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

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through April 12, 1996, at 61 FedReg 16290 [~~which are in effect as of November 8, 1986~~].

(g) (No change.)

(h) Transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through April 12, 1996, at 61 FedReg 16290.

§335.78. Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators.

(a) (No change.)

(b) Except for those wastes identified in subsections (e)-(g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for

Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); [~~Chapters 261, 263, 265, 267, 269, 271, 273, and 305 (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and~~] or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirement of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that: [~~Hazardous waste that is not subject to regulation or that is subject only to §335.62, §335.63, §335.70 and §335.71 of this title (relating to Hazardous Waste Determination; EPA Identification Numbers; Recordkeeping; and Annual Reporting) is not included in the quantity determinations of this section and Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapter 305 of this title (relating to Consolidated Permits) and is not subject to any of the requirements of such subchapters or chapter. Hazardous waste that is subject to the requirements of §§335.24(d)-(f), 335.211-335.214, §335.221-335.226 and 335.241 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials; Recyclable Materials Used in an Manner Constituting Disposal; Hazardous Waste Burned for Energy Recovery; and Applicability) is included in the quantity determination of this section and is subject to the requirements of Subchapters C-H of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 305 of this title (relating to Consolidated Permits).~~]

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c)-(f), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials);

(4) is used oil managed under the requirements of §335.24(j) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials) and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements); or

(6) is universal waste managed under §335.41(j) of this title (relating to Purpose, Scope and Applicability) and §335.261 of this title (relating to Universal Waste Rule).

(d) (No change.)

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); [~~Chapters 261, 263, 265, 267, 269, 271, 273 and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits)~~] and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR [~~Code of Federal Regulations~~] §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR [~~Code of Federal Regulations,~~] §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) (No change.)

(2) The generator may accumulate acute hazardous waste on-site. If the generator [~~he~~] accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); [~~Chapters 261, 263, 265, 267, 269, 271, 273 and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits)~~] and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its [~~his~~] acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency under 40 CFR [~~Code of Federal Regulations~~] Part 270;

(B) in interim status under 40 CFR [~~Code of Federal Regulations~~] Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR [~~Code of Federal Regulations~~] Part 271;

(D) permitted, licensed, or registered by a state to manage municipal [~~or industrial~~] solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 ; [~~or~~]

(E) permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5-257.30;

(F) [~~(E)~~] a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under §335.261 of this title (relating to Universal Waste Rule), a universal waste handler or destination facility subject to the requirements of §335.261 of this title (relating to Universal Waste Rule) .

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) (No change.)

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator [~~he~~] accumulates at any time more than a total of 1000 kilograms of its [~~his~~] hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D-H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); [~~and~~] Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); [~~Chapters 261, 263, 265, 267, 269, 271, 273 and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits)~~] and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a

conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of its [~~his~~] hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency under 40 CFR [~~Code of Federal Regulations~~] Part 270;

(B) in interim status under 40 CFR [~~Code of Federal Regulations~~] Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR [~~Code of Federal Regulations~~] Part 271;

(D) permitted, licensed, or registered by a state to manage municipal [~~or industrial~~] solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste) ; [~~or~~]

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial non-hazardous waste and, if managed in a non-municipal or industrial non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5-257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;

(F) [~~(E)~~] a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under §335.261 of this title (relating to Universal Waste Rule), a universal waste handler or destination facility subject to the requirements of §335.261 of this title (relating to Universal Waste Rule) .

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR [~~Code of Federal Regulations~~] Part 261, Subpart C.

(i) (No change.)

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil) and 40 CFR [~~Code of Federal Regulations~~] Part 279.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809156
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter D. Standards Applicable to Transporters of Hazardous Waste

30 TAC §335.91

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.91. Scope.

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

(e) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste), or subject to the universal waste management standards of 40 CFR Part 273, or subject to §335.261 of this title (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809157
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §335.112, §335.114

STATUTORY AUTHORITY The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial

solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1) Subpart B – General Facility Standards (as amended through April 12, 1996, at 61 FedReg 16290 [~~November 18, 1992, at 57 FedReg 54452~~]);

(2)-(18) (No change.)

(19) Subpart AA – Air Emission Standards for Process Vents (as amended through June 13, 1997, at 62 FedReg 32451 [~~April 26, 1991, at 56 FedReg 19290~~]);

(20) Subpart BB–Air Emission Standards for Equipment Leaks (as amended through June 13, 1997, at 62 FedReg 32451 [~~April 26, 1991, at 56 FedReg 19290~~]);

(21)-(22) (No change.)

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

§335.114. Reporting Requirements.

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year a single copy of an annual report which covers facility activities during the previous year and contains the following information:

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

(3) the TNRCC [~~TWC~~] hazardous waste code and a description and the quantity of each hazardous waste the facility received during the year;

(4)-(5) (No change.)

(6) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations (CFR) §265.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194 [~~which are in effect as of May 2, 1986~~], and §335.127 of this title (relating to Cost Estimate for Closure), and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 CFR [~~Code of Federal Regulations~~] §265.144, as amended and adopted through [~~which are in effect as of~~] May 2, 1986, at 51 FedReg 16422 ;

(7)-(9) (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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809158
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §§335.152, 335.154, 335.156

STATUTORY AUTHORITY The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1) Subpart B–General Facility Standards (as amended through April 12, 1996, at 61 FedReg 16290 [~~November 18, 1992, at 57 FedReg 54452~~]); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2)-(16) (No change.)

(17) Subpart AA – Air Emission Standards for Process Vents (as amended through June 13, 1997, at 62 FedReg 32451 [~~April 26, 1991 at 56 FedReg 19290~~]);

(18) Subpart BB – Air Emission Standards for Equipment Leaks (as amended through June 13, 1997, at 62 FedReg 32451 [~~April 26, 1991, at 56 FedReg 19290~~]);

(19) (No change.)

(20) The following appendices contained in 40 CFR Part 264:

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

(E) Appendix IX–Ground-Water Monitoring List (as amended through June 13, 1997, at 62 FedReg 32451) .

(b)-(d) (No change.)

§335.154. Reporting Requirements for Owners and Operators.

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year an annual report which covers facility activities during the previous calendar year and which contains the following information:

(1)-(4) (No change.)

(5) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations (CFR) §264.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194 [~~which are in effect as of May 2, 1986~~], and §335.178 of this title (relating to Cost Estimate For Closure) and, for disposal facilities, the most recent post-closure cost estimate under

the regulations contained in 40 CFR [~~Code of Federal Regulations~~] §264.144, as amended and adopted through December 10, 1987, at 52 FedReg 46946 [~~which are in effect as of May 2, 1986~~];

(6)-(8) (No change.)

(b) (No change.)

§335.156. Applicability of Groundwater Monitoring and Response.

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) (No change.)

(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157-335.166 of this title (relating to Required Program; Groundwater Protection Standard; Hazardous Constituents; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program)[~~;~~] in lieu of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

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

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809159
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

Division 1. Recyclable Materials Used in a Manner Constituting Disposal

30 TAC §§335.211, 335.213, 335.214

STATUTORY AUTHORITY The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§35.211. Applicability.

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

(c) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in subsection (b) of this section and remain subject to regulation.

§335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), [~~Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision),~~] and the notification requirement under §335.6 of this title (relating to Notification Requirements).

§335.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter

20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), [~~Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision),~~] and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

(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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809160
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Division 2. Hazardous Waste Burned for Energy Recovery

30 TAC §335.221

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.221. Applicability and Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 13, 1997, at 62 FedReg 32451 [~~1, 1990 (see FedReg 22685), and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, September 5, 1991, June 22, 1992, August 25, 1992, September 30, 1992, July 20, 1993, November 9, 1993, and September 19, 1994, issues of the *Federal Register* (see 56 FedReg 7239, 56 FedReg 32688, 56 FedReg 42504, 56 FedReg 43874, 57 FedReg 27880, 57 FedReg 28558, 57 FedReg 44999, 58 FedReg 38816, 58 FedReg 59598, and 59 FedReg 48042-48043)~~]:

(1)-(14) (No change.)

(15) §266.104 – Standards to Control Organic Emissions, except §266.104(h [~~i~~]);

(16)-(23) (No change.)

(b) The following hazardous wastes and facilities are not regulated under §§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) (No change.)

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4 and §335.24(c)(3)-(5) [~~(4)-(7)~~]of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(3)-(4) (No change.)

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809161
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Division 3. Recyclable Materials Utilized for Precious Metal Recovery

30 TAC §335.241

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.241. Applicability and Requirements.

(a) (No change.)

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) (No change.)

(2) Section 335.6 of this title (relating to Notification Requirements); [and]

(3) Sections 335.9-335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable; and

(4) For precious metals exported to or imported from designated OECD member countries for recovery, 40 Code of Federal Regulations (CFR) Part 262, Subpart H and §265.12(a). For precious metals exported to or imported from non-OECD countries for recovery, §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments) .

(c) (No change.)

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits)[, ~~Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures After Final 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809162

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: July 19, 1998

For further information, please call: (512) 239-6087

♦ ♦ ♦

Division 4. Spent Lead-Acid Batteries Being Reclaimed

30 TAC §335.251

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.251. Applicability and Requirements.

(a) The regulations of this section apply to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); or Chapter 305 of this title (relating to Consolidated Permits)[, ~~Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), or Chapter 273 of this title (relating to Procedures After Final Decision)~~]. Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) (No change.)

(2) All applicable provisions in Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (re-

lating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits)[, ~~Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures After Final 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809163
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Division 5. Universal Waste Rule

30 TAC §335.261

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.261. Universal Waste Rule.

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under Title 30 Texas Administrative Code. Except as provided in subsection (b) of this section, Title 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended and adopted through April 12, 1996, at 61 FedReg 16290 [~~adopted and effective on May 11, 1995, at 60 FedReg 25492~~].

(b) Title 40 CFR Part 273, except §273.1, is adopted subject to the following changes:

(1)-(12) (No change.)

(13) In 40 CFR §273.6, the following definitions are changed to the meanings described in this paragraph:

(A) "Destination Facility" means a facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste;

(B) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation;

(C) "Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated;

(D) "Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate at any time more than 5,000 kilograms total of universal waste (as defined in this section), calculated collectively;

(E) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section; and

(F) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of this section:

(i) Batteries as described in 40 CFR §273.2;

(ii) Pesticides as described in 40 CFR §273.3; and

(iii) Thermostats as described in 40 CFR §273.4; [~~In 40 CFR §273.6, the definitions of "Generator" and "On-site" are replaced with the corresponding definitions found in §335.1 of this title (relating to Definitions). Also, the definition of "Small Quantity Handler of Universal Waste" is changed to read "Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates less than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time."~~]

(14)-(33) (No change.)

(c) (No change.)

(d) Any waste not qualifying for management under this section [~~40 CFR part 273, as adopted by reference in this section,~~] must be managed in accordance with applicable state regulations.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809164
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter O. Land Disposal Restrictions

30 TAC §335.431

STATUTORY AUTHORITY The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment and new language implement Texas Health and Safety Code Chapter 361.

§335.431. Purpose, Scope, and Applicability.

(a) (No change.)

(b) Scope and Applicability.

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

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under §335.261 of this title (relating to Universal Waste Rule) are exempt from 40 Code of Federal Regulations §§268.7 and 268.50.

(c) Adoption by Reference.

(1) Except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR, Part 268, as amended through May 12, 1997, in 62 FedReg 25998 [~~January 3, 1995, in 60 FedReg 242~~] are adopted by reference.

(2) The following sections of 40 CFR, Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§ 268.1(f), 268.5, 268.6, 268.7(a)(10), 268.[~~10-~~]13, 268.42(b), and 268.44.

(3) Appendices IV, VI-IX, and XI [~~I-X~~]of 40 CFR, Part 268 are adopted by reference as amended through May 12, 1997, in 62 FedReg 25998 [~~January 3, 1995, in 60 FedReg 242~~].

(d) (No change.)

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809412
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

34 TAC §3.558

The Comptroller of Public Accounts proposes an amendment to §3.558, concerning earned surplus: officer and director compensation. Subsection (b)(1) provides for an updated definition of the Internal Revenue Code, in accordance with Senate Bill 861, 75th Legislature, 1997. Subsection (b)(3) amends the definition of "compensation" to clarify that the term does not include any amounts that are not deductible for federal income tax purposes, in accordance with agency policy. Subsection (b)(9) is being revised for clarity. New subsection (b)(10) clarifies the definition of "officer of a corporation."

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 adopting the amendment 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 amendment.

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, §171.110.

§3.558. Earned Surplus: Officer and Director Compensation.

(a) (No change.)

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

(1) Internal Revenue Code -

(A) For reports originally due on or after January 1, 1998, the Internal Revenue Code (IRC) of 1986 in effect for the tax year beginning on or after January 1, 1996 and before January 1, 1997.

(B) For reports originally due on or after January 1, 1996 and before January 1, 1998, the Internal Revenue Code [~~(IRC)~~] of 1986 in effect for the tax year beginning on or after January 1, 1994, and before January 1, 1995.

(C) For reports originally due on or after January 1, 1992 and before January 1, 1996, the Internal Revenue Code of 1986 in effect for the tax year beginning on or after January 1, 1990, and before January 1, 1991 (1990 IRC).

(D) The franchise tax law requires that the 1990 IRC be used for reports originally due prior to January 1, 1996. Because of this requirement, there may be differences between federal taxable income reported for federal income tax purposes and reportable federal taxable income for franchise tax purposes for franchise tax reports originally due prior to 1996. To the extent that such differences exist, the 1990 IRC must be used to report the differences for reports originally due on or after January 1, 1996. For example, if a corporation was denied any portion of an IRC

§179 deduction on an asset in computing taxable earned surplus on a franchise tax report due prior to January 1, 1996 (because the §179 deduction exceeded the $10,000 limit allowed under the 1990 IRC), the corporation will be allowed to compute depreciation on the asset based on the 1990 IRC (i.e., the corporation may depreciate the asset based on the $10,000 §179 deduction allowed under the 1990 IRC) for reports originally due on or after January 1, 1996.

(2) (No change.)

(3) Compensation - The amount reportable to an officer or director for the tax reporting period as includable in the officer/director's federal taxable income without regard to any monetary limitations imposed for federal income tax purposes. Compensation does not include any amount reported to an officer/director which is disallowed as a reduction to federal taxable income for any taxable period for federal income tax purposes. For example, compensation does not include employee remuneration for which a deduction is disallowed under Internal Revenue Code, §162(m). Compensation is included wherever reportable on federal tax reporting forms including a Form W-2 Wage and Tax Statement, a Form 1099-MISC, or Schedule K-1 of Form 1065. For example (if all compensation is deductible):

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

(4) Officers and directors of a corporation other than a banking corporation - Except as provided in paragraph (10) of this subsection, the [~~The~~] officers and directors determined in accordance with the laws of the corporation's state of incorporation and the corporation's bylaws.

(5) (No change.)

(6) Officers and directors of a limited liability company - For the purposes of this section, the "officers or directors" are the managers or similar management persons identified in the articles of organization, operating agreement, or similar agreements required under the laws of the state in which the company is organized, except as provided in paragraph (10) of this subsection.

(7)-(8) (No change.)

(9) Unless otherwise indicated in this section, the following will apply.

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

[~~(C) "Officer of a corporation" includes, but is not limited to, an executive officer of a banking corporation (as defined in paragraph (5) of this subsection) and an officer of a limited liability company (as defined in paragraph (6) of this subsection).~~]

(C) [~~(D)~~] "Director of a corporation" includes, but is not limited to, a director of a limited liability company (as defined in paragraph (6) of this subsection) and a director of a banking corporation (as defined in paragraph (5) of this subsection).

(10) Officer of a corporation -

(A) Unless otherwise indicated in this section, "Officer of a corporation" includes, but is not limited to, an executive officer of a banking corporation (as defined in paragraph (5) of this subsection), an officer of a limited liability company (as defined in paragraph (6) of this subsection), and an officer of a corporation other than a banking corporation (as defined in paragraph (4) of this subsection).

(B) For a limited liability company or a corporation other than a banking corporation, any person designated as an officer (or as a manager in the case of a limited liability company) is presumed to be an officer of the corporation for purposes of Tax Code, §171.110, and subject to compensation add-back if that person:

(i) holds an office created by the board of directors or pursuant to the corporate charter or bylaws (or the articles of organization, operating agreement, or similar agreement in the case of a limited liability company); and

(ii) has legal authority to bind the corporation with third parties by executing contracts or other legal documents.

(C) A limited liability company or a corporation other than a banking corporation may rebut the presumption that a person is an officer if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policymaking aspects of the corporate operations.

(c)-(h) (No change.)

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809126
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 463-4062

♦ ♦ ♦

Chapter 5. Funds Management (Fiscal Affairs)

Subchapter O. Uniform Statewide Accounting System

34 TAC §5.200

The Comptroller of Public Accounts proposes an amendment to §5.200, concerning the state property accounting system.

The purpose of the amendment is to implement House Bill 1572, 75th Legislature, 1997, which provides, in general, that a charitable organization that expends funds received from the state in order to purchase computer equipment may not discard or dispose of the equipment before the fourth anniversary of the date the organization purchased the equipment.

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 adopting the amendment 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 amendment.

Comments on the proposal may be submitted to Michael L. Hay, Manager, State Property Accounting, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Texas Civil Statutes, Article 9023d, which requires the comptroller to adopt rules to implement this statute.

The amendment implements House Bill 1572, 75th Legislature, 1997.

§5.200. State Property Accounting System.

(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) Charitable organization - The term has the meaning assigned by Civil Practice and Remedies Code, §84.003.

(6) [~~(5)~~] Comptroller - The comptroller of public accounts for the State of Texas.

(7) Computer equipment - The equipment includes computer, telecommunications devices and systems, automated information systems, and peripheral devices and hardware that are necessary to the efficient installation and operation of that equipment, but does not include computer software.

(8) [~~(6)~~] Controlled asset - A possession of the state that a state agency has determined must be secured and tracked because of the nature of the possession. The term does not include a capital asset, real property, an improvement to real property, or infrastructure.

(9) [~~(7)~~] Fiduciary fund - A fund held by a state agency as trustee of the fund. The term includes pension funds and nonexpendable trust funds.

(10) [~~(8)~~] Include - A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(11) [~~(9)~~] May not - A prohibition. The term does not mean "might not" or its equivalents.

(12) [~~(10)~~] Personal property - A capital asset or a controlled asset.

(13) [~~(11)~~] Proprietary fund - A self-supporting fund whose resources are generated through user charges. The term includes enterprise and internal service funds.

(14) [~~(12)~~] Reassignable personal property - Personal property that retains usage value for the state, continues to be functionally capable of serving a state agency, and is not surplus personal property.

(15) [~~(13)~~] Replacement of personal property - A replacement of an internal or external part of personal property that allows it to complete its normal useful life.

(16) [~~(14)~~] Salvage personal property - Personal property that no longer serves its original purpose because it is depleted, worn out, damaged, consumed, outdated, or obsolete. The term does not include personal property that has a remaining useful life.

(17) [~~(15)~~] State agency - A state governmental entity that manages, administers, or controls personal property.

(18) [~~(16)~~] State employee - An officer or employee of a state agency.

(19) [~~(17)~~] State property accounting system - The personal property fixed asset component of the uniform statewide accounting system.

(20) [~~(18)~~] Supplemental physical inventories - The optional physical inventories that a state agency conducts in addition to the required annual physical inventory.

(21) [~~(19)~~] Surplus personal property - Personal property in the possession of a state agency that is not currently needed by the agency and is not required for the agency's foreseeable needs. The term does not include salvage personal property.

(22) [~~(20)~~] Trust property - Property not owned by the state that a state agency temporarily holds on behalf of the owner.

(b)-(s) (No change.)

(t) Disposal of computer equipment by charitable organizations.

(1) Application of this subsection. This subsection applies to computer equipment purchased by a charitable organization for $500 or more with funds received from the state through appropriation by the Texas legislature or by grant or by other means.

(2) General requirements. Except as provided by paragraphs (3) and (4) of this subsection, a charitable organization that purchases computer equipment with funds received from the state may not dispose of or discard the computer equipment before the fourth anniversary of the date the charitable organization purchased that equipment.

(3) Exceptions. This subsection does not prohibit:

(A) the sale or trade of computer equipment; or

(B) the disposal of equipment that is not operational.

(4) Donations to other charitable organizations. A charitable organization may dispose of computer equipment purchased with state funds within the four-year period after the date of purchase by donating the equipment to another charitable organization.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809127
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 463-4062

♦ ♦ ♦

Part III. Teacher Retirement System of Texas

Chapter 41. Insurance

34 TAC §41.8

The Teacher Retirement System (TRS) proposes an amendment to §41.8, concerning the bidding process for TRS Insurance. New law passed by the 75th Legislature found at Insurance Code, §8, Article 3.50-4(i) requires rules with the information outlined in the amended language. It is a requirement to provide information on areas consisting of a county and adjacent counties on the number and types of qualified providers willing to participate in the coverage or plan. In addition, the

Board of Trustees or its designee will consider relevant factors or criteria in making a decision.

Ronnie Jung, TRS Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no negative fiscal implications for state and local government as a result of enforcing and administering the amendments. The new law and rule may provide more relevant data for making an informed decision on the best bid.

Mr. Jung also has determined that for each year of the first five years the section is in effect that the public benefit anticipated from the section is that the bids for TRS Group Insurance will be more complete and easier to evaluate. There will be no effect on small business. There may be a slight administrative or economic cost to persons who are required to comply with the proposed section. Gathering and presenting additional data always has a slight cost.

Comments on the proposed amendments to be considered by the executive director and the board of trustees must be submitted in writing within 30 days of publication of the proposed section in the *Texas Register*, to Charles L. Dunlap, Executive Director, Teacher Retirement System, 1000 Red River, Austin, Texas, 78701-2698.

The amendment is proposed under the Government Code, §825.102, which provides the Board of Trustees with the authority to adopt rules for the administration of the funds of the retirement system. In addition, the amendments are proposed under the Insurance Code, §8, Article 3.50-4(i) which provides for a rule that requires information on a county and all adjacent counties on the number and types of qualified providers willing to participate in coverage.

Insurance Code, §8, Article 3.50-4 is affected by the proposed amendment.

§41.8. Eligible Bidders.

(a) The Texas Public School Retirees Group Insurance Program may include separate contracts for:

(1) a health benefit [~~insurance~~] plan;

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

(b) To be eligible to bid on the health benefit services or products[~~insurance plan~~] a bidder [~~carrier~~] must have annual health benefit [~~insurance~~] premiums and premium equivalents of at least $1 billion.

(c) To be eligible to bid on utilization review a bidder [~~provider~~] must:

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

(d) To be eligible to bid on services to provide other ancillary benefits a bidder [~~provider~~] must currently be servicing at least twice as many persons as will be covered under this program.

(e) Bidders who desire to bid on the administrative services only of a TRS benefits program which includes group health benefits are not covered by subsection (f) of this section.

(f) Bidders who wish to bid on services or products available to the entire state or to a region of the state shall provide information for each area consisting of a county and all adjacent counties, on the number and types of qualified providers willing to participate in coverage or plan, for which the bid is made.

(g) In determining the quality of the bids, the Board of Trustees or its designee may consider such factors and criteria as they deem relevant and appropriate under the circumstances.

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

Filed with the Office of the Secretary of State, on June 8, 1998.

TRD-9809172
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: July 24, 1998
For further information, please call: (512) 391–2115

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 87. Treatment

Subchapter A. Program Planning

37 TAC §87.5

The Texas Youth Commission (TYC) proposes an amendment to §87.5, concerning family involvement. The amendment will add items to the list of information parents of TYC youth will be provided upon the youth's placement in a TYC facility.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 more efficient use of state fund. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0761, which provides the Texas Youth Commission with the authority to develop programs that encourage family involvement in the rehabilitation of the child.

The proposed rule implements the Human Resource Code, §61.034.

§87.5. Family Involvement.

(a)-(c) (No change.)

(d) Families shall be provided at least: [~~informed of the youth's primary service worker, visitation rights and information about locating the facility by each facility at which a youth is placed.~~]

(1) the name of the youth's primary service worker and instructions for contact him/her;

(2) rights and rules regarding visitation, mail, and telephone;

(3) rules regarding personal property;

(4) rules regarding parent sending money to youth; and

(5) information about locating the facility.

(e)-(g) (No change.)

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

Filed with the Office of the Secretary of State, on June 4, 1998.

TRD-9809001
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 424–6244

♦ ♦ ♦

Chapter 91. Program Services

Subchapter A. Basic Services

37 TAC §91.13

The Texas Youth Commission (TYC) proposes an amendment to §91.13, concerning food and nutrition. The amendments will provide for food services in TYC facilities to be operated by TYC employees or through contracts, delete an obsolete publication reference, and add wording to distinguish between medical and religious special diets provided to TYC youth.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 efficient use of state resources. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to ensure the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The proposed rule implements the Human Resource Code, §61.034.

§91.13. Food and Nutrition.

(a) Purpose. The purpose of this rule is to establish standards to ensure that agency programs provide food services to meet the basic nutrition needs of its youth.

(b) Food services departments in TYC facilities may be operated by TYC employees or through contracts with private organizations.

(c) [~~(b)~~] Facility food service departments shall meet applicable state and local sanitation and health standards.

(d)[~~(c)~~] Facilities shall comply with participation requirements for the U.S. Department of Agriculture National Breakfast Program and the National School Lunch Program.

(e)[~~(d)~~] The diet provided shall meet the most recent Recommended Dietary Allowances (RDA) published by the National Research Council.

[~~(e) Menus shall meet the nutrition standard of the Texas Minimum Standards for Child Caring Institutions published by the Texas Department of Human Services.~~]

(f) Standardized menus will be developed annually for institutions and for halfway houses by a dietitian.

(1) (No change.)

(2) Medical [~~Special~~] diets shall be provided as prescribed by appropriate medical or dental personnel.

(3) Religious [~~Special~~] diets will be provided when a youth's religious beliefs require adherence to religious dietary laws consistent with (GAP)§ 91.21 regarding Moral Values, Worship and Religious Education.

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

(j) On-duty correctional care [~~child care~~] staff shall supervise youth during meals.

(k)-(l) (No change.)

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

Filed with the Office of the Secretary of State, on June 4, 1998.

TRD-9809002
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 424–6244

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 182. Specialized Telecommunications Device Assistance Program

Subchapter A. Definitions

40 TAC §182.4

The Texas Commission for the Deaf and Hard of Hearing proposes new §182.4. The new section is proposed to define basic equipment for which vouchers can be received under

the new Specialized Telecommunications Device Assistance Program.

David W. Myers, Executive Director, has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Myers has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of this new section will be a better understanding of how the devices that will be available will be determined under the Specialized Telecommunications Device Assistance Program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the section as proposed.

Comments on this proposed section may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The new section is proposed under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§182.4. Determination of Basic Device.

In determining basic devices available for voucher exchange, the following criteria shall be applied.

(1) The device must be for the purpose of telephone access in the home or business;

(2) The device must mainly apply to telephone access functions and not daily living functions; and

(3) The device must serve to facilitate interactive communication that is functionally equivalent to that afforded by a basic telephone.

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

Filed with the Office of the Secretary of State, on June 5, 1998.

TRD-9809055
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 407–3250

♦ ♦ ♦

Part VIII. Children's Trust Fund of Texas

Chapter 201. Council Administration: Policies and Procedures

The Children's Trust Fund of Texas Council proposes the repeal of §§201.1, 201.3, 201.6, 201.7, and amendments to §§201.8, 201.9, and 201.10, concerning Council Administration: Policies and Procedures.

Section 201.1 is being repealed. The section is out-of date and is repetitive of CTF's enabling legislation, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule.

Section 201.3 is being repealed. Subsection (a) largely tracks CTF's enabling legislation, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule. Subsections (b) and (c) lack a proper statutory basis.

Section 201.6 is being repealed. This section involves the internal organization of the agency and incorrectly states the law regarding the executive director's employment status.

Section 201.7 is being repealed. This section is a restatement of CTF's enabling legislation, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule.

Section 201.8 is amended to reflect the correct reference to the Open Meetings Act (Government Code, Chapter 551). Subsections (a), (c), (g), and (i), and (k) are repealed. These subsections mirror applicable statutory law. Also, subsection (d) is repealed. The Open Meetings Act, not a rule, determines when an agency is authorized to go into executive session.

Section 201.9 is retained but amended by adding a new paragraph (6) as follows: "adoption of substantive or procedural rules, " to clarify to board members what actions require Council approvals.

Section 201.10 subsection (b) is repealed because it is a restatement of existing law, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule. Additionally the statutory citation is out-of-date.

Richard Hermann, Director of Finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed. There will be no foreseeable cost reductions to the state or to local governments, no net effect on 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 associated with implementing the rules.

Mr. Hermann also has determined that for each year of the first five year period that the rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be a cleaner version of already existing rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments should be directed to Sarah Winkler, Director of Education, Children's Trust Fund of Texas Council, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854.

40 TAC §§201.1, 201.3, 201.6, 102.7

(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 Children's Trust Fund of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code,§74.003 subsection (a)(11), which grants general rule-making authority.

§201.1. The Children's Trust Fund of Texas Council.

§201.3. Membership.

§201.6. Executive Director.

§201.7. Council Activities.

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

Filed with the Office of the Secretary of State, on June 8, 1998.

TRD-9809174
Janie D. Fields, MPA
Executive Director
Children's Trust Fund of Texas
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 458–1281

♦ ♦ ♦

40 TAC §§201.8, 201.9, 201.10

The amendments are proposed under the Human Resources Code, §74.003 subsection (a)(11), which grants general rulemaking authority.

§201.8. Meetings.

[~~(a) Regular meetings. The Council will meet a minimum of two times per year.~~]

(a) [~~(b)~~] Special meetings. Special meetings may be called by the chairperson at a time and location designated in a notice of the meeting.

[~~(c) Open meetings. All Council meetings are subject to the requirements of the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17. Regular and special meetings of the Council shall be open to the public.~~]

[~~(d) Executive sessions. Executive sessions of the Council are meetings with only Council members and invited persons present and are subject to the following requirements under the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.~~]

[~~(1) Executive sessions are held only to consider the following items as provided by law:~~]

[~~(A) involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing;~~]

[~~(B) with respect to the purchase, exchange, lease, or value of real property and negotiated contracts for prospective gifts or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiation position of the Council as between the Council and a third person, firm, or corporation;~~]

[~~(C) regarding the deployment, or specific occasions for implementation of security personnel or devices; or~~]

[~~(D) in private consultations between a governmental body and its attorney, in instances in which the Council seeks the attorney's advice with respect to pending or contemplated litigation, settlement offers, and matters where the duty of the Council's legal counsel to his/her client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with applicable statutory provisions.~~]

[~~(2) For any meeting that is closed to the public, except for consultations in accordance with paragraph (1)(D) of this subsection, the Council will take one of the following actions.~~]

[~~(A) The Council shall keep an agenda of the proceedings certified by the presiding officer that each agenda is a true and correct record of such proceedings. The certified agenda shall:~~]

[~~*(i)* include an announcement by the presiding officer at the beginning and end of the closed session or meeting indicating date and time, and~~]

[~~*(ii)* state the subject matter of each deliberation.~~]

[~~(B) In lieu of the certified agenda requirement of subparagraph (A) of this paragraph, the Council may make a tape recording of the proceedings which shall include an announcement made by the presiding officer at the opening and closing of the meeting indicating the date and time.~~]

(b) [~~(e)~~] Notice of meeting. The notice of meetings shall be published in the *Texas Register* in accordance with state requirements.

(c) [~~(f)~~] Agendas. The chairperson will approve the official agenda, which will be distributed the day of the meeting. Any matter may be placed on the agenda for consideration by the written request of three members of the Council within 30 days of a regular or special meeting.

[~~(g) Quorum. Five members will constitute a quorum.~~]

(d) [~~(h)~~] Rules of order. The Council will use Robert's Rules of Order, Newly Revised, except that the chairperson may vote on any action as any other member of the Council, and any other exception as provided in Council management policies or by statute.

[~~(i) Minutes. Official minutes are retained by the state office of the CTF Council and the Texas Legislative Reference Library.~~]

(e) [~~(j)~~] Public participation. The public may participate in the Council's scheduled meetings by personal appearance in accordance with accepted rules of order and as determined by the chairperson and the executive director or by submitting written comments.

[~~(k) Dissents. A Council member may enter a written statement into the official minutes to reflect opposition to any action taken at a meeting by the Council majority.~~]

(f) [~~(l)~~] Public statements. When making public statements concerning matters under the jurisdiction of the Council, members will not imply that their individual opinions reflect the official position or policy of the Council.

§201.9. Actions Requiring Council Approval.

Council approval is required for the following actions:

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

(4) when required by law, requested by the executive director, or desired by the Council; [~~or~~]

(5) issuance of a formal public statement reflecting the opinion or policy of the Council; or [~~.~~]

(6) adoption of substantive or procedural rules.

§201.10. Relationship Between Council and Private Organizations and Donors.

[~~(a) Authority and purpose.~~]

These rules are proposed under the provisions of Human Resources Code, Chapter 74, whereby the Council may apply for and receive funds made available by the federal or state government or by another public or private source, which funds may be designated and expended for administrative purposes or for grants for child abuse and neglect prevention programs, and which may be deposited in either the Trust Fund [~~trust fund~~] or the Operating Fund [~~operating fund~~], as appropriate. The Council may solicit donations for child abuse and neglect prevention programs and public information and education activities.

[~~(b) Standards of Conduct~~]

[~~(1) Standards of conduct of members and employees of the Council are governed by Article 6252-9B, Texas Civil Statutes.~~]

[~~(2) No member or employee of the Council should accept or solicit any gift, favor, or service that might reasonably tend to influence him or her in the discharge of favor, or service that might reasonably tend to influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence him/her with the intent to influence his or her official contributions from individuals or organizations under contract with the Council.~~]

[~~(3) No member or employee of the Council should accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by reason of his or her official position.~~]

[~~(4) No member or employee of the Council should accept other employment or compensations which could reasonably be expected to impair his or her independence or judgment in the performance of his or her official duties.~~]

[~~(5) No member or employee of the Council should make personal investments which could reasonably be expected to create a substantial conflict between his or her private interest and the public interest.~~]

[~~(6) No member or employee of the Council should intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another.~~]

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

Filed with the Office of the Secretary of State, on June 8, 1998.

TRD-9809175

Janie D. Fields, MPA

Executive Director

Children's Trust Fund of Texas

Earliest possible date of adoption: July 19, 1998

For further information, please call: (512) 458–1281

♦ ♦ ♦

Chapter 202. Funded Program Awards and Contracts

The Children's Trust Fund of Texas Council proposes the repeal of §202.9 and amendments to §§202.6, 202.8, and 202.10, concerning Funded Program Awards and Contracts.

Section 202.6 subsection (a) is amended to delete a delivery address that is no longer available.

Section 202.8 subsection (f) is amended by including a description of the confidentiality guidelines that are referred to in the current rule. By adding the guidelines, applicants will have adequate guidance without going to another source.

Section 202.9 is being repealed. These conflict of interest provisions will be transferred to the Policies and Procedures Manual.

Section 202.10 amends subsection (a) to reflect the amendment to Human Resources Code, §74.010, which authorizes more than two extensions under certain circumstances as determined by the Council and defines those circumstances.

Richard Hermann, Director of Finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed. There will be no foreseeable cost reductions to the state or to local governments, no net effect on 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 associated with implementing the rules.

Mr. Hermann also has determined that for each year of the first five year period that the rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be a cleaner version of already existing rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments should be directed to Sarah Winkler, Director of Education, Children's Trust Fund of Texas Council, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854.

40 TAC §§202.6, 202.8, 202.10

The amendments are proposed under the Human Resources Code, §74.003 subsection (a)(11), which grants general rule-making authority.

§202.6. Application Requirements and Proposal Submission.

(a) Proposal format. The Council adopts by reference the document entitled Request for Proposal (RFP), that is periodically updated and published by Council staff. Copies are available upon request from the Children's Trust Fund of Texas Council. [~~P.O. Box 160610, Austin, Texas 78716-0610.~~]

(b) Format content. The format consists of the forms and related material that the applicant will complete to apply to receive funds to perform services.

(1) The format included in the application package shall be used.

(2) Substantially incomplete proposals will not be considered.

(3) Proposals received after the closing date will not be considered.

§202.8. Project Approval.

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

(f) A contractor who provides direct client services must comply with confidentiality guidelines. All Contractors who provide direct client services must maintain confidential files on all participants who receive those services. All program staff including instructors must review confidentiality guidelines set forth by the agency prior to employment. Participants may sign a release of information upon entry into a program. Names, addresses, phone numbers and other identifying information must not be released to anyone without the participant's prior written approval.

(g)-(h) (No change.)

§202.10. Renewal Funding.

(a) Renewal of a grant is not automatic. Grants may be renewed twice for a total contract period of three years at the Children's Trust Fund of Texas Council's (CTF's) option, when authorized by the CTF Council, and when it is in the best interest of

the CTF Council. A Program may be eligible for renewal a third time as determined by the CTF Council under certain circumstances which include but are not limited to funding availability, proven program success, and demonstrated community support.

(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.

Filed with the Office of the Secretary of State, on June 8, 1998.

TRD-9809176
Janie D. Fields, MPA
Executive Director
Children's Trust Fund of Texas
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 458–1281

♦ ♦ ♦

40 TAC §202.9

(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 Children's Trust Fund of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The amendments are proposed under the Human Resources Code, §74.003 subsection (a)(11), which grants general rulemaking authority.

§202.9. Conflict of Interest.

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

Filed with the Office of the Secretary of State, on June 8, 1998.

TRD-9809177
Janie D. Fields, MPA
Executive Director
Children's Trust Fund of Texas
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 458–1281

♦ ♦ ♦

Chapter 203. Advisory Committees

40 TAC §§203.1–203.5

(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 Children's Trust Fund of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Children's Trust Fund of Texas Council proposes the repeal of §§203.1–203.5, concerning Advisory Committees.

Both advisory committees have expired therefore the entire chapter must be repealed.

Richard Hermann, Director of Finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals as proposed. There will be no foreseeable cost reductions to the state or to local governments, no net effect on revenues as a result of repealing the rules, and no foreseeable implications relating to costs or revenues to the state or to local governments associated with the repeal of the rules.

Mr. Hermann also has determined that for each year of the first five year period that the rules are in effect, the public benefit anticipated as a result of enforcing the repeals as proposed will be the removal of obsolete rule language for the agency's standards. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments should be directed to Sarah Winkler, Director of Education, Children's Trust Fund of Texas Council, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854.

The repeals are proposed under the Human Resources Code, §74.003 subsection (a)(11), which grants general rulemaking authority.

§203.1. Purpose.
§203.2. Definitions.
§203.3. Advisory Committees.
§203.4. CTF Fiscal Advisory Committee.
§203.5. CTF Public Awareness Advisory Committee.

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

Filed with the Office of the Secretary of State, on June 8, 1998.

TRD-9809178
Janie D. Fields, MPA
Executive Director
Children's Trust Fund of Texas
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 458–1281

♦ ♦ ♦

Part IX. Texas Department on Aging

Chapter 260. Area Agency on Aging Administrative Requirements

40 TAC §260.1

The Texas Department on Aging proposes an amendment to §260.1, relating to the Area Agency on Aging Administrative Requirements. The proposed amendment will establish the use of standardized forms to improve the collection and accuracy of the required programmatic and financial performance targets (units, persons, unit costs) reported to the Department as outlined in the approved area plan of each area agency on aging. The use of uniform reporting instruments will also assist each area agency in maintaining verifiable supporting documentation of the services they provide to the elderly in their service region.

Frank Pennington, director of program and fiscal accountability, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Pennington also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated will be a better accountability of federal and state resources for the delivery of Older Americans Act programs.

Comments on the proposed amendments may be submitted to Frank Pennington, director of program and fiscal accountability,

Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The rule is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§260.1. Are Agency on Aging Administrative Responsibility.

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

(g) Area Agency on Aging Accountability. To demonstrate area agency contractor accountability:

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

(7) area agency contractors shall use any and all standard forms promulgated by the Department for reporting or maintenance of supporting documentation following appropriate written notice from the Department of not less than 30 days unless an approval waiver is granted by the Department which approves the use of alternative forms.

(h)-(q) (No change.)

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809065
Mary Sapp
Executive Director
Texas Department on Aging
Earliest possible date of adoption: July 19, 1998
For further information, please call: (512) 424-6840

♦ ♦ ♦

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 V. State Board of Dental Examiners

Chapter 107. Dental Board Procedures

Procedures for Investigating Complaints

22 TAC §107.101

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amendment to §107.101, which appeared in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3796).

Issued in Austin, Texas, on June 8, 1998.

TRD–9809185
Douglas A. Beran, Ph. D.
Executive Director
State Board of Dental Examiners
Effective date: June 8, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

Subchapter E. Medical Phase

25 TAC §33.140

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed amendment to §33.140, which appeared in the December 26,1997, issue of the *Texas Register* (22 TexReg 12659).

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809054
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 5,1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

Subchapter K. Private Duty Nursing

25 TAC §33.601–33.609

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed amendment to §33.601–33.609 which appeared in the December 26,1997, issue of the *Texas Register* (22 TexReg 12660).

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809053
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 5,1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 260. Area Agency on Aging Administrative Requirements

40 TAC §260.1

The Texas Department on Aging has withdrawn from consideration for adoption the proposed amendment to §260.1 relating to Area Agency on Aging Administrative Requirements, that was published in the proposed rule section of the March 27, 1998, issue of the *Texas Register* (23 TexReg 3246).

Issued in Austin, Texas, on June 5, 1998.

TRD–9809064
Mary Sapp
Executive Director
Texas Department on Aging
Effective date: June 5, 1998
For further information, please call: (512) 424–6840

♦ ♦ ♦

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 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation 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 XV. Health and Human Services Commission

Chapter 371. Medicaid Fraud and Abuse and Program Integrity

Subchapter F. Pilot Program: On-Site Reviews of Prospective Providers

1 TAC §§371.1501, 371.1503, 371.1505, 371.1507, 371.1509

The Health and Human Services Commission adopts new §§371.1501, 371.1503, 371.1505, 371.1507 and 371.1509, in Chapter 371, Medicaid Fraud and Abuse and Program Integrity, new subchapter F, Pilot Program: On-Site Reviews of Prospective Providers, concerning a pilot program to conduct on-site reviews of certain types of providers who are applying to provide services in the Texas Medicaid program, without changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3776). The text will not be republished.

Section 2.06 of Senate Bill 30, 75th Legislature, Regular Session, directs the Health and Human Services Commission to establish a pilot program to reduce fraud by conducting random on-site reviews of prospective Medicaid providers in targeted counties. The adopted rules set out how the pilot program will operate, in which counties it will occur, and which potential provider types will be reviewed. Senate Bill 30 prescribes the number of counties in which the on-site reviews will occur, as well as the type of personnel who must conduct the reviews. The criteria used to select counties in which to conduct on-site reviews and the scope of the review are based on the commission's experience in handling Medicaid fraud and abuse claims. Senate Bill 30 provides the basis upon which the pilot program may be expanded. Randomly selected prospective providers will be the most equitable method of conducting on-site reviews, thereby precluding claims of bias or prejudice in conducting the reviews. Similarly, using a standard format for the interviews conducted as part of the on-site review will provide uniformity in the way the on-site reviews are conducted. Based on its experience in handling Medicaid fraud and abuse claims, the commission believes that the adopted rules are the best method of conducting on-site reviews of prospective Medicaid providers.

No comments were received on the new sections as proposed.

The new rules are adopted under the Texas Government Code, Chapter 531, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Health and Human Services Commission's duties under Chapter 531.

The new rules affect Chapter 531 of the Texas Government Code and Chapter 32 of the 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809187
Marina S. Henderson
Interim Commissioner
Health and Human Services Commission
Effective date: June 28, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 424–6576

♦ ♦ ♦

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 1. General Procedures

Subchapter K. Employee Training Rules

4 TAC §§1.700-1.702

The Texas Department of Agriculture (the department) adopts new §§1.700-1.702, concerning training for employees of the department, without changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3777). The department adopts the new sections to codify policies and procedures currently implemented and administered by the department which provide for an adequately trained, capable and qualified workforce. The new sections will assist the department in providing responsive regulatory and customer services in the performance of agricultural regulatory duties pursuant to the State Employees Training Act, Texas Government Code, Chapter 656, Subchapter C., §§656.041-656.049. The sections provide requirements for use of state funds for training and education in accordance with the State Employees Training Act, establish components of the department's employee training program, and provide that approval to participate in a training program has no effect on an employee's at-will employment status.

No comments were received on the proposal.

The new sections are adopted under the Texas Government Code, §656.048, which provides that each state agency shall adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency; and the obligations assumed by the administrators and employees on receiving the training and education.

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

Filed with the Office of the Secretary of State on June 4, 1998.

TRD-9809016
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: June 24, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 463-7541

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 8. TexShare Library Consortium

13 TAC §§8.1–8.6

The Texas State Library and Archives Commission adopts new §§8.1- 8.6 regarding establishment and operation of the TexShare library consortium. Section 8.4 is adopted with changes to the proposed text as published in the April 10, 1998, issue of the *Texas Register* (23 TexReg 3645). Sections 8.1 - 8.3 and §§8.5 - 8.6 are adopted without changes to the proposed text as published, and the text will not be republished.

The sections are necessary for the commission to operate the TexShare consortium for libraries at institutions of higher education. The TexShare consortium was transferred to the Texas State Library and Archives Commission by the 75th Legislature. The new sections establish policies to govern the operation of the TexShare library consortium. They set forth membership criteria, establish policies for an advisory board, and propose guidelines for grants to members.

The sections will guide the commission and institutions of higher education in their joint efforts to enhance the quality of higher education through efficient exchange of information and sharing of library resources.

The following is a summary of comments received. Following each comment is the commission's response.

Comment: The composition of the advisory board should be expanded to include one health sciences center librarian and one law school librarian as permanent representatives on the board.

Response: The composition of the advisory board is established in the statute, and the relevant text in proposed §8.4(a) is taken directly from the statute. There is only one at-large position, so both a medical and law librarian could not be accommodated. However, the section as written does not make it clear that a ninth board position exists. A sentence will be added to §8.4(a) to make it clear that there is ninth member on the board without a specified affiliation as follows: the ninth member is at large without any affiliation specified. The commission will be able to consider representation for medical and law librarians in selecting persons for the ninth board position.

The following groups or associations made comments for or against the rule:

Texas Association of Academic Health Sciences Library Directors requested a change in §8.4(a).

The new sections are adopted under authority of Government Code 441.205(b) as amended by HB 2721, Acts, 75 Legislature, R.S. (1997) which authorize the commission to adopt rules to govern the operation of the consortium.

§8.4. Advisory Board.

(a) The commission shall appoint a nine-member advisory board to advise the commission on matters relating to the consortium. At least two members must be public members, at least two members must be affiliated with a four-year public university in the consortium, at least two members must be affiliated with a public community college in the consortium, and at least two members must be affiliated with a private institution of higher education in the consortium. The ninth member is at large without any affiliation specified. Members of the advisory board must be qualified by training and experience to advise the commission on policy.

(b) Members of the advisory board shall be chosen to present as much variety as possible in geographic distribution and size and type of institution.

(c) The advisory board shall meet at least twice a year regarding consortium programs and plans at the call of the advisory board's chairman or of the director and librarian.

(d) Members of the advisory board serve three-year terms beginning September 1.

(e) A member of the advisory board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(f) The advisory board shall elect a chairman, vice chairman, and secretary at the first meeting of each fiscal year.

(g) The advisory board may recommend to the commission that the consortium enter into cooperative projects with entities other than institutions of higher education.

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

Filed with the Office of the Secretary of State on June 4, 1998.

TRD-9809045
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: June 24, 1998
Proposal publication date: April 10, 1998
For further information, please call: (512) 463–5440

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.102

The Railroad Commission of Texas adopts new §3.102, concerning a severance tax reduction for incremental production, without changes to the proposed text as published in the April 3, 1998, issue of the *Texas Register* (23 TexReg 3404).

The commission adopts the section to implement the Texas Tax Code, §202.057, which was added by the 75th Legislature, Regular Session, effective September 1, 1997. The purpose of this section is to provide a procedure by which an operator may obtain from the Comptroller a 50% severance tax reduction on qualified incremental production. The commission determines an incremental production ratio that the Comptroller applies to a lease's monthly total production to arrive at the qualified incremental production entitled to the 50% severance tax reduction. The section provides for a hearing if an operator is dissatisfied with the administrative disposition of his application to the commission for certification of an incremental production ratio.

Participation in this incentive is voluntary. If, however, an operator does choose to participate, an incremental production technique costing at least $5,000 is required as one part of eligibility for the incentive. Implementation of this tax incentive should result in increased oil and casinghead gas production from wells that now produce only marginally, which will be of general benefit to the Texas economy.

Texas Oil & Gas Association was the only commenter. The association favors the section and suggested no changes in the proposed text.

The new section is adopted under Texas Tax Code, §202.057 which provides the commission with the authority to certify an incremental production ratio that an operator provides to the comptroller upon making application for the 50% severance tax reduction.

Texas Tax Code, §§202.051, 201.053, and 201.058, are affected by this 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 June 3, 1998.

Filed with the Office of the Secretary of State on June 3, 1998.

TRD-9808975
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: June 23, 1998
Proposal publication date: April 3, 1998
For further information, please call: (512) 463–7008

♦ ♦ ♦

Chapter 5. Rail Division

Subchapter A. General Provisions

16 TAC §5.10

The Railroad Commission of Texas adopts new §5.10, relating to the rail advisory committee, with changes to the version published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4161). Pursuant to the requirements of Texas Government Code, §§2110.001–2110.008, the new section creates the rail advisory committee of the commission and establishes its duration; sets forth the purpose and duties of the committee; prescribes the composition of the committee, the nomination and appointment process, and the term of committee membership; and sets forth the mechanisms by which the committee meets, performs its work, and is evaluated.

The purpose of the committee is to give the commission the benefit of the members' collective business, technical, and operating expertise and experience; to help the commission in obtaining timely information about the conditions and reliability of rail service for Texas shippers; and to develop comprehensive policy options which support the needs of both shippers and the rail industry and which the commission can advance to the Texas legislature and the federal government. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of the division.

As proposed, §5.10(b) would have established the rail advisory committee for four years. However, because it is likely that the committee will have completed its work prior to the next legislative session, the commission adopts §5.10(b) with an automatic abolition date of December 1, 1998, unless the commission amends the subsection to establish a different date. This change necessitates changes in subsections (d), (g), and (h), relating to membership terms and nomination and appointment of members as well.

As adopted, §5.10(d) increases the committee membership by two–one additional consumer representative and one additional local government representative–to 24 members, 23 of whom will be voting members. The director of the Rail Division will serve as an *ex officio*, non-voting member of the committee. The 23 voting members, all of whom serve at the pleasure of the commission, will include 12 consumer representatives; five industry representatives from Class 1, Class 2, or Class 3 railroads; and six local government representatives.

Any person may nominate a candidate or candidates for membership on the committee. Nominations are to be made in writing and may be submitted to the commission, a commissioner, or the director of the division for transmittal to the commission.

All members of the committee and subcommittees are appointed by and serve at the pleasure of the commission. The commission will appoint members of the committee such that the composition of the committee meets the requirements of subsections (d) and (e) of the rule. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the commission will appoint a replacement to serve the remainder of the unexpired term. The commission will not reimburse members for travel or other expenses related to service on the committee or subcommittees.

As proposed, §5.10(f) created three subcommittees to the rail advisory committee; however, based on the comments received, as well as on additional reflection on ways to make the committee as flexible as possible, the commission has determined that it will not initially divide the whole committee into subcommittees. Under §5.10(f) as adopted, as the commission determines that a subcommittee is needed, the commission will

appoint committee members to serve on the subcommittee and will appoint the chair of the subcommittee. This arrangement will afford the commission the ability to address issues as they may arise, particularly emergent situations.

The rail advisory committee will meet at the call of the presiding officer or the commission, and subcommittees, if impaneled, will meet at the call of the subcommittee chair, the presiding officer or the commission. Committee and subcommittee meetings are open to the public. The rail division staff will record and maintain the originals of the minutes of each committee and subcommittee meeting, will maintain a record of actions taken by the committee and subcommittees, and will distribute copies of approved minutes and other committee and subcommittee documents to the commission and the committee and subcommittee members.

By October 1 of each year, the rail division director will evaluate for the previous fiscal year and report to the commission on the committee's work; the committee's usefulness; and the costs related to the committee's existence, including the cost of commission staff time spent in support of the committee's and subcommittees' activities. The commission will biennially report to the Legislative Budget Board the information developed by the division director in evaluating the committee's costs and benefits.

The commission received no comments from any group or association.

The commission received comments from two companies, the Union Pacific Railroad Company (Union Pacific) and the Burlington Northern Santa Fe Railway (BNSF). Union Pacific and BNSF both commented generally on their concern about the purpose of the committee because many of the issues to be considered by the committee are within the sole and exclusive jurisdiction of either the Surface Transportation Board or the Federal Railroad Administration. Citing the Interstate Commerce Commission Termination Act and the Federal Railroad Safety Act of 1970, the BNSF pointed out that economic regulation and railroad safety regulation are areas where federal preemption of state regulation is clear. The commission disagrees that issues which might be considered by the advisory committee are solely under the purview of the federal government. Besides the fact that the rail committee is advisory in nature and has no power to mandate or require action on the part of railroads, issues such as public safety, railroad infrastructure, and rail-to-rail competition are not exclusively federal.

Union Pacific commented that the definition of "industry representative" in §5.10(a) is so broad as to potentially deny railroads meaningful participation, and proposed that the definition be limited to persons actually engaged in the business of railroad operations. The commission agrees that persons actually engaged in the business of railroad operations should be participants. However, other entities that have significant experience in railroad operations should not be excluded from participation; the commission's goal is to ensure that it receives input from as broad a spectrum of interested entities as possible.

BNSF commented that railroads should represent the industry, that there should be a minimum of three Class 1 railroads on the committee, that a Class 1 railroad representative be on each subcommittee, and that there should be an equal number of railroads, local government, and consumer representatives. Union Pacific also commented that the proposed committee makeup seems slanted against the railroad industry. Union Pacific also commented that the composition of the committee does not provide for balanced representation as required by Texas Government Code, §2110.002, and proposed that the makeup of the committee be changed to include an equal number of railroad, local government, and customer representatives and that industry representation include a specialist in each subcommittee area.

The commission disagrees that the committee representation is skewed. Indeed, the makeup of the committee is significantly more balanced than the actual ratio of shippers to the number of railroads who serve them. Further, in an attempt to receive viewpoints from as diverse a group as possible, the commission has increased the number of participants to the maximum number allowed by statute. Also, in order to foster the maximum amount of flexibility, the commission has determined to initially appoint only the whole committee and not any subcommittees. Consequently, the commission disagrees that industry representation should include specialists other than the representative appointed by the commission.

Further, the commission does not agree that the standard of "balanced representation" imposed by Texas Government Code, §2110.002, demands numerical identity. Union Pacific's comments appear to assume, moreover, that the consumer and local government representatives would somehow be aligned against the rail industry representatives. The commission adopts this particular advisory committee structure because it recognizes that all economic activity–the rail industry as well as the industries represented by consumers of rail services–brings benefits and imposes burdens. The commission makes no such assumptions about alignment of interests but instead creates the advisory committee so as to derive the broadest scope of information, expertise, viewpoints, and ideas.

Union Pacific proposed that, because rail industry representatives are subject to frequent relocation or reassignment, the rule should allow industries to nominate a replacement for vacancies caused by such relocation or reassignment. In response, the commission points out that any person may nominate a candidate for membership on the advisory committee; since the industry will know sooner than the commission whether the industry representatives will be relocated or reassigned, the industry will be able to make replacement nominations virtually immediately.

Both commenters stated that the committee chair should be selected by the committee and not the commission. Texas Government Code, §2110.003(a), provides that an advisory committee is to select its chair from among its members, unless a different procedure for selecting the presiding officer is prescribed by other law. The commission rejects the idea that the commission cannot appoint the chair of an advisory committee which is a creation of the commission, and views Texas Civil Statutes, Articles 6445 and 6448a as conferring sufficiently broad authority for the commission to appoint the chair. Further, because of the differing circumstances of each representative there will be varying degrees of participation. It is probable that the position of committee chair will require a substantial amount of time; to ensure a successful undertaking, the commission must be able to appoint as the chair a committee member who can commit to the rigors of the task.

Finally, Union Pacific requested that any revised rules be subject to public comment. The commission declines to delay the adoption of the rule implementing the rail advisory committee,

finding that under the standards articulated in *State Board of Insurance v. Deffebach*, 631 S.W.2d 794, (Tex. App.–Austin 1982, ref. n.r.e.), there is no legal requirement that the amended rules be republished before they may be adopted. As adopted, the rule affects no subject or person other than those previously given notice, nor is any greater burden imposed on those who are potentially affected.

The commission adopts the new section under Texas Civil Statutes, Article 6445, which gives the commission broad authority to regulate railroads and to perform other duties in connection with such regulation, and to adopt all necessary regulations; Texas Civil Statutes, Article 6448a, which authorizes the commission to issue rules as permitted by the Federal Railroad Safety Act of 1970; and Texas Government Code, §§2110.001–2110.008, which mandate specific requirements for state agency advisory committees.

Texas Civil Statutes, Articles 6445 and 6448a, and Texas Government Code, §§2110.001–2110.008, are affected by the adopted new section.

§5.10. Rail Advisory Committee.

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

(1) Commission–The Railroad Commission of Texas.

(2) Committee–The Rail Advisory Committee of the commission.

(3) Consumer representative–A member of the committee who is not engaged in the business of railroad operations, but who is an end user of rail transportation or related services, including but not limited to shippers of aggregates and concrete, agricultural products, chemicals, plastics, scrap metal and recycled materials, forest products, or automobiles.

(4) Division–The Rail Division of the commission.

(5) Fiscal year–September 1 of a year through August 31 of the following year.

(6) Industry representative–A member of the committee who is engaged in the business of railroad operations, or who is engaged in the business of performing services of any type for a railroad.

(7) Local government representative–A member of the committee who is an elected official for a city or county; a member of the board of a rural rail transportation district; or a representative of a port authority.

(8) Member–An industry representative, a consumer representative, or a local government representative who serves on the committee.

(9) Presiding officer–The chair of the committee.

(b) Establishment; duration. The Rail Advisory Committee of the commission is hereby established effective July 1, 1998. The committee is abolished on December 1, 1998, unless the commission amends this subsection to establish a different date.

(c) Purpose and duties. The purpose of the committee is to give the commission the benefit of the members' collective business, technical, and operating expertise and experience; to help the commission in obtaining timely information about the conditions and reliability of rail service for Texas shippers; and to develop comprehensive policy options which support the needs of both shippers and the rail industry and which the commission can advance to the Texas legislature and the federal government. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of the division; all such powers and duties rest solely with the commission.

(d) Composition of committee; membership term. The committee shall be composed of 24 members, 23 of whom shall be voting members. The voting members' terms shall be from the date of appointment through the date the committee is automatically abolished pursuant to subsection (b) of this section. The director of the Rail Division shall serve as an *ex officio*, non-voting member of the committee. The 23 voting members, all of whom serve at the pleasure of the commission, shall include:

(1) 12 consumer representatives;

(2) five industry representatives from Class 1, Class 2, or Class 3 railroads; and

(3) six local government representatives.

(e) Presiding officer; other officers. The commission shall designate a member of the committee to be the presiding officer who shall report the committee's advice and attendance in writing to the commission. The committee may elect other officers at its pleasure.

(f) Subcommittees.

(1) The commission may appoint committee members to serve on one or more subcommittees.

(2) If a subcommittee is impaneled, the commission shall appoint the subcommittee chair.

(3) A subcommittee chair shall make written reports regarding the subcommittee's work to the presiding officer no less often than quarterly. The presiding officer may require subcommittee chairs to make written reports more frequently.

(g) Nominations for committee membership. Any person may nominate a candidate or candidates for membership on the committee. Nominations shall be made in writing and may be submitted to the commission, a commissioner, or the director of the division for transmittal to the commission.

(h) Appointment of members. All members of the committee and subcommittees are appointed by and serve at the pleasure of the commission. The commission shall appoint members of the committee such that the composition of the committee meets the requirements of subsections (d) and (e) of this section. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(i) Meetings. The committee shall meet at the call of the presiding officer or the commission. Subcommittees shall meet at the call of the subcommittee chair, the presiding officer or the commission. Committee and subcommittee meetings are open to the public.

(j) Reimbursement of members' expenses. The commission shall not reimburse members for travel or other expenses related to service on the committee or subcommittees.

(k) Committee and subcommittee records. The division staff shall record and maintain the originals of the minutes of each committee and subcommittee meeting. The division shall maintain a record of actions taken by the committee and subcommittees and shall distribute copies of approved minutes and other committee and

subcommittee documents to the commission and the committee and subcommittee members.

(l) Evaluation of committee costs and benefits. By October 1 of each year, the division director shall evaluate for the previous fiscal year and report to the commission:

(1) the committee's work;

(2) the committee's usefulness; and

(3) the costs related to the committee's existence, including the cost of commission staff time spent in support of the committee's and subcommittees' activities.

(m) Report to Legislative Budget Board. The commission shall biennially report to the Legislative Budget Board the information developed under subsection (l) of this section in evaluating the committee's costs and benefits.

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 June 2, 1998.

Filed with the Office of the Secretary of State on June 2, 1998.

TRD-9808891
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: June 22, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 463–7008

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 104. Continuing Education

22 TAC §104.1

The State Board of Dental Examiners adopts amendments to §104.1, Requirement, without changes to proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3795).

The amended §104.1 will comply precisely with the language in the Dental Practice Act regarding mandatory continuing education for dentists and dental hygienists.

The amended §104.1 now provides that licensees must complete required continuing education in order to maintain licensure, rather than imposing completion of continuing education as a prerequisite to renewal of a license.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543, Section 2 and Article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4544, Section 5 and Article 4551e, Section 5A.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809179
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: June 28, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

22 TAC §104.4

The State Board of Dental Examiners adopts amendments to §104.4, Penalties, without changes to proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3795).

The amended §104.4 provides a method for the board to enforce compliance with statutorily mandated continuing education. The intent of the amendments is to establish procedures for imposition of sanctions for such failures. The cornerstone of the board's enforcement of the statute is the affidavit of licensees seeking license renewal. Falsification of the affidavit will be treated as a separate violation and will subject the actor to the full range of sanctions provided by law.

A licensee who upon request cannot produce proof of compliance with continuing education requirements will be afforded 90 days to comply. If compliance is achieved, the board will notify the licensee that an administrative fine, fixed by schedule set forth in other rules, will be imposed. The fine is proposed as an inducement to licensees to comply timely with continuing education requirements as discovery by the Board of failure to do so will lead to disciplinary actions i.e., fine, or disciplinary procedures.

Licensees who do not comply within the 90 day period will be subject to revocation procedures. Licensees must meet continuing education requirements if they are to maintain licensure; thus, failure to meet such requirements will result in revocation proceedings.

The amended §104.4 in subsection (b) provides for imposition of penalties for violations; in subsection (c) provides that falsification of the attestation clause described in subsection (a) will result in the implementation of disciplinary procedures; in subsection (d) provides that a licensee who fails to document successful completion of required continuing education courses will be given a 90 day period to cure, i.e., complete the required continuing education and that an administrative fine will be proposed for such failure if the deficiency is cured. If the deficiency is not cured the board will initiate a disciplinary proceeding, non administrative, to revoke the license's license.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543, Section 2 and Article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4544, Section 5, Article 4551e, Section 5A, which requires minimum

continuing education of licensees, Article 4548h, and Article 4548j which provide for impositions of sanctions upon licensees who violate the law affecting practice of dentistry.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809180
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: June 28, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

Chapter 107. Dental Board Procedures

Subchapter D. Administrative Penalties

22 TAC §107.200

The State Board of Dental Examiners adopts amendments to §107.200, Administrative Penalty, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3990).

The amended §107.200 provides that licensees comply with the Dental Practice Act and Board rules because of possible penalties that may be assessed for lack of compliance.

The amended §107.200 at subsection (a) provides that administrative penalties for failure to complete required continuing education hours will be set forth in §107.201. Rule 107.201 sets administrative penalties for all other violations of the Dental Practice Act and rules of the Board.

No comments were received regarding adoption of this amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543, Section 2 and Article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548j.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809181
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: June 28, 1998
Proposal publication date: April 24, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

22 TAC §107.201

The State Board of Dental Examiners adopts new §107.201, Administrative Penalties, without changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3797).

The effect of new §107.201 is that licensed dentists and dental hygienists will be encouraged to comply with the continuing education requirements rather than pay penalties.

The new §107.201 provides for the amounts of administrative penalties for failure to complete required continuing education hours. Fines are arrayed in three ranges based on the amount of continuing education hours not completed. The amount of fine for a second offense is doubled for each range. The amounts of fines are intended to be of sufficient magnitude to indicate that failure to timely complete continuing education is a serious offense while at the same time not being unnecessarily punitive, especially in situations where some continuing education hours have been completed. The schedule is proposed in response to Article 4545a of the Dental Practice Act which requires the agency to adopt by rule an administrative fine schedule. The existing schedule in rule 107.200 was developed to cover all violations of the Dental Practice Act and board rules and, thus, is not specific to continuing education violations. This rule is intended to provide specifically for continuing education violations.

No comments were received regarding adoption of this new rule.

The new rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543, Section 2 and Article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4544, Section 5, Article 4551e,

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809182
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: June 28, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

22 TAC §107.400

The State Board of Dental Examiners adopts new §107.400, Reportable Disciplinary Action without changes to the proposed text as published in the April 17,1998, issue of the *Texas Register* (23 TexReg 3798).

The new §107.400 provides that superfluous information regarding action against a licensee will not be reported to the public because such information does not reflect a practitioner's quality of care.

The new §107.400 establishes a method whereby a licensee who has only one board order that addressed specified violations that are minor may, after passage of the required time, request that the board will report to individuals who may inquire concerning licensing status of the practitioner's license that he or she has no reportable actions. The conditions set forth are intended to protect the public's interest in having ready access

to information that a licensee has been disciplined if the violation found is of the sort that imposed risk upon patients or the public.

This rule will provide licensees who were sanctioned for minor offenses in the past and who have no subsequent disciplinary actions, upon request and after review, to have no reportable actions shown on their records. For example, a board order issued 15 years past for an advertising violation that is no longer a violation, is still shown on a licensee's record. This rule will allow a licensee in such a situation to request that reports by the board concerning his license status show no reportable actions, and allows the board to do so, if after review it determines that the actions for which discipline was imposed meets rule criteria.

One comment was received regarding adoption of the new rule. The commentor commended the board for proposing this rule and urged its adoption.

The new rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543, Section 2 and Article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809183
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: June 28, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

Chapter 109. Conduct

Fair Dealing

22 TAC §109.144

The State Board of Dental Examiners adopts amendments to §109.144, with changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3799). Subsection (f)(3) is changed to provide that dollar amounts in paragraph (3) subparagraphs (A)-(E) are maximum amounts; the language as published provided that charges were required at the amounts shown in the subparagraphs.

The amended §109.144 provides that a dental patient may have access to his/her dental records but at a reasonable cost.

The amended §109.144 at subsection (f) provides that a dentist must make a patient's dental records available at reasonable cost when the patient requests them. Without this rule there is no requirement that a dentist make copies of a patient's record available to the patient upon request. The board is of the opinion that a patient should be able to obtain copies of his/her records at a reasonable cost. Further, it provides maximum amounts that may be charged for copies and requires that copies be made available within 30 days. Other amendments to subsections (a) and (c) clarify the name of the board.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543, Section 2 and Article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§109.144. Records and Their Transfer.

(a) Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners.

(b) (No change.)

(c) Dental records are the sole property of the dentist who performs the dental service. A dentist who leaves a location, whether by retirement, sale, or otherwise, shall either take all said dental records with him, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records, and the State Board of Dental Examiners' Central Office shall be notified within 15 days of any such event, giving full information concerning the dentists and location(s) involved. A maintenance of records agreement shall not transfer ownership of the dental records, but shall require: (1) that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners; and (2) that the dentist(s) performing the service(s) recorded shall have access to and control of the records for purposes of inspection and copying. A maintenance of records agreement may be made at any time in an employment or other working relationship between a dentist and another entity. A maintenance of records agreement may apply to all or any part of the dental records generated in the course of the relationship, including future dental records. The provisions of this subsection for a transfer of records or a maintenance of records agreement shall not be construed to require a written agreement when a dentist performs dental services in the employ of another dentist or entity and the dentist performing the dental services leaves the resulting records in the possession of the employing dentist or entity.

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

(f) A dentist shall furnish copies of his dental records as described in section (b) of this title to a patient who requests his or her dental records. Requested copies including radiographs shall be furnished within 30 days of the date of the request, provided, however, that copies need not be released until payment of copying costs has been made.

(1) A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than $25 for the first 20 pages and $.15 per page for every copy thereafter.

(2) Fees for radiographs, which if copied by an x-ray duplicating service, may be equal to actual costs verified by invoice.

(3) Reasonable costs for radiographs duplicated by means other than by an x-ray duplicating service shall not exceed the following charges:

(A) a full mouth series: $15;

(B) a panoramic x-ray: $15;

(C) a lateral cephalogram: $15;

(D) a single extra-oral x-ray: $5.00

(E) a single intra-oral x-ray: $5.00

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809184
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: June 28, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 463–6400

♦ ♦ ♦

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §§153.1, 153.8, 153.13, 153.18

The Texas Appraiser Licensing and Certification Board adopts amendments to §§153.1, 153.13, and 153.18 and new §153.8, concerning provisions of the Texas Appraiser Licensing and Certification Act. Section 153.18 is adopted with changes to the proposed text as published in the March 6, 1998, issue of the *Texas Register* (23 TexReg 2212). Sections 153.1, 153.8 and 153.13 are adopted without changes and will not be republished.

Section 153.1 is amended to incorporate new definitions for terms which are used in other sections being concurrently adopted. The new definitions should help eliminate confusion and misunderstandings about the meanings of the terms.

Section 153.13 is amended to: eliminate unnecessary and dated language; increase the number of hours of fundamental real estate appraisal courses as part of the unchanged total educational requirements; require that courses specifically must be approved by the board to be acceptable; provide that the board will accept only those Uniform Standards of Professional Practice (USPAP) courses which have been completed within two years of application submission; and add language similar to the Appraisal Qualifications Board (AQB) criteria and interpretations for distance education (formerly called correspondence courses).

Section 153.18 is amended to: require a seven-hour USPAP course each renewal rather than every other renewal; restructure the appraiser trainee renewal education; and add language similar to the AQB criteria and interpretations for distance education (formerly called correspondence courses).

The following changes were made to §153.18: The last sentence in subsection (b) now reads: The courses must comply with fundamental education requirements for application for licensing and certification set out in §153.13(e)-(n) of this title (relating to Education Requirements). Subsection (d)(2) was changed to read as follows: The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A)-(L) of this paragraph:. In subsection (d)(2)(F) a comma was added after the word courses.

New §153.8 is adopted to add the scope of practice as adopted by the AQB criteria and interpretations, to assist Texas licensees in determining what types of real property they may appraise with various classifications of certifications and licenses.

The Texas Appraiser Licensing and Certification Board met at its regular meeting on May 29, 1998. No written or oral comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

§153.18. Appraiser Continuing Education.

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 28 classroom hours of appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. Renewals due after January 1, 1999, shall include a minimum of seven classroom hours devoted to the Uniform Standards of Professional Practice (USPAP). The courses must comply with the requirements set out in subsection (d) of this section.

(b) Renewing an Appraiser Trainee Authorization. As a condition for renewing an appraiser trainee authorization, a trainee must successfully complete educational courses during the one-year period preceding the expiration of the appraiser trainee authorization being renewed. The courses must comply with fundamental education requirements for application for licensing and certification set out in §153.13 (e) - (n) of this title (relating to Educational Requirements):

(1) for the first annual renewal, 15 classroom hours devoted to the USPAP which shall include the successful completion of an examination;

(2) for the subsequent annual renewals, 30 classroom hours of fundamental real estate appraisal courses specifically approved by the board;

(3) Beginning with the third annual renewal, every other annual renewal (third, fifth, seventh, etc.) must include a minimum of 7 classroom hours devoted to the USPAP as part of the 30 classroom hours.

(c) (No change.)

(d) In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (AQB).

(1) (No change.)

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A)-(L) of this paragraph:

(A)-(C) (No change.)

(D) a course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education, and which specifically has been approved by the board;

(E) (No change.)

(F) distance education courses, provided that the course is approved by the board and meets one of the following conditions listed in clauses (i)-(iv) of this subparagraph:

(i) the course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the AQB; or

(ii) the course either has been presented by an accredited college or university that offers distance education programs in other disciplines , or has received either the American Council on Education's Program on Non-collegiate Sponsored Instruction (ACE/PONSI) approval for college credit or the AQB's approval through the AQB Course Approval Program; and the course meets the following requirements listed in subclauses (I)-(II) of this clause:

(I) the course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the Appraisal Qualifications Board; and

(II) the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation with demonstrated mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

(iii) (No change.)

(iv) a minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(G)-(I) (No change.)

(J) Effective January 1, 1999, as, part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(K)-(L) (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.

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809063
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: January 1, 1999
Proposal publication date: March 6, 1998
For further information, please call: (512) 465-3950

♦ ♦ ♦

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

22 TAC §§213.1–213.33

The Board of Nurse Examiners adopts the repeal of §§213.1-213.33 concerning Definitions, Construction, Pleading, Representation, Appearance, Agreements in Writing, Final Disposition, Filing of Documents, Computation of Time, Notice and Service, Motion for Continuance, Witness Fees and Expenses, Complaint Investigation and Disposition, Preliminary Notice to Respondent in Disciplinary Matters, Commencement of Disciplinary Proceedings, Respondent's Answer in a Disciplinary Matter, Discovery, Depositions, Subpoenas, Informal Proceedings, Agreed Disposition, Formal Hearing Procedures and Practices, Decision of the Board, Rescission of Probation, Monitoring, Reissuance of a License, Good Professional Character, Licensure of Persons with Criminal Convictions, Eligibility and Disciplinary Criteria Regarding Intemperate Use and Lack of Fitness, Declaratory Order of Eligibility for Licensure, Cross Reference of Rights and Options Available to Licensees and Petitioners, Schedule of Fines, and Penalty/Sanction Factors without changes in the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4164).

The repeal would allow for the adoption of new sections.

The Board of Nurse Examiners has reviewed Chapter 213, Practice and Procedure, and has determined that a complete revision is necessary, due in part to the newly adopted State Office of Administrative Hearings rules and to efforts to streamline staff processes.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Nursing Practice Act, (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809131
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: September 1, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 305–6811

♦ ♦ ♦

22 TAC §§213.1–213.33

The Board of Nurse Examiners adopts new §§213.1-213.33 concerning Definitions, Construction and Application, Pleading, Representation, Appearance, Agreements in Writing, Final Disposition, Filing of Documents, Computation of Time, Notice and Service, Non SOAH - Motion for Continuance, Witness Fees and Expenses, Complaint Investigation and Disposition, Preliminary Notice to Respondent in Disciplinary Matters, Commencement of Disciplinary Proceedings, Respondent's Answer in a Disciplinary Matter, Discovery, Depositions, Subpoenas, Informal Proceedings, Agreed Disposition, Formal Proceedings, Decision of the Board, Rescission of Probation, Monitoring, Reissuance of a License, Good Professional Character, Licensure of Persons with Criminal Convictions, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters, Declaratory Order of Eligibility for Licensure, Cross Reference of Rights and Options Available to Licensees and Petitioners, Schedule of Fines, Penalty/

Sanction Factors, and Witness Fees and Expenses. Section 213.12 is adopted with changes to the text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4165). There were no changes made in §§213.1-213.11 and §§213.13-213.33; therefore, the text will not be republished.

The Board of Nurse Examiners has reviewed Chapter 213, Practice and Procedure, and has determined that a complete revision is necessary, due in part to the newly adopted State Office of Administrative Hearings rules and to efforts to streamline staff processes.

The new chapter states the requirements for application of the statute and the manner in which those requirements will be implemented. In addition, the amendments will provide the necessary requirements needed to reactivate a license which has been refused.

A comment was received from the Comptroller of Public Accounts regarding clarification of the reimbursement amounts in the State of Texas Travel Allowance Guide set by the legislature, not the comptroller's office.

The agency concurs and has made that change to reflect the appropriate travel provisions.

The new sections are adopted under the Nursing Practice Act, (Texas Civil Statutes), Article 4514, §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it and Article 4525(a) which permits the Board to refuse to issue or renew a license.

Article 4525(a) and (a-1) are affected by these sections.

§213.12. Witness Fees and Expenses.

A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the subpoena, either the minimum as set by the legislature in the APA or the State of Texas Travel Allowance Guide issued by the Comptroller of Public Accounts, whichever is greater.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809132
Erlene Fisher
Katherine A. Thomas, MN, RN
Executive Director
Effective date: September 1, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 305–6811

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter L. General Administration

25 TAC §29.1126

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts an amendment to §29.1126, concerning in-home total parenteral hyperalimentation services provided to Medicaid recipients, without changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1466), and therefore the section will not be republished.

The amendment removes enteral feeding services as a covered service under the in-home total parenteral hyperalimentation services rule because these services are covered under home health. The amendment also removes reference to the reimbursement methodology for enteral feeding services.

No comments were received on the proposal during the comment period.

The amendment is adopted under the Human Resources Code, §32.021 and Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809059
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 25, 1998
Proposal publication date: February 20, 1998
For further information, please call: (512) 458–7236

♦ ♦ ♦

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 133. General Medical Provisions

Subchapter B. Required Reports

28 TAC §133.101

The Texas Workers' Compensation Commission (the Commission) adopts an amendment to §133.101, concerning the TWCC-61 "Initial Medical Report" without changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1904). The amendment is adopted to reduce the number of forms and amount of paper that the Commission receives.

As required by the Government Code, §2001.033(1), the Commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. The reasoned justification is contained in this preamble, and throughout this preamble, including how and why the Commission reached the conclusions it did, why the rule is

appropriate, the factual, policy, legal bases for the rule, and a restatement of the factual basis for the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the Commission disagrees with some of the comments and proposals.

Former §133.101 required the injured employee's treating doctor to complete an Initial Medical Report, form TWCC-61, for every occupational disease, and every accidental injury resulting in loss of more than one full day or more than one full shift from work, and submit this form to the insurance carrier, the Commission, and the injured employee or his/her representative within ten days of the injured employee's initial visit to the treating doctor. The amendment to §133.101 removes the requirement that the treating doctor submit the TWCC-61 form to the Commission unless it is requested. In the past, the TWCC-61 forms have been used by the Commission to create injury record files. Creating injury records from the TWCC-61 report was initiated back in 1992 to meet certain service requirements related to mailing information packets to injured workers, and for employer injury occurrence information. However, these medical reports and the supporting rules were originally designed to provide data to supplement injury data previously provided by one or more of the primary reporters: employees, employers, and insurance carriers. As such, creating injury records from these medical reports was less efficient, and could result in conflicts with other more reliable data sources. The number of injury record files reflect injuries, but not necessarily injuries that require action or assistance from the Commission. Many of these injury record files created from the TWCC-61 are claims which do not result in any lost time and require medical services only. The Commission receives other notice forms (Employer's First Report, and the employee's Notice of Injury Claim) from which injury records can be created. These other sources have provided more reliable data than the TWCC-61. For instance, the doctor's TWCC-61 form often reports all treated work injuries, even when the employer is not covered under the workers' compensation system and the doctor's report is not always a true measure of actual time lost from work.

The Legislature through The General Appropriations Act, 75th Legislature, Regular Session, Chapter 1452, §175, encouraged agencies to reduce the amount of information required to be submitted by its customers. This amendment is a means to accomplish this legislative goal and to focus efforts on injuries that are more likely to require assistance.

The public benefit anticipated will include the reduction in paper work and paper handling by the Commission resulting in a savings to state government. Health care providers will realize an estimated savings of $96,200 (260,000 forms at $.37 - $.32 postage plus $.05 copying cost) as a result of not copying and mailing the TWCC-61 form to the Commission. Insurance carriers should experience no impact as a result of the rule amendment because they will continue to receive the TWCC-61 forms as in the past.

Currently, the Commission sends information to injured employees based on the approximate 42,000 TWCC-61 forms for which injury record files are created. The injured employees for which the remaining 171,000 TWCC-61 forms were filed do not currently receive this information upon the filing of the TWCC-61. Text changes to the TWCC-61 form are planned which would add information regarding the procedure for obtaining assistance, information regarding rights and responsibilities, and information regarding the claim filing process. By including this information on the TWCC-61 form, the information will be available to approximately 171,000 more injured employees, because the rule still requires the heathcare provider to send the TWCC-61 to the employee. There will be no adverse impact on injured employee's receipt of information because those who received the information in the past will continue to receive it via the revised TWCC-61 form.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the authority of the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; and the Texas Labor Code, §408.025, which requires the Commission to adopt rules regarding the requirements for reports and records from health care providers; Texas Labor Code, §402.042(11), which authorizes the Executive Director to prescribe the form, manner, and procedure for transmission of information to the Commission; Texas Labor Code, §409.005(g), which requires the employer to provide a summary of the employee's rights and responsibilities; Texas Labor Code, §409.003, regarding an employee's claim for compensation; and the Texas Labor Code, §409.010, regarding information from the Commission to the employers.

These statutory provisions authorize the Commission to adopt amendments to a rule such as §133.101 which addresses how and by whom information is to be transmitted to the Commission.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809119
Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: June 28, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 440–3972

♦ ♦ ♦

Subchapter C. Second Opinions for Spinal Surgery

28 TAC §133.206

The Texas Workers' Compensation Commission (the Commission) adopts an amendment to §133.206, concerning the spinal surgery second opinion process with changes to the proposed text as published in the March 20, 1998, issue of the *Texas Register* (23 TexReg 2944).

As required by the Government Code, §2001.033(1), the Commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. The reasoned justification is contained in this preamble, and throughout this preamble, including how and why the Commission reached the conclusions it did, why the rule is appropriate, the factual, policy, and legal bases for the rule, a restatement of the factual basis for the rule, a summary of

comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the Commission disagrees with some of the comments and proposals.

Changes made to the proposed rule are in response to public comment received in writing and at a public hearing held on April 9, 1998, and are described in the summary of comments and responses section of this preamble. Other changes were made for consistency or to correct typographical or grammatical errors.

Changes from the rule as proposed are found in: subsection (a)(13) and (14); subsection (b)(1), (2), (3), and (4); subsection (d)(2); subsection (g)(3); subsection (i)(2); and subsection (m).

Section 133.206 describes the process by which and the circumstances in which a carrier becomes liable for spinal surgery. The rule provides definitions of terms related to the spinal surgery second opinion process. In addition, the rule sets out the procedures for the second opinion process, establishes liability for costs of a second-opinion examination and sets the fee for second opinions. The rule also establishes qualifications for doctors who perform second opinions regarding spinal surgery and requires the Commission to maintain a list of surgeons whose current practice includes performing spinal surgery (the spinal surgeon list or the List) and to provide sublists of five of these spinal surgeons from which a second opinion doctor may be chosen by the injured employee and the carrier. A doctor must be on the spinal surgeon list to be reimbursed by the carrier for spinal surgery. The Commission's Medical Review division is given the authority to issue orders requiring timely submission of reports, records, or forms, to refer a doctor who fails to comply with the rule or an order for proceedings on possible administrative violation, and to refer a doctor to the Commissioners for possible removal from the spinal surgeon list. The rule sets out actions which may result in division action to suspend or Commission action to remove a doctor from the spinal surgeon list. In addition, the rule sets out the procedure for a doctor who has been suspended to request a hearing to contest the suspension.

The spinal surgery second opinion process established in §133.206 has proven to be an effective tool in maintaining cost effective, quality care for spinal injuries requiring surgery. Three goals were established for §133.206: 1) to decrease the processing time frame for the second opinion process; 2) to ensure qualified objective second opinions; and 3) to monitor the system. Section 133.206 has proven effective in reducing the time required to determine carrier liability for spinal surgery. Commission data for 1997 shows that processing time for the second opinion process has been reduced from 59 days under the previous system to the current processing time of 35 days under §133.206. Section 133.206 has been effective in ensuring qualified objective second opinions. As of February 1998, the total number of second opinion doctors on the Commission's spinal surgeon list is 687. This number of available doctors has proven to be sufficient for the process to function efficiently. No time delays have been experienced in setting appointments and very few appointments require rescheduling due to doctor unavailability. Commission data for 1997 shows that carrier selected second opinion doctors concur with a recommendation for surgery approximately 73% of the time, while employee selected doctors concur with a recommendation for surgery approximately 64% of the time. These concurrence figures demonstrate that second opinions in this system are not decided based upon the interests of the person or entity selecting the second opinion doctor, but rather are true medical opinions. Additionally, concerns that doctors of a differing specialty might offer largely different opinions have been alleviated by a review of Commission data that shows doctors of like specialty concur 71% of the time, while doctors of non-like specialty concur 67% of the time. The process in §133.206 preserves objectivity in the selection of second opinion doctors by requiring that the Commission's Medical Review Division maintain the list of spinal surgeons who are allowed to perform second opinions and by providing for the random selection of the spinal surgeons on the sublist from which the injured employee and insurance carrier may choose a second opinion doctor. Commission data also shows that a wider group of doctors are providing second opinions under §133.206 than under the previous system. Under the previous system, 70 doctors performed the bulk of all second opinion examinations, whereas under §133.206 the 30 doctors who individually perform the greatest number of second opinions account for only 15% of all second opinion examinations. In 1997, out of a total of 7225 cases where second opinions were requested, 227 cases were disputed at the contested case hearing level and only 30 cases were appealed to the Appeals Panel. Carriers were liable for the costs of spinal surgery in approximately 91% of the cases. The specific criteria and timeframes in §133.206 have allowed for better tracking of the elements of the second opinion process and thus better monitoring of the effectiveness of the system.

The adopted amendments to §133.206 are in response to complaints from participants in the second opinion process and issues which are frequently the subject of disputes.

The amendment to subsection (a)(13) changes the definition of "concurrence." The previous definition of "concurrence" provides that agreement of a second opinion doctor that spinal surgery is needed is a concurrence regardless of whether the second opinion doctor agrees that the particular type of surgery recommended is needed. Previously, if a second opinion doctor agreed that surgery was needed, but was of the opinion that the recommended type of surgery was not likely to benefit the injured employee or even that the recommended type of surgery was contraindicated, the rule defined this as a concurring opinion. The carrier was held liable for the costs of the surgery, despite indications from second opinion doctor(s) that the recommended treatment was not likely to benefit the injured employee.

An analysis of the Commission's medical billing database for the years 1991 through 1997 indicate that for Texas workers' compensation patients, the typical percentage of all spinal surgery cases which require subsequent spinal surgeries is 15% or less. An analysis of surgical recommendations from calendar year 1995 indicates that 287 injured employees had second opinions which agreed that surgery was needed, but differed with the type of spinal surgery recommended by the surgeon. The year 1995 was used for analysis because that is the first full year of data available which allows tracking of concurrences where there was disagreement regarding the type of spinal surgery recommended. The use of 1995 data also allowed a sufficient time period for monitoring the frequency of subsequent surgery for this group. Monitoring of these 287 injured employees through 1996 and 1997 reveals that approximately 31% (90 employees) had a subsequent surgical

recommendation. Therefore, the percentage of Texas injured employees requiring subsequent spinal surgery in cases where the second opinion doctor recommended a different type of spinal surgery is far higher than that of the general Texas workers' compensation spinal surgery population.

The amendment to subsection (a)(13) changes the definition of concurrence to require that the second opinion doctor agree with not only the need for spinal surgery, but also with the need for the particular type of spinal surgery recommended.

The adopted definition of "concurrence" was changed from the definition as proposed, not in substance, but in wording, to provide a clearer understanding of the term. "Concurrence" is defined as the type of spinal surgery likely to improve the pathology present in the area of the spine affected by the compensable injury. Type of spinal surgery is defined, but not limited to, stabilizing procedures (e.g. fusions), decompressive procedures (e.g. laminectomies), exploration of the fusion/ removal of hardware, and procedures related to spinal cord stimulators. Second opinion doctors are not expected to concur with exact CPT codes and the surgeon is not limited to performing surgery according to the exact CPT codes listed on the TWCC-63 form. A second opinion doctor evaluates the type of surgery recommended, agreeing or not agreeing, with the likelihood that the recommended type of surgery is likely to improve the injured employee's condition. If the second opinion doctor agrees with the type of spinal surgery recommended by the treating doctor or surgeon the carrier is deemed liable for the surgery. The surgeon must make medical decisions related to the surgery. These decisions include, but are not limited to, approach (e.g. posterior, anterior), levels of the spine to be operated upon, instrumentation, bone growth stimulators, etc. Surgical technique for the type of spinal surgery is determined by the surgeon.

Monitoring of the spinal surgery second opinion process indicates that approximately 10% of second opinions result in nonconcurrence, 85% result in concurrence with the type of surgery recommended, and 5.0% result in concurrence with a different type of surgery than the surgery recommended. It is this third group of injured employees who experience an unusually high rate of subsequent surgical recommendation. Monitoring of this group since 1995, indicates that approximately 31% of these injured employees have subsequent surgical recommendations. Of the 85% of the injured employees who have a second opinion concurrence with the type of surgery recommended only 15% have a subsequent surgical recommendation.

The amendment to the definition of concurrence aims to provide this specific group of claimants with a higher quality prospective review. By seeking agreement regarding the type of surgery likely to benefit the patients condition, the process may assist to decrease the number of patients who require multiple surgeries.

The adopted changes to the definition of "nonconcurrence" in subsection (a)(14) provide consistency with the changes to subsection (a)(13).

Subsection (b)(1) previously stated that the carrier was liable for the reasonable and necessary costs of spinal surgery related to the compensable injury in six situations. Subsection (b)(2) stated that the reasonable and necessary costs of spinal surgery include the services of the surgeons and ancillary providers during the hospital admission, and the hospital services. Subsection (b)(3), limited any medical dispute to the reasonableness of the fees charged, preventing a retrospective review of the medical necessity of any services provided in connection with the spinal surgery. This prohibition against retrospective review of services related to spinal surgery allowed unanticipated services to be provided without an avenue for challenge of the medical necessity of such services. For example, under the previous rule, while there may be agreement prospectively regarding the medical necessity of spinal surgery itself, the necessity of treatments and services other than the concurred upon spinal surgery was not reviewed prospectively and could not be reviewed retrospectively for medical necessity. Therefore a concurrence under the previous rule may have authorized procedures and services which were never reviewed or even contemplated by the concurring second opinion doctor. The second opinion process is a prospective review of the medical necessity of the spinal surgery, but is not a prospective review of the necessity of all treatments and services rendered in connection with the spinal surgery. This issue was complicated by the definition of "concurrence" in the previous rule which could impose carrier liability for a particular type of spinal surgery that the second opinion doctors did not agree was medically necessary.

The adopted changes to subsection (b) address issues regarding the effect of a spinal surgery concurrence. Subsection (b)(1) as proposed has been changed to be consistent with the definition of "concurrence" as outlined in subsection (a)(13). Subsection (a)(13) reads, "a second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed." Therefore subsection (b)(1) is amended for consistency to read "...the carrier is liable in any of the following situations for the reasonable and necessary costs of the proposed type of spinal surgery..." The change to subsection (a)(13) was made to provide clarification of the definition of concurrence.

Subsection (b)(2) as proposed has been changed to state that medically necessary care related to the spinal surgery generally includes services of the surgeons and ancillary providers for the hospital admission and the hospital services. This language change allows for necessary procedures, which may be required based on their relationship to the spinal surgery, to be performed by ancillary providers or surgeons in offices or clinic settings prior to admission to the hospital and while in the hospital. The word "during" is changed to "for" to clarify that medically necessary care related to the spinal surgery is not limited to services delivered during the hospital admission. This provides for efficient delivery of health services required for the spinal surgery. The word "generally" has been added to clarify that the medically necessary care related to spinal surgery may vary depending upon the particular case.

The proposed amendments to subsection (b)(3) are changed. This section addresses the opportunity to file for dispute resolution related to spinal surgery. Section 408.021 of the Workers' Compensation Act provides "that a claimant is entitled to all health care reasonably required by the nature of the injury as and when needed", therefore, the issue of medically necessary care related to spinal surgery appears to be a proper subject for retrospective review. On the other hand, because the spinal surgery second opinion process does provide a prospective review and approval of the need for spinal surgery, the spinal surgery itself is not an appropriate subject for retrospective review of medical necessity. Proposed subsection (b)(3) is amended to limit dispute resolution to the reasonableness of fees charged for the proposed and concurred upon type of spinal surgery. The change limits dispute resolution to fee

disputes for the proposed and concurred upon type of spinal surgery while allowing retrospective utilization review of medical necessity for other services. The subsection further requires carrier bill review be performed in accordance with any applicable rules and regulations regarding utilization review. This will prevent frivolous bill denials while limiting the carrier liability to the reasonable and necessary care related to the type of spinal surgery. Language was also added as a warning to carriers who may unreasonably deny medically necessary benefits associated with the spinal surgery. The Division will monitor spinal surgery bill denials and may make referrals for administrative violations when it appears a carrier has unreasonably denied benefits. This further supports the third goal of the second opinion process to "monitor the system." The carriers will have the ability to monitor and question those services which do not appear to be related to the type of spinal surgery proposed. These changes were made to provide a balance to the system and offer a fair process to both carriers and providers. In addition, the changes to subsection (b)(3) are adopted to assist in the implementation of Article 21.58A of the Insurance Code where applicable to workers' compensation cases.

The amendment to subsection (b)(3) clarifies that the issue of medical necessity for the proposed type of spinal surgery is determined prospectively and cannot be denied retrospectively, while allowing for the retrospective review of procedures and services which were not reviewed prospectively. Appropriate medical treatment remains within the purview of the surgeon. If treatments or surgeries are performed which are additional to or different from those agreed upon through the second opinion process, the surgeon is responsible for documenting the medical necessity of such services.

Subsection (b)(4) has been added to the rule to limit the validity of a determination of carrier liability to a one year period. To proceed with spinal surgery based upon a determination of carrier liability which is more than one year old a reevaluation of the injured employee's condition will be required. Subsection (b)(4) as proposed has been changed to require an addendum report rather than a new TWCC-63 form in the case of a final Commission order over one year old. If carrier liability resulted from a carrier waiver of a second opinion or failure to request a second opinion within the allowed timeframe, a new TWCC-63 form would be required to be submitted and the process reinitiated. If a determination of carrier liability was the result of concurrence by both second opinion doctors, failure to timely appeal in a case where there is only one concurrence, concurrence by only one second opinion doctor, or if carrier liability resulted from a final Commission order, a resubmission of the original TWCC-63 form for an addendum report to determine continued medical necessity for the proposed spinal surgery will be required. Previously there was no provision in the rule for expiration of a concurrence for spinal surgery. Because the condition of the injured employee will most likely have changed in this amount of time and medical technology and information may have advanced, the year-old second opinion(s) may no longer be relevant and should be reevaluated before surgery proceeds. This change ensures the integrity of the spinal surgery second opinion process and ensures that the injured employee receives the most appropriate treatment. In addition, under the previous rule, insurance carriers were not allowed to dispute medical necessity of a spinal surgery even if the second opinion concurrence took place years before. The amendment requires a reassessment of the medical necessity of a spinal surgery if the second opinion concurrence or insurance carrier waiver is over one year old.

In a small number of cases (approximately 100 per year), the injured employee requests change of treating doctor, from the treating doctor who recommended surgery to a doctor who provided a second opinion in their case. These injured employees request this change of treating doctor because they want the second opinion doctor rather than their treating doctor to perform their spinal surgery. Subsection (d) of the rule sets out the minimum qualifications a doctor rendering a second opinion must meet. These qualifications include that a second opinion doctor cannot be scheduled to perform or assist with the recommended surgery and cannot be economically associated or share office space with the treating doctor or surgeon. Subsection (d) as proposed would have allowed an injured employee to change treating doctors to a doctor who provided a second opinion in the employee's case if they obtained another second opinion on the recommended spinal surgery. The proposed amendment has been changed. Public comment indicates that there was concern regarding the possible increased costs and time associated with additional second opinions. To address these concerns and to maintain the integrity of the second opinion process the proposed language is changed to read, "The doctor rendering the second opinion cannot for a period of 12 months after rendering a second opinion become the injured employee's treating doctor or surgeon for the medical condition on which the doctor rendered a second opinion." This provision prevents the appearance that the second opinion doctors opinion may have been influenced by potential financial gain. If second opinion doctor's have the potential to become the surgeon, there may be, in some cases the appearance that the second opinion doctor concurred with surgery only because he or she believed there was a potential to become the surgeon. Similar to the Commission's rule regarding designated doctors, this new language prevents the second opinion doctor from participating directly with the patients care for one year.

Previously, subsection (g)(3) stated that the carrier was responsible for notifying the injured employee, treating doctor and surgeon of the scheduled second opinion appointment. Additionally, the rule indicated that failure to set an appointment within 30 days resulted in a waiver of a second opinion by the insurance carrier. However, the rule did not address the ramifications of setting an appointment within 30 days but failing to notify the involved persons. Failure to notify the injured employee, treating doctor, and the surgeon of the scheduled second opinion examination may result in a delay of treatment to the injured employee. Additionally, there are added costs incurred by the carrier. These costs include the $100 no-show fee which is owed to the doctor with whom the appointment was set and not kept. The carrier is required to schedule another appointment and provide notification to the injured employee, treating doctor and surgeon. Commission data indicates that 15 to 20 percent of the spinal surgery recommendations taking more than 50 days to process are delayed because of rescheduling of the carrier second opinion examination due to failure to notify one or more participants. In some situations, the injured employee received notification and arrived at the appointment, however, the second opinion doctor would not see the patient because there were no accompanying medical records or diagnostic films due to the lack of notification to the surgeon by the insurance carrier. Many surgeons and injured employees report that the only notification they received regarding the scheduling of a second

opinion examination was the notification sent by the Commission. Some participants also report the notification arriving the day of the scheduled examination or even a day or two after the scheduled examination. Case managers in the Commission's spinal surgery section estimate that delays due to failure to notify involved persons of a scheduled second opinion examination lengthens the second opinion process by three to five weeks.

The adopted amendment to subsection (g)(3) adds failure to timely notify the injured employee, the surgeon, and the treating doctor of the scheduled second opinion examination as grounds for deeming carrier waiver of a second opinion. To ensure the treating doctor and surgeon have reasonable time to send records and films to the second opinion doctor, and to provide the injured employee with sufficient time to make arrangements to attend the examination, amended subsection (g)(3) requires that notification of the appointment be sent by the carrier at least 10 calendar days prior to the date of the second opinion examination. Subsection (g)(3) as proposed provided that notice of the appointment be sent at least 10 working days prior to the day of the second opinion examination. Based on commenter's suggestions the notification time period has been changed from 10 working days to ten calendar days. Staff believes that 10 calendar days will provide adequate time to inform the injured employee, treating doctor and surgeon of the second opinion exam, without causing undue delay to second opinions. Monitoring of second opinion examination time frames indicates that approximately 3.5% of second opinion examinations scheduled by the carrier are scheduled within the first 10 days, while approximately 12% of examinations scheduled by the carrier occur later than 30 days from the acknowledgement date. This time frame will allow sufficient time to submit medical records and films to the second opinion doctor and also for the injured employee to receive information of the scheduled evaluation and make the necessary transportation and other personal arrangements required to attend the appointment. The Commission considers five days a reasonable time for receipt of mail sent through regular delivery. Therefore, the change to 10 calendar days will keep to a shorter period the amount of time the injured employee is required to wait for a second opinion appointment.

Subsection (i)(2) as proposed has been changed. The language has been changed in this section for consistency with the language used throughout the rule. In subsection (i)(2) the term "procedure" has been removed and replaced with "type of spinal surgery."

The adopted amendment to subsection (m) deletes the July 1, 1998, expiration date of the rule. The expiration date has been deleted because the rule has proven to be an effective tool in maintaining cost effective, quality care for spinal surgeries and should continue in effect. The adopted amendments to §133.206 are effective for all requests for spinal surgery second opinions filed with the Commission on or after the effective date of the amendments. Requests filed with the Commission before the effective date of the amendment are subject to the rule in effect at the time the request was filed with the Commission. The effective date is changed from June 1, 1998 to July 1, 1998, to allow staff adequate time to inform system participants of the rule change and to implement internal measures that will be necessary.

The rule reference in subsection (c)(5) has been changed in accordance with the renumbering of subsection (d). Adopted changes to subsections (d)(6), (i)(2), (i)(3), and (i)(4) provide consistency with other language in the rule and consistency with the amended definition of "concurrence." Adopted changes to subsection (d)(4) (previously (d)(3)) preserve the meaning of that section and make it consistent with the addition of new subsection (d)(2).

Comments generally opposing the proposed amendment to §133.206 were received from the following groups: Robert L. Allred, M.D., Killeen, Tx; Raymond J. Bagg, M.D., Texas Orthopaedic Association, Austin, Tx; David Bauer, M.D., Dallas, Tx; Howard L. Berg, M.D., Amarillo, Tx; Michael S. Valastro, M.D., Round Rock, Tx; Leslie Bishop, M.D., Round Rock, Tx; Craig Callewart, M.D., Dallas, Tx; Emil Cerillo, Southwest Spine & Orthopedic Specialists; Huntly Chapman, M.D., Dallas, Tx; Jack W. Chitwood, M.D., Abilene, Tx; Wayne Clark, Patient Advocates of Texas; Stephen A. Cord, M.D., Lubbock, Tx; Howard B. Cotler, M.D., Texas Spine Society, Houston, Tx; J. Stuart Crutchfield, M.D., Tyler, Tx; Guy O. Danielson, M.D., Tyler, Tx; M. David Dennis, M.D., San Antonio, Tx; Randall F. Dryer, M..D., Austin, Tx; David W. Duffner, M.D., Tyler, Tx; Michael A. Earle, M.D., San Antonio, Tx; James E. Elbaor, M.D., Arlington, Tx; Conrad A. Fischer, M.D., Nassau Bay, Tx; James A. Ghadially, M.D., Houston, Tx; Kevin Gill, M.D., Dallas, Tx; David O. Gillory, III, M.D., Round Rock, Tx; Charles R. Gordon, M.D., Tyler, Tx; Richard D. Guyer, M.D., Plano, Tx; Floyd Hardimon, D.O., Houston, Tx; Robert J. Henderson, M.D., Dallas, Tx; David F. Henges, M.D., Austin, Tx; Nick Huestis, American Insurance Association; Andrew P. Kant, M.D., Houston, Tx; Charles W. Kennedy, Jr., M.D., Texas Orthopaedic Association, Corpus Christi, Tx; Jeffrey A. Kozak, M.D., Houston, Tx; Thomas I. Lowry, M.D., Austin, Tx; Carol Lusk, NeuroCare Network, Tyler, Tx; Donald Mackenzie, M.D., Plano, Tx; Craig L. McDonald, M.D., Angleton, Tx; Allen Meril, M.D., Texas Medical Association, Texas Orthopedic Association, Garland, Tx; Robert A. Peinert Jr., M.D., Lubbock, Tx; Michael E. Putney, M.D., Round Rock, Tx; Ralph Rashbaum, M.D.; Spencer Rowland, M.D. , San Antonio, Tx; Albert E. Sanders, M.D., San Antonio, Tx ; Eric H. Scheffey, M.D., Houston, Tx; Mark W. Scioli, M.D., Lubbock, Tx; Gini Seely, T-Bones; Raul Sepulveda, M.D., Houston, Tx; James W. Simmons, M.D., San Antonio, Tx; Gene R. Smith, M.D., San Antonio, Tx; John Paul Theo, M.D., Lubbock, Tx; Michael S. Valastro, M.D., Round Rock, Tx; Robert Viere, M.D., Dallas, Tx; Steve C. Wilson, M.D., Round Rock, Tx; Jack E. Zigler, M.D., Plano, Tx .

Comments generally in support of the proposed amendment to §133.206 were received from the following groups: Pat Crawford, TABCC Worker's Compensation Task Force, Austin, Tx; Jaelene Fayhee, Texas Workers' Compensation Insurance Fund, Austin, Tx; Richard H. Jackson, M.D., Texas Association of Neurological Surgeons, Dallas, Tx; Jack W. Latson, Flahive, Ogden & Latson, Austin, Tx; Nicholas Tsourmas, M.D., Texas Workers' Compensation Insurance Fund, Texas Association of School Boards

Comments neither generally in support or generally opposed to the proposed amendment to §133.206 but who made suggestions for change were received from the following groups: Phil H. Berry, Jr., M.D., Texas Medical Association, Austin, Tx; Judy French, Dallas Neurosurgical Associates, P.A., Dallas, Tx

Summaries of the comments and Commission responses are as follows.

CONCURRENCE.

COMMENT: Many commenters opposed the change in the definition of concurrence. Some commenters questioned whether a second opinion doctor was more knowledgeable about the injured worker's condition and more qualified as to the procedures or as familiar with modern techniques; stays up to date with spine related information; or likes to treat spine patients. Commenter further questioned who had the best interest of the patient at heart the treating doctor or the second opinion doctor who has not been involved in the patient's case throughout the process. The commenter stated that the presumption would be that both doctors have similar training and experience. A commenter stated that the insurance company is putting more trust in an individual who doesn't have the patient's best interests at heart. Commenters stated that it was implied that the second opinion doctor selected randomly from a "sublist of five" possesses certain qualifications and training not possessed by the "treating doctor" that would enable him to make recommendations that would be more "beneficial" to the patient. Commenter stated that to a conservative treater who does not have the same qualifications and who does not perform the recommended surgery nor have the experience or training to do so , the recommendation may represent unnecessary surgery and that is a difference of opinion.

RESPONSE: The Commission disagrees. The second opinion doctor list and the spinal surgeon list are the same list. Second opinion exams are performed by the same group of doctors who are recommending surgery. In creating sublists, the division takes into account the recommended surgical procedures and the second opinion doctor's level of expertise. The spinal surgeons are surveyed every two years for the purpose of determining level of expertise and active surgical practice. There is no evidence that the insurance company is putting trust in doctors who do not have the patients best interest at heart. Monitoring indicates that in fact the carrier selected second opinion doctor concurs with surgery at a slightly higher rate than the employee selected doctor.

COMMENT: Many commenters opposed the change in the definition of concurrence because it requires the second opinion doctor to concur with the procedure recommended by the treating doctor/surgeon rather than only concurring with the recommendation for surgery. Some commenters stated that surgeons have different skills and some are good at and comfortable with one technique, whereas others may be good at or more comfortable performing another, but both obtain good results so a disagreement as to the procedure to be used should not be a nonconcurrence. Some commenters felt the current definition for concurrence worked well because it left the choice of procedure with the treating doctor/surgeon and so the rule should not be changed. A commenter stated that the only question for the Commission is whether the surgery is reasonable and necessary. Another commenter felt that the role of the second opinion doctor should be simply to determine that there is or is not pathology present for which a surgical procedure is indicated and that because the second opinion doctor is not treating the patient it should not be that doctor's position to comment on the surgical procedure chosen by the treating doctor/surgeon. Some commenters felt that the proposed definition of concurrence interfered with the treating doctor's independent medical decision-making ability and professional judgment, Another commenter felt the change made the rule overly restrictive and will likely cause the system to break down because surgeons rarely agree on the finer points of surgical treatment for a particular problem. Commenters stated that the proposed change emphasized the particulars of the spinal surgery rather than the diagnosis and that there is no consensus in the literature or in the medical profession on surgical procedures. This will make reaching concurrence difficult particularly between doctors who studied in different areas such as orthopedic versus neurosurgeons. A commenter felt that the proposed change did not recognize that medicine is an art and does not allow for different philosophical approaches to the practice of medicine. Some commenters interpreted the proposed change as requiring agreement by the second opinion surgeon that surgery is needed and agreement with the surgical technique recommended or the result would be a non-concurrence. Examples given of areas where surgeons have different opinions on the same problem included anterior versus posterior approach, fusion or no fusion, instrumentation or no instrumentation and timing of surgery after conservative care. A commenter suggested that the second opinion doctor concur with whether surgery is warranted and also give an opinion if the patient would benefit from a different procedure than that recommended and let the patient make the decision with the treating doctor/surgeon as to the type of procedure to be done. Another commenter stated the recommended surgical procedure is usually determined by what works best for a particular surgeon based on education and experience rather than findings reported in medical literature. A commenter felt that the variability of surgical techniques used was good and should not be limited. Some commenters felt the change-in the definition of concurrence made the second opinion surgeon's decision incontestable and gave the second opinion doctor's opinion preferential status. Some commenters felt that the change in the definition of concurrence would limit the surgeon's medical judgment and be a disservice to or even present a harm to the injured worker who needs treatment. Commenter pointed out that leaving the rule as it presently exists serves to preserve the patient's right to quality medical care without the imposition of undue burden.

RESPONSE: The Commission disagrees. The proposed change to the definition of concurrence should have a beneficial impact for injured workers. System monitoring indicates that a subset of injured workers experience a reoperation rate at double the rate experienced by the general spinal surgery workers compensation population in Texas. Concerns that doctors of a differing specialty might offer largely different opinions have been alleviated by a review of Commission data that shows doctors of like specialty concur 71% of the time, while doctors of non-like specialty concur 67% of the time. In the cases where the second opinion agrees with surgery but disagrees with the type of surgical procedure, (about 5.0% of the spinal surgery population), there is a 31% rate for recommendations of further surgery. The general spinal surgery workers compensation population has a 15% rate for further surgery. The change to the definition should not impact the injured worker population outside of the 5.0% who currently experience the higher rate of recommendations for further surgery. For this particular 5.0%, it is expected that fewer subsequent surgical procedures will be necessary. However, there seems to be misunderstanding about the meaning of the change of definition for concurrence. Therefore, the definition has been amended, not in substance, but in wording, to clarify the meaning. The definition of concurrence will read, "A second opinion doctor's agreement that the surgeon's proposed type of surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e. cervical, thoracic, lumbar, or adjacent levels

of different areas of the spine) that are likely to improve as a result of the surgical intervention. Types of surgeries include but are not limited to: stabilizing procedures (e.g. fusions); decompressive procedures (e.g. laminectomies); exploration of fusion/removal of hardware procedures; and procedures related to spinal cord stimulators." This definition should help to clear up any confusion regarding what constitutes a concurrence.

The technique for a particular surgical procedure is a medical decision to be made by the surgeon. For example, if a surgeon recommends a fusion, and both second opinion doctors disagree that a fusion would be likely to benefit the patient, the carrier would not be liable. However, if the surgeon recommends a fusion and one or both second opinion doctors agree that a fusion would be likely to benefit the patient, then the carrier would be deemed liable. In the second case, decisions, for example, about approach (anterior, posterior, etc), levels, instrumentation, bone growth stimulators etc. are medical decisions to made by the surgeon.

Although the second opinion doctor is not treating the patient, his/her expertise can be utilized to more fully evaluate the patient's condition, in support of the evaluation and recommendations made by the surgeon, and assist in determining, based on pathologies identified, the type of procedure which will most likely benefit the injured employee. The second opinion doctor's opinion is not given preference. The rule allows for the opinion of the surgeon and two second opinion doctors. The recommendations of the three doctors are evaluated and the preponderance of weight upon which the decision is made relative to carrier liability is based on the concurring opinions of two of the three spinal surgeons.

COMMENT: Commenter stated that there has never been a definition of what constitutes unnecessary surgery. The commenter further stated that there is no way to legislate what is unnecessary and what is necessary.

RESPONSE: The Commission disagrees. The Act and rule defines the conditions under which the carrier is liable for spinal surgery. The rule in particular defines concurrence and nonconcurrence. The definition of concurrence defines the circumstances in which the carrier will become liable for spinal surgery. The rule identifies agreement of the second opinion doctor and the surgeon on what type surgery is "needed". It further clarifies that "need" is assessed by determining whether pathologies exist in the area of the spine for which surgery is proposed that are likely to improve as a result of the surgical intervention recommended by the surgeon

COMMENT :Commenter suggested the real reason for the change was "that it will provide specific identification of the procedure(s) the insurance carrier is liable for as a result of the concurrence". Some commenters expressed concern that the insurance company would see this as an opportunity to confuse the issue and make it even more difficult to obtain an agreement on a second opinion. The differences of opinion as to level or specific surgical procedure do not affect the carrier's liability and so liability should be determined on whether an agreement on the need for surgery is agreed upon and not the specific type of procedure.

RESPONSE: The Commission disagrees. The proposed change to concurrence was made in an attempt to decrease the 31% rate for subsequent surgeries for the 5.0% of patients who are currently affected. Individual CPT codes do not need to be concurred upon prospectively in order to obtain a concurrence. Carriers are responsible for paying or disputing medical bills within 45 days of receipt. If a surgeon has a bill denied they may avail themselves to medical dispute resolution.

COMMENT: Many commenters expressed concern about the inherent time delays which would result from the proposed rule change. Commenters went on to say that the delay would also increase costs by prolonging disability, causing needless repetition of third and fourth opinions, increasing the appeal process and adding to the already insurmountable paper work load placed on the doctor. Some commenters stated that the proposed changes would not be of benefit to the injured workers and would in fact lengthen the time it takes to return a patient to work. A Commenter stated that the intent of the change appears to be to try to ensure that the worker receives the appropriate surgery and that the number of subsequent surgeries are reduced. In making this change, the proposed rule has the potential to increase the number of disputes and lengthen the time required to get a final decision on whether surgery is to be performed and the exact procedure to be performed. Another commenter felt that there is already too much delay in the system by carriers and that the proposed change will increase the delay.

RESPONSE: The Commission disagrees. The amendments proposed should not, in general produce time delays. For a subset of injured employees, those 5.0% who experience a higher than average rate for proposal of subsequent surgery, there may in a few cases be an increased amount of time to determine carrier liability because of the need to obtain the employee selected second opinion. The disadvantage of additional time should be off-set by fewer patients ultimately requiring multiple surgeries. This is beneficial to injured workers and will not lengthen time to return to work compared to time caused by the need for more than one surgery. This should not produce an overall increase in cost to the system. While some patients may receive two second opinions, the cost savings associated with avoiding repeat surgeries, will off-set any up-front costs of the additional second opinion.

COMMENT: Commenter expressed concern that the proposed changes would impair the injured employees access to "all health care reasonably required by the nature of the injury as and when needed".

RESPONSE: The Commission disagrees. The injured worker is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The second opinion process, as mandated by statute, determines carrier liability for spinal surgery by identifying those cases where the second opinion(s) agree with the need for surgery. Need is further defined in §133.206 as agreement that the type of spinal surgery recommended by the surgeon is likely to benefit the patient.

COMMENT: Commenter pointed out that second opinions are of significant importance and should not be questioned and that a decision that a patient requires surgery and would benefit from the surgery is reinforced by the second surgical opinion.

RESPONSE: The Commission agrees that the second opinion doctor's decision that a patient would benefit from surgery reinforces the surgeons recommendation for surgery.

COMMENT: Commenter pointed out that if there is a subsequent change to the definition of concurrence then this rule would require more documentation to support the medical necessity for making a change regarding the type of spinal surgery

which, if experience is to be a guide, will only result in further denial, disputes, increased paperwork and continuing confrontation.

Response: The Commission disagrees. If there was a change in the type of surgical procedure at the time of surgery, for example, a laminectomy recommended, but a fusion performed, additional documentation would be necessary to support the medical necessity of the change. This is appropriate given the statutory requirement for a second opinion process. Carriers must abide by any rules and regulations relating to utilization review.

COMMENT: Some commenters were in favor of the proposed rule changes. A commenter stated that if a disagreement (non-concurrence) is noted in a report by the second opinion surgeon, it would be considered substantive, not semantic. A commenter pointed out that the change ensures that a second opinion concurrence results in treatment most likely beneficial to the injured employee and will provide specific identification of the procedure the insurance carrier is liable for as a result of the concurrence. The revision may also have the positive result of reducing the occurrence of subsequent spinal surgery procedures. The commenter further stated that required concurrence more importantly affords the injured employee the assurance that the best possible treatment will be provided. A commenter stated the previous rule failed to recognize that many of the surgical disputes arise, not over the question of surgical necessity, but over the procedure that should be performed. The current rule permits workers' compensation patients to be the subjects of experimental and often times controversial surgeries. Statistics recited in the preamble demonstrate that these surgeries (where there was no concurrence with the procedure to be performed) fail twice as often as surgeries in which the concurring physician concurs with the procedure recommended as well as the need for surgery. A commenter agreed and stated he firmly believes we need the proposed changes and is very interested in seeing this concurrence for several reasons one being the timeliness issue. A commenter stated full support of the proposed amendment to subsection (a)(13) which would change the definition of concurrence. The commenter further recommended that subsection (i)(3) be amended to require an itemized second opinion report indicating concurrence with the following: (1) the pathological condition that warrants surgery, (2) that the recommended surgery will correct or improve the identified pathology, (3) the specific levels of the spine to be operated on, and (4) the exact procedures to be performed.

RESPONSE: The Commission agrees that some patients are experiencing a high rate of reoperation and that the change in definition for concurrence should help to avoid those surgeries that are not likely to help the patient and in fact are more likely to result in further surgery. Commission disagrees that specific itemized CPT codes or the exact procedure should be agreed upon prospectively. The type of surgical procedure should be concurred upon, i.e. laminectomy, fusion, etc, but the medical decisions regarding approach, number of levels, instrumentation, etc. should be made by the surgeon at the time of the operation.

COMMENT: Commenter stated this is not good medicine. There is case after case where neurosurgeons would disagree with a fusion only to have patients undergo discectomies and later require a fusion, further taxing the system and worst of all, not providing the patient with the appropriate index procedure in the first place.

RESPONSE: The Commission disagrees. Monitoring of the number of concurrences indicates that there is no significant difference in recommendations between orthopedic and neurosurgeons, despite the procedure recommended, the type of surgeon making the recommendation, whether the second opinion doctor was selected by the carrier or the injured worker or the percentage of times a carrier selects a neurosurgeon.

COMMENT: Commenter questioned whether the rule as proposed will significantly ameliorate things and make an imperfect world perfect and further questioned the facts in place to substantiate this.

RESPONSE: The Commission disagrees that this is the standard for whether or not a rule should be adopted. The rule is intended to ensure quality medical care to injured employees. The facts to support the amendments are recited throughout this order.

COMMENT: Some commenters disagreed with and questioned the statistics presented to support the proposed rule change to subsection (a) (13). A commenter stated there is virtually no evidence presented to indicate what necessitated the additional surgeries; nor what the additional surgeries were comprised of; nor whether or not these additional operations would have been avoided had there been concurrence with the actual surgical procedure. The commenter further stated the authors of the preamble provided virtually no meaningful information that supports a conclusion that the rate of revision surgery would be further reduced by requiring complete agreement across the board by the reviewing physicians and the treating physician as to exactly what surgical procedure was to be carried out. A commenter stated that the statistics indicated that when second opinion doctors differed as to what to do with patients, 91% of the time they chose to do less surgery. The commenter further stated that due to the higher operation rate, the proposal was made to "make surgery match" The commenter stated that the statistics proved that going with the opinion of the surgeon 69% of those people did not undergo reoperation and in conclusion the majority of the decisions made were right. A commenter inquired as to what the Commission's definition was of "less complex procedure" and asked for a ranking of a list of spinal surgery procedures by complexity. This comment was supported by the Commission statistics stating 90% of 287 patients who had a second opinion recommendation for a different procedure had a second opinion recommendation for a less complex procedure than recommended by the surgeon.

RESPONSE: The Commission disagrees. The majority of difference in opinion between second opinion doctors and surgeons in this group, was a difference of opinion regarding the use of a fusion to treat the patient. In ninety percent of the cases, in which there was a difference of opinion, the second opinion doctor did not recommend a fusion, however, a fusion was performed. Generally, the second operation that was recommended was for the diagnosis "failed fusion." While a certain percentage of medical procedures may not result in the optimum outcome, for this group of spinal surgery candidates the reoperation rate is double the rate for general spinal surgery population. This is meaningful information. This suggests that if this population could share the same concurring opinions prospectively, then they could enjoy the same results as the general spinal surgery workers' compensation population. A

ranking of spinal surgeries by complexity is not relevant to the determination of carrier liability. Concurrence is not an agreement with the specific CPT Codes recommended, but rather is agreement that the recommended type of surgery is likely to benefit the injured employee. When a second opinion doctor disagrees on the type of spinal surgery which would best benefit the injured employee a second or subsequent surgery was needed 31% of the time. Because this rate of subsequent surgery is twice as high as the subsequent surgery rate for the rest of the workers' compensation population, it is not acceptable. The rule amendment addresses this high rate of subsequent surgery.

COMMENT: A commenter pointed out that the Commission offered figures to demonstrate that the opinions are not biased in favor of the claimant and the commenter felt this conclusion was false because the two categories being compared were not comparable. The commenter further stated that the carrier pays for the surgeries in 73% of the cases in which their doctor concurs and in 17.28% of the cases in which their doctor did not concur.

RESPONSE: The Commission disagrees. The claimant receives the same sublist as the carrier from which to choose a second opinion doctor. Monitoring of the system indicates that carriers and claimants select orthopedic and neurosurgeons at about the same rate. Monitoring also indicates that both doctor types are about equally likely to concur or nonconcur with surgery. Monitoring does not find any indication of bias toward the claimant or the carrier. The carrier is liable for surgeries when prospectively it is determined that the type of surgery recommended by the surgeon is medically necessary. The commenter's numbers do not reflect results as indicated by Commission monitoring.

COMMENT: A commenter stated until such time as it is proven there is not reason to conclude there is a problem with the current system therefore there is no scientifically documented problem there is virtually no credible reason for changing what constitutes a concurrence.

RESPONSE: The Commission disagrees. Data was presented to substantiate the need for the proposed amendment to the rule. The change intends to improve a process which is working well yet with changes that will improve performance and continue to meet the goals established.

COMMENT: A commenter pointed out that the fundamental problem with the present rule is the provision allowing the claimant to select two of the three doctors and the presumption that the surgery is necessary if only two doctors established the presumption, and if the claimant picks a second doctor, there is no independent evaluation of surgical necessity. The Commission is urged to resolve this fundamental unfairness and dispense with the right of the employee to choose a second opinion.

RESPONSE: The Commission disagrees. The Commission generates the sublists of second opinion doctors from which the carrier and the claimant each chooses the doctor they wish to perform the second opinion. These doctors are independent of the surgeon. Their role is to determine whether the proposed type of surgery will likely benefit the patient. In many instances the injured employee never sees their choice of second opinion doctor as they accept the recommendation of the carrier selected doctor.

COMMENT: A commenter stated the narrative must indicate any differences of opinion in the type of procedure or level proposed for surgery. The commenter pointed out that this may have eliminated the opportunity for professional dialogue and exchange of information so necessary to the medical profession. Some commenters agreed with the proposed changes and stated it would open up a seriously needed line of communication between the two doctors, treating and second opinion. A commenter stated that even though medicine is not an exact science and one physician may have a different opinion and if this opinion disagrees useful information for treatment of the patient can still be obtained. The commenter recommended to keep subsection (i)(3) as it is in the current Rule that requires the narrative to discuss why there is a difference of opinion and why there is a differences in recommendations.

RESPONSE: The Commission disagrees that subsection (i)(3) should remain unchanged. Language to subsection (i)(3) regarding the requirements of the second opinion narrative report was amended, because the difference of opinion between second opinion doctors and surgeons, in some cases, will affect carrier liability. However, removal of this language does not prevent the second opinion doctor from providing their opinion regarding surgical technique, nor does it prevent communication between the two doctors regarding any opinions.

COMMENT: A commenter questioned subsection (i)(2) stating "The second opinion doctor shall CALL the designated phone number....The commenter suggested written documentation, if desired, should also be acceptable.

Response: The Commission agrees. The purpose of the phone call to the Spineline is to inform the TWCC case manager of the second opinion. If the opinion is a nonconcurrence, the case manager takes additional steps to ensure the employee selected second opinion appointment is scheduled. The division accepts fax responses as well as phone responses to the Spineline. Fax response should be sent to (512)440-3501 within 48 hours of the examination.

CARRIER LIABILITY.

COMMENT: Commenters opposed the ability of retrospective review by carriers for procedures or services not prospectively agreed upon. A commenter stated differing preoperative and postoperative protocols regarding tests, consults, medicines, rehabilitation, etc. will and should be, at the discretion of the treating physician and surgeon based on his experience and his skills. Preoperative evaluation or treatment of a condition in order to prepare the patient for the surgical procedure are services which would be disputed by carriers. Commenter pointed out that there was a change of language in §133.206 (b)(2) from necessary cost to medically necessary care related to spinal surgery.

RESPONSE: The Commission agrees in part. The second opinion doctor is required to opine on the need for the type of spinal surgery that is recommended. Concurrence therefore does not review the medical necessity of all services that could be billed. The carrier is not liable for medical treatment and services that are not medically necessary. Subsection (b)(3) has been amended to read, "If a carrier becomes liable for spinal surgery pursuant to the provisions of this section, disputes regarding the proposed and concurred upon type of spinal surgery shall be limited to a dispute as to the reasonableness of the fees charged. A carrier may challenge whether medical care related to the spinal surgery is medically necessary. A carrier's bill re-

view for medical necessity must be performed in accordance with any applicable rules and regulations regarding utilization review. In dispute resolution proceedings regarding medical necessity, carriers are required to provide documentation indicating compliance with applicable rules and regulations regarding utilization review. A carrier shall not unreasonably deny benefits which are medically necessary. The division may recommend administrative violations proceedings when a carrier unreasonably denies benefits." The purpose of this language is to clarify that carriers may retrospectively review spinal surgery bills for medical necessity. Such reviews, however, must be performed in accordance with any applicable rules and regulations regarding utilization review. Medical Review will, in its dispute resolution process, require documentation from the carrier indicating full compliance with such rules and regulations. Furthermore, abuses by the carrier, relating to prompt payment of spinal surgery bills and bills related to the spinal surgery, may be acted upon, either by the Commission or through referral to the department of insurance.

This language is intended to allow for appropriate questioning of medical necessity, while ensuring that inappropriate bill denial by carriers is addressed in accordance with the regulations that apply to bill payment and utilization review. The revised language should protect the rights of the carrier in terms of liability while assuring spinal surgeons and ancillary providers of prompt payment for services.

The language in §133.206 was changed from "reasonable and necessary costs of spinal surgery" to " medically necessary care related to the spinal surgery." The Act states that "a claimant is entitled to all health care reasonably required by the nature of the injury as and when needed." Subsection (b)(1) states the carrier is liable for the reasonable and necessary costs of the proposed spinal surgery and the medically necessary care related to the spinal surgery. Medical decision making is at the discretion of doctors and physicians. Reimbursement, however, is owed only for those services that are medically necessary. The appropriate medical treatment remains within the purview of the surgeon. The language in subsection (b)(2) is changed to clarify what medically necessary care includes. The intent is to ensure optimum care for all workers covered under the Act. This change brings a balance into the process and a clear definition of the scope of liability of the carrier, as is stated in the preamble

COMMENT: A commenter stated that there was agreement on the main points, the selection of patient, distraction, and the fusion of the anterior column. The only disagreement is on the basis of how to obtain that fusion. In this circumstance, under the new rules the carrier could say this is a non-concurrence and they are not liable.

RESPONSE: The Commission disagrees. In the situation described, where the only disagreement between doctors is the method of performing a fusion, under the amended rule this would continue to be a concurrence. If one or both second opinion doctors agree that fusion is necessary to treat the pathology in the spine, decisions regarding the number of levels, location of levels, approach, instrumentation etc., are left to the discretion of the treating surgeon. The carrier cannot argue that this type of agreement is a nonconcurrence. Carriers may request a Contested Case hearing for those cases where there is one nonconcurrence. To clarify that it is the type of procedure rather than how the procedure is performed that must be agreed upon, the definition of "concurrence" in subsection (a)(13) has been changed. The definition of concurrence has been clarified to state: "Concurrence - A second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e., cervical, thoracic, lumbar, or adjacent levels of different areas of the spine) that are likely to improve as a result of the surgical intervention. Types of surgical procedures include but are not limited to: stabilizing procedures (e.g., fusions); decompressive procedures (e.g., laminectomy); exploration of fusion/removal of hardware; and procedures related to spinal cord stimulators."

COMMENT: Commenters expressed concern regarding non-receipt or timely receipt of payment for services rendered or procedures conducted which were not prospectively agreed upon. A commenter stated ancillary providers have to "fight to get their bills paid by carriers" and with the proposed rule changes these providers will have even greater difficulty obtaining payment and may stop doing workers compensation all together.

RESPONSE: The Commission disagrees that the proposed amendment affects timeliness of payment. The rules which address the time in which bills must be paid are not affected by this amendment and remain the same. Carriers are required to pay or deny bills within 45 days of receipt. Instances where payment rules are violated should be referred to Compliance and Practices Division for possible administrative actions. Bills that are denied and remain in dispute maybe submitted to Medical Review, Medical Dispute Resolution section for resolution of the dispute. The amendment does allow retrospective review of services which may not be medically necessary care related to the spinal surgery. Previously while there may have been agreement prospectively regarding the necessity of the spinal surgery itself, the necessity of treatments and services other than the spinal surgery was not reviewed prospectively and could not be reviewed retrospectively, leaving the carrier without an avenue to dispute a treatment or service which may or may not be medically necessary care related to the spinal surgery procedure.

The clarification of what is considered medically necessary service related to spinal surgery should provide guidance regarding the extent of the carrier's liability. Subsection (b)(3) has been amended to point out that carriers should not unreasonably deny benefits related to spinal surgery.

COMMENT: Commenters believed that under the rule as proposed it would be virtually impossible for the surgeon to "change his or her mind" during the actual procedure based on findings at the time of surgery which could not have been anticipated or were not identifiable before surgery. Identification, at the time of surgery, of a lesser procedure than was prospectively agreed upon would result in non-payment should the lesser surgery, in the best interest of the patient, be performed. Many commenters disagreed with allowing the carrier an opportunity to retrospectively review procedures or services not prospectively agreed upon in the situation where a decision to change procedure is made during surgery. A commenter stated a procedure recommended and concurred upon by the second opinion doctor which requires change at the time of surgery should not be denied for payment because this may be misconstrued as a rule violation by the carrier. Other commenters expressed concern that physicians would feel limited to perform the procedures concurred upon even if it became apparent during surgery that the procedure or level needed to be changed in the best interest of

the injured worker. Commenters also felt that carrier liability for only the procedure concurred upon would eventually affect the judgment of the doctor and the services received the injured worker. Another commenter felt that the changes to subsection (b) will increase disputes and lengthen the process.

RESPONSE: The Commission disagrees. Appropriate medical treatment remains the responsibility of the surgeon. At the time of surgery a medical condition may be identified which was not anticipated prior to the surgical intervention. Under the proposed amendments, the carrier may pay medical bills for "lesser" surgeries. The carrier can also pay the medical bills for the "greater" surgeries. The surgeon should make the best medical decisions possible at the time of surgery, provide appropriate documentation to the carrier that indicates the medical rationale for the difference in procedure types and avail themselves of medical dispute resolution should they believe the bill has been inappropriately denied. The Commission agrees that at the time of surgery a medical condition may be identified which was not anticipated prior to the surgical intervention. This does not prohibit the surgeon from performing the procedure which is in the best interest of the patient. Documentation which defines the medical necessity for the change and supports the decision made is required. A change in the type of surgery performed should be an exception and occur infrequently. Doctors will continue to base their judgments as to the best interest of the patient on medical information and not on the doctor's belief as to whether a procedure will or will not be disputed and/ or paid for by a carrier.

COMMENT: Commenter felt the proposed change to the rule requiring the insurance company to be liable only for medically necessary care related to the procedure is "ridiculous." Some commenter stated the rule change would adversely impact the services received by and demonstrate irresponsibility toward the employee.

RESPONSE: The Commission disagrees. The Workers Compensation Act states "that a claimant is entitled to all health care reasonably required by the nature of the injury as and when needed." Health care includes spinal surgery and the necessary preoperative and postoperative assessments and treatments necessary to ensure a successful operation. Health care should be reasonable and necessary and related to the spinal surgery procedure. The amendment to the rule is in accordance with this statutory provision. It is unclear what the commenter is suggesting. The care which is provided should be in direct correlation to the work- related injury sustained by the injured employee and the necessary medical attention required to treat that medical condition. The proposed amendments should have no impact on patient care. However, the proposed language to subsection (b)(3) has been amended with the statement, "If a carrier becomes liable for spinal surgery pursuant to the provisions of this section, disputes regarding the proposed and concurred upon type of spinal surgery shall be limited to a dispute as to the reasonableness of the fees charged. A carrier may challenge whether medical care related to the spinal surgery is medically necessary. A carrier's bill review for medical necessity must be performed in accordance with any applicable rules and regulations regarding utilization review. In dispute resolution proceedings regarding medical necessity, carriers are required to provide documentation indicating compliance with applicable rules and regulations regarding utilization review. A carrier shall not unreasonably deny benefits which are medically necessary. The division may recommend administrative violations proceedings when a carrier unreasonably denies benefits."

COMMENT: Commenters stated that the changes were biased in favor of the carrier and serve to limit their responsibility for reimbursement to the surgeon and hospital. Some commenter suggested the carrier will deny the hospital and surgeon due payment of medically indicated and necessary procedures. Another commenter felt that the only beneficiary of the proposed changes would be carriers who would have almost unlimited authority to dispute and refuse to pay for necessary medical care

RESPONSE: The Commission disagrees. Carriers will be liable for services rendered which are medically necessary and related to the spinal surgery. The medically necessary care related to the spinal surgery includes the services of surgeons and ancillary providers for the hospital admission and the hospital services. The changes to the rule allow the carrier to dispute payment for services which are not medically necessary and related to the spinal surgery. This is reasonable because the prospective review provided for in the spinal surgery second opinion rule was not meant to impose unlimited liability upon the carrier. The amendments better define the liability established by the rule. The insurance carrier is responsible for providing reimbursement in accordance with the Medical Fee Guideline. Medical bills should be paid or denied within 45 days of receipt. Additionally, the carrier is responsible for payment for medically reasonable and necessary services to treat the injury sustained as a result of the compensable injury. The outcome should be quality medical care for the injured employee and a fair equitable system for providers and carriers. Subsection (b)(3) has been amended to require that a carrier's bill review for medical necessity be performed in accordance with applicable rules and regulations regarding utilization review. A warning has also been added that the Division may recommend administrative violation procedings when a carrier unreasonably denies benefits.

COMMENT: Commenter agreed that the hospitalization and surgery itself are not subject to retrospective review but felt the rule, as proposed provides for no limitations on what the surgeon would construe as related to the spinal surgery. Commenter disagreed with the statement in the preamble that "... the spinal surgery itself together with the care related to the spinal surgery are not appropriate subjects for retrospective review" and felt it was not consistent with the statement that the process is not a prospective review of the necessity of all treatments and services rendered in connection with spinal surgery. Commenter expressed concern as the proposed rule does not provide for prospective or retrospective review of treatments and services rendered in connection with spinal surgery. The concurrence with the need for a specific type of surgery does not automatically reflect medically necessary services which could be billed.

RESPONSE: The Commission agrees in part. Subsection (b)(1) has been amended to state that the liability of the carrier includes the reasonable and necessary costs of the proposed type of spinal surgery procedure and the medically necessary care related to the spinal surgery. Commission agrees that concurrence with the need for a type of surgery does not automatically reflect the medical necessity of services which might have been provided and billed. Subsection (b)(3) has been amended to read "A carrier's bill review for medical necessity must be performed in accordance with any applicable

rules and regulations regarding utilization review. In dispute resolution proceedings regarding medical necessity, carriers are required to provide documentation indicating compliance with applicable rules and regulations regarding utilization review. A carrier shall not unreasonably deny benefits related to spinal surgery. The division may recommend administrative violation proceedings when a carrier unreasonably denies benefits. When a carrier is determined to be liable for the costs of a spinal surgery procedure there are ancillary services which may be provided with the surgery. To establish parameters for challenge of the medical necessity and/or nonrelatedness of services to a spinal surgery, subsection (b)(3) has been amended to allow retrospective review of such services. A carrier shall not unreasonably deny benefits associated with spinal surgery. The division may recommend administrative violation proceedings when a carrier unreasonably denies benefits. This language does not prohibit a carrier from reasonably disputing the medical necessity of medical services associated with the surgery.

COMMENT: Commenter stated that bills are not easily reimbursed as allowed under medical fee guidelines. Commenter further stated that few adjusters or others have the knowledge and/or experience to properly process complicated spine surgery submissions.

RESPONSE: The Commission disagrees. Medical Fee Guidelines address appropriate billing and reimbursement; Medical Fee Guidelines are not addressed in this rule. The rule amendments discuss necessary medical care and related services which are required at the time of surgery. Bills that are not reimbursed timely should be referred to the Division of Compliance and Practices for possible administrative violations. Bills that are not reimbursed at a payment satisfactory to the provider, can be submitted to the Division of Medical Review, Medical Dispute Resolution section, for resolution of the fee dispute.

COMMENT: Commenter supported the proposed change to subsection (b) as it would add an important check and balance to the Commission's cost containment efforts.

RESPONSE: The Commission agrees. Although this is an important feature, based on comments received the language in subsection (b)(3) has been changed to state "A carrier's bill review for medical necessity must be performed in accordance with any applicable rules and regulations regarding utilization review. In dispute resolution proceedings regarding medical necessity, carriers are required to provide documentation indicating compliance with applicable rules and regulations regarding utilization review. A carrier shall not unreasonably deny benefits which are medically necessary. The division may recommend administrative violation proceedings when a carrier unreasonably denies benefits." This allows a retrospective review of nonrelated medical services, care and equipment in regards to the spinal surgery. The carrier is responsible for the medically reasonable and necessary services to treat the compensable injury. While prospective review determines the medical necessity of the spinal surgery, retrospective utilization review, in accordance with any applicable rules that apply to utilization review, is an important element to medical cost containment.

COMMENT: Some commenters stated that to allow the insurance company to challenge every order that a doctor makes is a violation of the Medical Practice Act and places the insurance company in the position of practicing medicine. A commenter stated carriers already have too much say regarding treatment of patients, and again the full liability burden rests upon the treating physician/spine surgeon. A commenter stated that to make medical decisions without ever having examined a patient is dangerous.

RESPONSE: The Commission disagrees that the amended rule places the insurance carrier in the position of practicing medicine. Liability for spinal surgery is determined by the second opinion process, which uses the knowledge and expertise of qualified spinal surgeons. If one or both spinal surgeons agree with the type of spinal surgery, the carrier is deemed liable, unless otherwise ordered by the Commission. Bills reviewed and denied by the insurance carrier for medical necessity should be reviewed in accordance with any rules and laws that apply to utilization review. Language has been added to subsection (b)(3) to read, "A carrier shall not unreasonably deny benefits which are medically necessary. The division may recommend administrative violation proceedings when a carrier unreasonably denies benefits." This language serves as a fair warning to carriers that inappropriate denial of medical benefits may result in administrative actions against the carrier.

COMMENT: Commenter agreed with the proposed changes as they offer carriers the additional certainty of the extent of their liability and the ability , through dispute resolution, to challenge treatments and services not prospectively reviewed. The commenter agreed that retrospective review of procedures and services which were not reviewed prospectively is logical. The commenter further stated that appropriate medical treatment remains within the purview of the surgeon and treatments performed in addition to or different than those proposed required documentation supporting the medical necessity of the services.

RESPONSE: The Commission agrees. The Commission cautions the carrier to make prudent use of retrospective bill review, taking care to maintain compliance with applicable rules and regulations regarding utilization review.

COMMENT: Commenter opposed the proposed changes to subsection (b) which allow retrospective review of procedures not prospectively reviewed because it will require additional documentation to support changes and that the time required to develop the documentation will increase the cost to treat injured employees.

RESPONSE: The Commission disagrees. The documentation is standard medical documentation. Surgeons are required to obtain patient consent for proposed surgical procedures. Additionally, typically the surgeon documents the planned procedure in the patients medical chart. The operative report contains documentation regarding the patient pathology and the procedure performed, and should serve as adequate documentation of the need for the type of surgical procedure performed. Preparation of additional documentation should not be necessary.

COMMENT: Commenter stated the problem is simple; anything not related to the specific spinal procedure prospectively reviewed will require additionally documented medical necessity,

RESPONSE: The Commission agrees. Commission agrees that documentation may be required in some situations to justify the medical necessity of services rendered. However, it is not the specific procedure prospectively rendered, but rather, the type of spinal surgery recommended, i.e. fusion vs. laminectomy.

COMMENT: Commenters stated the proposed changes would cause delays that will affect impairment income benefits to

which the injured employee may be entitled. Commenter stated proposed changes would not allow for timely approval of the procedure.

RESPONSE: The Commission disagrees. The proposed changes to the rule should not have any impact on impairment income benefits. No delay in second opinion processing time is anticipated.

COMMENT: Some commenters expressed concern regarding the proposed changes to subsection (b)(1) and resulting denial or delay of payment due to differences in the CPT codes billed and CPT codes approved by the second opinion doctor. A commenter questioned whether additional documentation would be required to support the changed CPT codes.

RESPONSE: The Commission disagrees. Second opinion doctors will not be approving specific CPT codes. The language in subsection (a)(13) regarding concurrence has been amended to clear up any confusion regarding that definition. The amended language reads, "A second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e. cervical, thoracic, lumbar, or adjacent levels of different area of the spine) that are likely to improve as a result of the surgical intervention. Types of surgical procedures include but are not limited to: stabilizing procedures (e.g. fusions); decompressive procedures (e.g. laminectomy); exploration of fusion/removal of hardware procedures; and procedures related to spinal cord stimulators." Therefore, for example, in those cases when fusion is recommended, the second opinion doctor's agreement that a fusion is likely to improve the patient condition, is considered a concurrence. Surgical decisions regarding approach, levels, instrumentation etc. are the medical decisions of the surgeon who performs the surgery.

COMMENT: Commenters expressed concern about the possibility of CPT coding error or the ability of carriers to arbitrarily and capriciously decide which CPT codes to reimburse.

RESPONSE: The Commission disagrees. The language in subsection (a)(13) regarding concurrence has been amended to clear up any confusion regarding the definition of concurrence. The amended language reads, "A second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed." A particular type of surgery, for example spinal fusion, is represented by many different CPT codes. The second opinion doctor's agreement that the type of surgical procedure is necessary is a concurrence. The second opinion doctor concurs or fails to concur with the proposed type of surgery, not with the CPT code. Carriers who retrospectively review medical bills for medical necessity, must abide by any rules and laws pertaining to such review. Carriers who unreasonably deny benefits associated with spinal surgery may be referred to the Division of Compliance and Practice for possible administrative violations.

COMMENT: Commenter recommended that TWCC rely on Spine Treatment Guidelines and determine carrier liability based on the guidelines.

RESPONSE: The Commission disagrees. The spine treatment guideline does not contain provisions for second opinion examinations. Section 408.023 of the Act requires a second opinion process to determine carrier liability for spinal surgery.

COMMENT: Commenter recommended that carrier disputes be referred to an independent state audit company for review and objective evaluation.

RESPONSE: The Commission disagrees. Carrier dispute is a utilization review issue not addressed by this rule. The Act allows for independent adjudication of disputes through the Commission's Medical Dispute Resolution process.

COMMENT: Commenter felt that carriers should be liable for treatment of new problems discovered at the time of surgery, but suggested tracking such instances to determine if a pattern of finding new problems during surgery exists for certain doctors.

RESPONSE: The Commission agrees in part. "New problems" is not defined by the commenter. The Commission agrees that a tracking system is a good recommendation and the division will consider implementation of such a tracking system. Liability is related to the compensable injury and the spinal surgery second opinion process. It would not be prudent to include a blanket statement regarding liability for "new problems" found at surgery.

COMMENT: Commenters expressed concern that by continually delaying the ability of the patient to get to surgery, necessary instrumentation, equipment, hospital facility, trained personnel and so on will finally drop off the treatment wagon and make it impossible for the patient to get the needed care. Another commenter felt the proposed changes adversely impact the quality of care by reducing the physicians treating options.

RESPONSE: The Commission disagrees. Treatment will not be continually delayed by the amendments to the rule. Medical review will be monitoring the number of spinal surgeons participating in the system and the number of spinal surgeries recommended. If there were to be a significant number of doctors who dropped out of the system, the division would make the Commissioners aware and would make recommendations to resolve that problem. Currently, the monitoring indicates increasing numbers of spinal surgeons who are participating as relates to spinal surgery. The definition of "concurrence" has been amended to require that the second opinion doctor agree with the type of spinal surgery. The surgeon retains the right and the obligation to make the medical decisions related to the surgery, including approach, levels of the spine to be operated upon, instrumentation and other associated medical decisions.

COMMENT: Commenter agrees that medical problems that are not going to jeopardize the patient during surgery and that are routine certainly should not be a part of the spinal surgery and should not be treated that way even if continued treatment of these medical problems for an extended period postoperatively is necessary, that also should not be covered after a reasonable period of time.

RESPONSE: Commission agrees in part. The carrier is liable for the reasonable and necessary medical care required to treat the compensable injury. The carrier is not responsible for unreasonable care, unnecessary care or care that is not related to compensable injury. All reasonable and necessary medical care for spinal surgery includes evaluation and medical management of conditions required to ensure the safety of the patient's condition during the spinal surgery and peri-operative period.

COMMENT: Another commenter objected to the carrier having the opportunity to retrospectively review preoperative procedures and services necessary to stabilize a patient for surgery such as a bleeding ulcer developed while in the hospital.

RESPONSE: The Commission disagrees. Subsection (b)(3) has been amended to read: "If a carrier becomes liable for spinal surgery pursuant to the provisions of this section, disputes regarding the proposed and concurred upon type of spinal surgery shall be limited to a dispute as to the reasonableness of the fees charged. A carrier may challenge whether medical care related to the spinal surgery is medically necessary. A carrier's bill review for medical necessity must be performed in accordance with any applicable rules and regulations regarding utilization review. In dispute resolution proceedings regarding medical necessity, carriers are required to provide documentation indicating compliance with applicable rules and regulations regarding utilization review. A carrier shall not unreasonably deny benefits which are medically necessary. The division may recommend administrative violations proceedings when a carrier unreasonably denies benefits."

COMMENT: A commenter felt that the addition of carrier opportunity to retrospectively review preoperative procedures will result in internists refusing to do preoperative clearance because they know payment for their services can be denied.

RESPONSE: The Commission disagrees. Subsection (b)(3) states that a carrier shall not unreasonably deny benefits associated with spinal surgery. The division may recommend administrative violation proceedings when a carrier exhibits a pattern of inappropriate denying of benefits." Denied payments may be referred to Medical Dispute Resolution for resolution of dispute. Retrospective review of medical necessity is an important element of medical cost containment. Carriers however must ensure the applicable rules and regulations relating to utilization review are followed.

NECESSARY MEDICAL CARE.

COMMENT: A number of commenters stated that preoperative work ups were necessary to identify pre-existing conditions which may not be directly related to, yet may have a significant impact on the surgical procedure. These workups should be conducted by either internal medicine or family practice physicians utilizing tests and protocols based on their knowledge and skills. These work-ups are expected to stabilize unstable medical conditions and cost effectively prevent complications from occurring. Commenters expressed concern that internal medicine and family practice physicians would not be reimbursed for services unless carriers assume full responsibility for the patients condition which will result in the assurance of payment to these allied health personnel. Without this assurance injured employees may be denied reasonable, necessary medical care.

RESPONSE: The Commission disagrees. A claimant is entitled to all health care reasonably required by the nature of the injury as and when needed. The reasonable and necessary costs of spinal surgery include the services of surgeons and ancillary providers for hospital admission. Commission disagrees that a family practice or internal medicine doctor would not receive payment for services rendered to identify a medical condition or stabilize an existing condition which may have an impact on the surgery. The claimant is entitled to all health care reasonably required to manage the surgery. Health care includes evaluation and management of conditions such as diabetes, hypertension, bleeding disorders, and heart and lung disease if and when disease processes such as these will or are likely to impact the patients well being as it relates to the proposed spinal surgery. Retrospectively, medical necessity is supported by documenting the medical justification for rendering these services. The Commission disagrees that this will result in a denial of reasonably necessary medical care. However, to avoid any confusion language in subsection (b)(2) is changed to read "the medically necessary care related to spinal surgery includes the services of the surgeons and ancillary providers for the hospital admission and the hospital services. The word "during" is changed to "for" to clarify that pre-operative work-ups conducted prior to the hospitalization are included in the definition of services that may be required.

COMMENT: Some commenters disagreed with the amendment as proposed because they felt it will allow the carrier to challenge medical necessity of decisions which will demonstrate irresponsibility towards the injured employee. It will also create even more unnecessary discussion, debate, delay, denials and disputes from carriers who refuse to pay for necessary medical care. A commenter stated that in theory it was reasonable to allow the carrier to be responsible for the decisions of reasonable and necessary costs and medically necessary care yet in reality would create lengthy delays for denial or refusal of payment.

RESPONSE: The Commission disagrees. The adopted amendment is intended to ensure prompt payment for services related to the spinal surgery and the surgery itself to support responsible care for the injured employee. An important "check and balance" in the system is in subsection (b)(3), which provides the ability of the insurance carrier to review medical services for medical necessity. Without retrospective bill review, costs for spinal surgery could include medically unnecessary services. The surgeon is responsible for documenting the medical necessity of services which may not usually be considered part of a spinal surgery procedure. While the carrier is responsible for prompt payment of medical bills, it is only responsible for payment of services that are medically necessary. It is through retrospective bill review that carriers evaluate those services where medical necessity may be in question.

COMMENT: Commenter pointed out that TWCC advisory 97-01 states that if an injured worker has a condition that impacts surgery or treatment services necessary to stabilize the patient are reimbursable. Commenter felt that the proposed amendment would negate this advisory. Another commenter stated that health care coverage of the injured employee may have been dropped as a result of the inability to return to work following the work related injury. Based on this fact carriers should be liable for treatment to stabilize pre-existing conditions to prepare the injured employee for surgery. Another commenter stated that these complicating conditions are unforeseen and unplanned yet the purveyor of care will wait interminable amounts of time to get paid due to the allowance of a carrier retrospective review of conditions not agreed upon prospectively. A number of commenters were concerned about spinal surgery patients with pre-existing conditions which must be stabilized prior to surgery.

RESPONSE: The Commission disagrees. The proposed amendments to the rule support TWCC advisory 97-01. If the insurance carrier is liable for the spinal surgery, then medical services necessary to evaluate and manage medical conditions that might impact the welfare of the patient undergoing spinal surgery are reimbursable.

In addition, routine pe-operative testing is medically necessary care related to the spinal surgery for which the carrier is liable.

Subsection (b)(2) has been changed to state that "medically necessary care related to the spinal surgery generally includes services of the surgeons and ancillary providers for the hospital admission and hospital services." This change allows necessary procedures to be performed in the most convenient and cost-effective setting, whether in the hospital or an office or clinic. Medical Dispute Resolution offers the provider an avenue to obtain payment for services denied or disputed. Section 133.300 (a)-(h) identify payment requirements under the rule and options for providers in the event timely payment has not been submitted following the submission of all completed forms to the carrier. The proposed amendments to the rule do support TWCC advisory 97-01. If the insurance carrier was liable for the spinal surgery, then medical services necessary to evaluate and manage medical conditions that might impact the welfare of the patient undergoing spinal surgery are reimbursable.

COMMENT: Commenter expressed concern about having the treating doctor produce an addendum TWCC-63 giving their opinions as to the medically necessary care related to procedures after a concurrence has been provided by two second opinion doctors or if the carrier fails to make a timely appeal when there is only one concurrence.

RESPONSE: The Commission disagrees. An addendum is the method used to reopen a spinal surgery file when the injured employee presents to their treating doctor/surgeon with a change of medical condition, after receiving two nonconcurring surgical opinions. (12 MONTH LIMIT ON LIABILITY DETERMINATIONS.)

COMMENT: A commenter stated that it would be reasonable to limit the carrier liability to one year from the date of the determination. The commenter also agreed that a new TWCC-63 process should be initiated to restart the process following the lapse of the one year period.

RESPONSE: The Commission agrees. The addition of this language limits the validity of a determination of a carrier to a one year period. To proceed with spinal surgery based on a determination of carrier liability which is more than one year old a reevaluation of the injured employees condition will be required.

COMMENT: A few commenters pointed out that allowing the insurance company the right to demand the surgical approval process start all over again, simply because they did not timely file, review, approve, disapprove, or waive their rights to a 2nd opinion would delay treatment for the patient.

RESPONSE: The Commission disagrees. Subsection (b)(4) only addresses situations where a determination of carrier liability (except in the case of an emergency) is over one year old and surgery has not taken place. A second opinion examination is an examination of the injured workers' current condition and the evaluation of proposed surgical treatment. Twelve months after the second opinion evaluation, the second opinion concurrence with the proposed surgical intervention is no longer current. At this point, a second opinion doctor may recommend against surgery, in favor, for example, of multi-disciplinary tertiary treatment programs. Patients this far from the date of injury may require interventions such as those described in the spine treatment guideline's tertiary care treatment tables. A reevaluation is prudent at this point. The condition of the injured worker will most likely have changed over 12 months and medical technology and information may have advanced. The year-old second opinion(s) may no longer be relevant and should be reevaluated before surgery proceeds. Paragraph (4)(A) and (B) identify the method by which submission will occur based on the date of determination and status of carrier liability.

COMMENT: A commenter stated that there was some confusion on carrier liability determination resulting in submission of a new TWCC-63.

RESPONSE: The Commission agrees. A clerical error was identified in subsection (b)(4)(A) and (B) and has been corrected. Subsection (b) (1)(F) regarding carrier liability and final and nonappealable Commission order to pay has been deleted from subsection (b)(4)(A) and added to subsection (b)(4)(B). In those situations where the carrier became liable by Commission order, and the employee did not undergo surgery within 12 months, a new TWCC-63 will not be required, but rather, the employee will return to the doctors who initially performed the second opinion exams. In cases where one or both second opinion doctors are unavailable, the carrier or employee will select a new second opinion doctor from the original sublist.

COMMENT: The commenter stated that beginning the second opinion process over again after a 12 month time period has elapsed would allow the carrier the ability to challenge the initial recommendations which would produce a never-ending cycle, and should not be allowed.

RESPONSE: The Commission disagrees. The vast majority of injured employees have the recommended surgery performed as soon as possible after carrier liability is determined. Some injured employees elect not to pursue surgery even though it is recommended by at least two spinal surgeons. In these very few cases, after one year has elapsed from the determination of carrier liability, an evaluation of the current condition and proposed surgery are prudent. Patients who are more than one year from their date of injury may require treatment other than surgery, such as those treatments listed in the tertiary treatment tables of the spine treatment guidelines. Because so few patients are involved, the Commission disagrees that reevaluation after one year would create a "never-ending cycle." It is in the best interest of the injured worker to have their condition re-evaluated. Within 12 months many changes may have occurred with the injured worker's condition, and the surgery initially recommended may no longer be appropriate. The process would follow the procedure in place for addendums or submission of new TWCC-63's and result in a processing time of approximately 35 days to determine carrier liability.

CHANGE OF TREATING DOCTOR.

COMMENT: Some commenters opposed the proposed changes to subsection (d) that would allow the injured worker to change their treating doctors because they felt it would increase bureaucracy, delay the surgery, increase the amount of time lost from work, create frustration for the treating surgeon, and increase the cost by requiring another second opinion which would not prove to be beneficial for the patient. A commenter felt that allowing the injured worker to choose his/her surgeon was a positive but that the downside of the change outweighs the upside and therefore subsection (d) should not be changed.

RESPONSE: The Commission agrees. Language to subsection (d) has been amended to read "The doctor rendering the second opinion cannot for a period of 12 months after rendering a second opinion become the injured employee's treating doctor

or surgeon for the medical condition on which the doctor rendered a second opinion." The new language will help to avoid additional second opinion exams. At the same time the integrity of the second opinion evaluation process will remain intact. When applicable, injured workers' will still be able to change to a surgeon with whom they feel more comfortable. However, the new surgeon may not be one of the second opinion doctors.

COMMENT: Commenter disagreed with the proposed changes to subsection (d) stating that no data exists to support the implication that second opinion doctors possess the same qualities, experience, familiarity with modern technique, and training, that would make their recommendations more beneficial to the patient. The commenter questioned the implication that the second opinion doctor will loose the ability to be objective if or when chosen to become the treating doctor/surgeon.

RESPONSE: The Commission disagrees. The list of second opinion doctors and the list of spinal surgeons are the same list. The surgeon who is recommending surgery for an injured worker today may be the second opinion doctor rendering an opinion for another injured worker tomorrow. The same qualifying survey is completed by all doctors performing spinal surgery and/or second opinions, and all are required to document the same professional qualifications. The sublists of second opinion doctors are created with the second opinion surgeon's expertise and experience considered in conjunction with the type of surgical procedure proposed to be performed. Additionally, subsection (d)(6) allows Medical Review to release a second opinion doctor from their obligation to render a second opinion if the doctor states that he or she is unable to render a second opinion because the doctor is not qualified due to unique or complex pathology or because the doctor's expertise excludes the involved body area. The Commission agrees that the judgment of the second opinion doctor, in most cases, would not be affected by the potential to become the surgeon for the injured employee. However to avoid any appearance of conflict of interest this section has been amended under subsection (d)(2) to state " The doctor rendering the second opinion cannot for a period of 12 months after rendering a second opinion become the injured employee's treating doctor or surgeon for the medical condition on which the doctor rendered a second opinion."

COMMENT: Commenter expressed concern regarding the change to subsection (d) and the availability of second opinion doctors in mid-size to small size cities and suggested that when the patient changes treating doctor's that a new sublist be compiled which does not contain surgeons associated with either the initial recommending surgeon's practice or the new surgeon's practice.

RESPONSE: The Commission disagrees. The proposed language to subsection (d)(2) will address this concern.

COMMENT: Commenter expressed confusion about the current interpretation of subsection (d)(1)(C) and (D). The commenter's understanding is that currently the second opinion doctor cannot perform surgery nor can the doctor have a financial association with the treating doctor or surgeon. The commenter questioned this interpretation and the effects on the proposed rule changes.

RESPONSE: The Commission disagrees. In response to concerns raised about the process and language proposal, the adopted language to subsection (d)(2) is made. The amended language change to this section will clarify that the second opinion doctor cannot perform the surgery for a period of at least one year after rendering the second opinion. This language change will help to maintain the integrity and objectivity of the second opinion process by removing any " appearance" of impropriety on the part of a second opinion doctor.

COMMENT: Some commenters supported the proposed changes to subsection (d)(2) stating that it would eliminate conflict of interest by the new surgeon or the appearance of conflict. Commenters also felt the change would maintain the integrity of the process by allowing the injured worker to choose the doctor they prefer to perform the surgery. A commenter felt that the nullification of the second opinion doctors opinion, after they become the treating doctor, neutralizes self-interest on the part of the second opinion surgeon.

RESPONSE: The Commission disagrees. Based on other commenters concerns the language in subsection (d)(2) will be changed as follows, "The doctor rendering the second opinion cannot for a period of 12 months after rendering a second opinion become the injured employee's treating doctor or surgeon for the medical condition on which the doctor rendered a second opinion." This language change will continue to address the concerns raised by the commenter, namely maintaining objective second opinions and ensuring the integrity of the second opinion process, while addressing the concerns of other commenters about timeliness and cost of second opinions.

COMMENT: Commenter strongly opposed the change of second opinion doctor becoming treating doctor because "when the second opinion doctor is unsuccessful in his attempts to steal the patient do you think he will approve the surgery and subsequent the post-op care?" A commenter stated that the change of §133.206 (d) regarding the qualification of a second opinion surgeon would destroy the objectivity of the process. A commenter expressed concern that the relationship between treating doctor and second opinion doctor becomes competitive and the process stand no chance of being objective. The commenter pointed out that there were unscrupulous adjusters and nurses who "threaten" patients with removal of their benefits if they don't change doctors.

RESPONSE: The Commission agrees. The second opinion doctor should not become the treating doctor. The purpose of the rule is to maintain a fair and objective process for determining the need for spinal surgery. The vast majority of physicians comply with professional ethical standards. Issues concerning breaches of medical ethics are properly addressed through the State Board of Medical Examiners. The choice of surgeon is the employee's, and not to be dictated by the insurance carrier. Insurance carrier representatives, including adjusters or nurses, who "threaten" or harass injured employees should, as always, be reported to the Commission for possible administrative action. Subsection (d)(2) has been amended, as discussed in other responses, to address the concerns about objectivity, timeliness and cost. The injured employee can still change surgeons, however, the new surgeon cannot be either one of the second opinion doctors.

COMMENT: Commenter stated that the surgeon has formed a close doctor patient relationship with the injured employee and therefore has the interests of the injured employee at heart. This is significantly different from a doctor who has not developed this relationship but seen the injured worker on a one time basis as the result of an appointment scheduled from a random selection from a sublist of five second opinion doctors.

RESPONSE: The Commission disagrees that because a second opinion doctor may see an injured employee only once, the doctor has other than the injured employee's interest at heart. While the injured employee and the surgeon may have formed a close doctor patient relationship, the division has no indication that second opinion doctors do not have the patients interest at heart when determining the need for surgery.

COMMENT: Commenter questioned why the opinion of the second opinion doctor, which was presumed correct in the first place, becomes null and void when the second opinion doctor becomes the treating doctor/surgeon.

RESPONSE: The Commission agrees that the concept contained in new subsection (d)(2) as proposed should be changed. Based on other commenters concerns about objectivity, timeliness and cost of second opinions, the rule language has been changed. Therefore, in the case questioned here, the original second opinion doctor's opinion will stand.

COMMENT: Commenter expressed concern that the Preamble to the rule reflected negatively on the integrity and ethics of the treating spine surgeon.

RESPONSE: The Commission disagrees. The Commission recognizes that the vast majority of physicians practice in an ethical manner. As a general policy, however, it is appropriate to avoid any process which could be construed as causing a conflict of interest. It is the perceived appearance of a conflict of interest that can damage the integrity of the process.

COMMENT: Commenter suggested that the initial TWCC-63 be used to show any changes recommended by the new treating doctor as an amendment to the initial 63 instead of issuing a new one.

RESPONSE: The Commission disagrees. The changes to subsection (d)(2) as it was proposed will mean that neither a new or amended TWCC-63 form will be required. The second opinion doctor will not be able to perform the surgery for at least 12 months after rendering a second opinion and therefore, no new or altered forms will be required as the original TWCC-63 and original second opinions will stand.

CARRIER NOTIFICATION.

COMMENT: Some commenters pointed out that subsection (g)(3), which requires notification by the carrier to the injured employee, treating doctor, surgeon, and second opinion doctors at least 10 working days before an appointment, would potentially delay the care and treatment of the patient by lengthening the process. Commenters contended that to lengthen the process would not be beneficial to the injured employee, carrier or employer. A commenter recommended that acknowledgment of the actual notice to the claimant serve as adequate notification which would avoid a carrier waiver. A commenter stated that less than ten days notice and unavailability of records and examination would result in the cancellation of an appointment resulting in a waiver. Another commenter recommended that no change be made to subsection (g)(3) because the proposed change could result in delay of care to injured workers.

RESPONSE: The Commission disagrees. Ten working days, in some months could significantly increase the time to obtain a second opinion and to determine carrier liability for the proposed spinal surgery. Language to subsection (g)(3) has been amended to read "Notification of the examination must be sent at least ten calendar days prior to the appointment." The Commission believes that 10 calendar days will provide adequate time to inform the injured employee, treating doctor and surgeon of the second opinion exam, without causing undue delay to second opinions. Documentation from the carrier, upon request by the division, that notice was sent and assumably received by the claimant will avoid carrier waiver. Monitoring of second opinion examination time frames indicates that approximately 3.5% of second opinion examinations scheduled by the carrier are scheduled within the first 10 days, while approximately 12% of examinations scheduled by the carrier occur later than 30 days. The most frequent complaint received regarding the 12% scheduled outside of 30 days, is that one or more of the parties were not timely informed of the second opinion examination. The purpose of requiring the carrier to notify all parties at least ten days before the appointment is to ensure the injured employee is able to arrange transportation and other personal matters, and to allow the surgeon time to provide the medical records and films to the second opinion doctor. The requirement for the carrier's second opinion appointment to be scheduled within 30 days of the TWCC-63 acknowledgment date has not been changed. The purpose of this amendment is to expedite the second opinion process by decreasing the number of carrier second opinion appointments which require rescheduling because either the injured employee was not notified of the appointment or the surgeon's office was not notified in time for them to provide records to the second opinion doctor.

COMMENT: Commenter suggested that the last sentence of subsection (g)(3) be deleted and the following be added: "notice to the employee will be timely if sufficient for the employee to actually attend the scheduled appointment. Notice to the surgeon will be timely if the surgeon has sufficient records to perform the exam and prepare a report without rescheduling the appointment. A ten-day notice will be presumed to be timely."

RESPONSE: The Commission disagrees. With this amendment, the insurance carrier will be deemed to be liable for the costs of spinal surgery if the notification requirements are not met. In fairness to the carriers, the requirements need to be clearly delineated, so that there is no uncertainty as to what is acceptable notification.

COMMENT: Commenter stated that the success of the second opinion process was due to the spinal surgeons accommodation of the carrier requests for timely appointments. This has reduced the processing time from 200 days to 35 days. This commenter felt that the proposed change will shift the responsibility from the carrier to the surgeon and the injured employee and expressed concern that the change could serve to remove doctors from the approved list for not making timely appointments.

RESPONSE: The Commission disagrees. Spinal surgeons have, for the most part, have been very cooperative in making time available to conduct second opinion examinations. The effort and commitment in this regard are commendable. The largest improvements in the time frames for determining carrier liability, however, have been in the area of timely submission of second opinion narrative reports. In monitoring the timeliness of the second opinion process, a direct correlation is seen between improved time frames for narrative reports and the overall second opinion processing time. There are no changes proposed to the requirement to provide examinations within the 30 days time frame. While few appointments may occur a couple of days later than they do under the current rule, the balance for spinal surgeons and injured employees is that fewer appoint-

ments overall will be missed or broken. This should benefit not only the injured employee but also the second opinion doctor because there will be fewer rescheduled exams. This amendment does not reassign responsibilities. The Rule currently requires the carrier to notify the injured employee, surgeon and treating doctor in writing of the scheduled appointment. The Rule currently states that the surgeon shall assure that all medical records and films arrive at each second opinion doctor's office prior to the scheduled appointment. This amendment does not affect the responsibility of either party.

COMMENT: Commenter suggested that the ten working days be changed to ten calendar days or less if the claimant is otherwise able to attend and the records are provided prior to the appointment because it would avoid unnecessary carrier waivers. Another commenter recommended that the rule allow an earlier appointment with the approval from the surgeon/ treating doctor.

RESPONSE: The Commission agrees that the ten working days should be changed to ten calendar days. The language in the amendment will be changed from "ten working days" to "ten calendar days." The Commission disagrees with the statement that an earlier appointment or an appointment in less than 10 days should be allowed even if the surgeon may agree. To maintain a level of consistency and provide adequate time for all surgeons and second opinion doctors to meet the requirements of the rule it is determined that the ten calendar days remain in effect.

CARRIER WAIVER.

COMMENT: Commenter felt that the deadline that was proposed for notification to the treating doctor, surgeon, injured employee and second opinion doctor was very restrictive and may defeat the purpose of obtaining an appointment with the doctor of their choice. Commenter therefore recommended the ten working days be changed to ten calendar days.

RESPONSE: The Commission agrees. Language in subsection (g)(3) has been changed from ten working days to ten calendar days. Ten calendar days will help to ensure the injured employee, treating doctor and surgeon have adequate notification of the second opinion exam date while ensuring the process of obtaining a second opinion will not be unnecessarily lengthened. The time frame proposed does not provide restriction. The carrier currently has 30 days in which to schedule an appointment with a second opinion doctor. The recommended change will ensure notification of the appointment date, time, place and doctor and will ensure this information is communicated to the injured employee allowing adequate time for the injured employee to schedule transportation and make other personal arrangements necessary in order to attend the appointment. This time frame also provides adequate time for the surgeon to send films and records to the second opinion doctor for review. This recommendation will eliminate the need to reschedule appointments due to lack of availability of either the injured employee or medical films or records and to pay for appointments missed due to lack of adequate notice.

COMMENT: A commenter suggested that a waiver under subsection (g)(3) only occur if failure to give notice results in an appointment having to be canceled.

RESPONSE: The Commission disagrees. Failure to notify the injured employee, surgeon and treating doctor results in two types of delays. If the injured employee is not timely notified, the appointment will be broken. If the employee attends for the examination but the medical records or films are not available, the second opinion narrative report will be delayed until the second opinion doctor receives and evaluates the medical records. This language change aims to address both broken appointments and delayed second opinions that are caused by failure of the carrier to notify the required parties. The change is proposed because monitoring indicates that additional time has been required for a number of injured employees to receive prompt second opinions because lack of notification or availability of records or films by the surgeon to the second opinion doctor. Ten calendar days will allow the treating doctor/surgeon the necessary time to send the films and records in preparation of the patient evaluation.

COMMENT: Other commenters suggested that subsection (g)(3) should not be changed as it allows sufficient time to accomplish the process particularly from the perspective of the patient. Another commenter added that delays in treatment were also not beneficial to the system.

RESPONSE: The Commission disagrees. Adequate notification of second opinion examinations is critical to ensuring timely second opinions and determination of carrier liability for spinal surgery. The Commission agrees that delays in treatment may be detrimental to a patient. Spinal surgeons and their office staff have frequently complained to Medical Review that neither the patient nor the surgeon/treating doctor receives timely notification of second opinion examinations. In some cases the notification is received one or two days prior to the exam while in other cases the notification is received the day of the examination or even after the examination date has passed. Medical Review case managers report that for cases that take more than 50 days to close, this issue is present 15% - 20% of the time. Appointments not scheduled, notifications not sent and records not submitted in a timely manner present a problem in the receipt of prompt quality medical care being delivered to the injured employee.

COMMENT: A commenter suggested that paragraph (4) should be amended to provide that all parties be notified with a copy of the TWCC-63 following a carrier second opinion waiver.

RESPONSE: The Commission disagrees. Upon carrier waiver, all parties are notified by letter by Medical Review. With the present system a letter is submitted to the carrier, treating doctor, surgeon, the injured employee and their representative (should one be stipulated) upon receipt of a notification of waiver by the carrier.

THE RULE GENERALLY.

COMMENT: Commenters disagreed with the proposed rule changes and recommended that Commissioners not adopt any amendments. Commenters stated §133.206 has been effective in ensuring qualified objective second opinions and is an effective tool in maintaining timely, cost effective medical care to spinal injuries requiring surgery. A commenter stated the current rule, although not perfect, is far better than any of the proposed changes. A commenter stated their puzzlement over the proposed changes because the time required to determine carrier liability has been reduced, the second opinion doctor is a true medical opinion, and the monitoring of the whole system is considered to be better. A commenter stated that in his opinion the spinal surgery second opinion process has been an excellent process and has worked in a very expeditious fashion. Commenter questioned the need to change the system in a

backwards fashion when the staff is currently happy with the system as it is.

RESPONSE: The Commission agrees in part. The rule has been effective: processing time has decreased from an average of 59 days to 35 days; monitoring indicates the second opinions are fair and objective. These amendments are intended to maintain the current level of rule performance while providing for improved objectivity, clarification and quality of the second opinion process. Amendments address complaints and problems encountered by participants. The goal of the amendments is ensure cost effective, quality care for spinal surgery, provide a mechanism to address resolution of disputes regarding medical necessity of services rendered and ensure the integrity of the second opinion exam.

COMMENT: Commenter stated as a law firm representing insurance carriers in the State of Texas, we have been concerned about the 1994 amendments to the Spinal Surgery Rules and the effects of those changes on the second opinion spinal surgery process. The change in the rules substantially encumbered the carrier's efforts to oppose unneeded spinal surgeries. Under the previous rule, approximately 1200 surgeries were avoided. After the rule changed, approximately 700 surgeries per year were avoided. The cost savings under the second opinion spinal surgery process was effectively reduced by almost half.

RESPONSE: The Commission disagrees. Increased monitoring of the second opinion process reveals a process that appears to be more fair and objective than the previous spinal surgery rule. While the number of nonconcurrence has decreased, the fact that the second opinion doctors are all spinal surgeons selected randomly from the master spinal surgeon list indicates that for the most part the second opinions are of a higher quality and integrity than those of the old rule. Under the old rule a carrier could select any doctor for a second opinion and pay the doctor any fee. This lead to the perception that second opinion exams were not always conducted by qualified doctors and/or that the second opinion process lacked integrity. Injured employees are entitled to reasonable health care to treat their compensable injury. The rule functions primarily to determine the medical necessity of proposed spinal surgeries. The rule does not function with a primary goal of saving money. Medical cost containment is attained by avoiding unnecessary surgeries. The rule requires two surgeons to determine the surgery is unnecessary before the carrier is deemed not liable. The rule attempts to assist injured employees, surgeons and insurance carriers to identify those cases where surgery is likely to benefit the patient's condition versus those in which surgery will not likely be of benefit.

COMMENT: A commenter suggested the need for and accumulation of data before we "destroy a system" that is proven to be working well.

RESPONSE: The Commission agrees with the desirability of accurate, reliable data. The Commission has a great amount of data collected which supports the rule amendments. The new spinal surgery process has been monitored extensively. It is because of this monitoring that staff has been able, over the past few years, to decrease the processing time dramatically, to monitor the appeals process, to assess administrative violations in those cases where compliance with the rule has affected processing time or integrity of the rule. Furthermore, data has assisted medical review to identify areas of the rule that could be improved upon. In the case of "concurrence with a different procedure recommended" the data indicates that this subgroup of injured employees has a significantly higher rate of reoperation than the rest of the spinal surgery patient population. The Commission believes that the proposed rule change will help the injured employee and that the proposed changes will not "destroy a system". Data will continue to be collected and analyzed by the staff to evaluate the effectiveness of the rule.

COMMENT: Commenter supported the amendments proposed to the rule because they achieve the stated goals in the preamble.

RESPONSE: The Commission agrees. The proposed amendments reflect quality improvements for those areas of the rule where issues have been raised while allowing for the continued high performance the rule has produced to date.

COMMENT: Some Commenters supported removing the sunset clause date and keeping the rule in its current form.

RESPONSE: The Commission agrees that the sunset or termination date should be removed because the rule has proven to meet the goals set forth for it. The Commission disagrees with the proposal to leave the rule in its present form. For areas of the rule that have the potential to be improved upon, staff has recommended changes that will result in clarification, increased objectivity, and high quality second opinions that result in the determination of carrier liability. The proposed amendments are intended to improve upon process.

COMMENT: Commenter expressed hesitancy to endorse the rule yet now feels it is a beneficial process.

RESPONSE: The Commission agrees. Monitoring of the second opinion process indicates that the process is working well in terms of both the three goals set forth.

COMMENT: Commenter questioned how the proposed changes are justified by the provision of the Act. Commenter expressed a concern over the passage of a law which will affect all doctors in Texas when "we have two or three potential over utilizers". Another commenter stated that the burden of proof of type of surgery will be placed on the recommending surgeon to defend.

RESPONSE: The Commission disagrees that the amendment to §133.206 is not in accordance with the Texas Labor Code. Texas Labor Code, §408.026, provides that except in a medical emergency, a carrier is liable for medical costs related to spinal surgery only if:

(1) before the surgery, the employee obtains, from a doctor obtained by the insurance carrier or the Commission, a second opinion that concurs with the treating doctor's recommendation;

(2) the insurance carrier waives the right to an examination or fails to request an examination before the fifteenth day after the date of the notification that surgery is recommended; or

(3) the Commission determines that extenuating circumstances exist and orders payment for surgery.

The Texas Labor Code also requires that the Medical Review Division establish medical policies relating to necessary treatments for injuries (§413.011(d)). Additionally §408.023 tasks the Commission to implement rules to ensure a process for obtaining second surgical opinions for the purpose of determining carrier liability. The Act also states that the injured employee

is entitled to reasonable health care. Section 133.206 supports the Act, and these changes are made under authority of the Act. The spinal surgery second opinion process established in §133.206 has proven to be an effective tool in meeting the three goals established for it: to decrease the processing time frame for the second opinion process; to ensure qualified objective second opinions; and to monitor the system. The amendments adopted to §133.206 address the medical costs which are related to spinal surgery and provide guidance regarding what in the treating doctor's recommendation must be concurred with by the second opinion doctor. The amendments also provide clarification which ensures that second opinion examinations are preformed without undue delay as required by the Act.

There is no objective data to demonstrate that there are "two or three over utilizers", and the Commission is not aware that this is a fact. The rule will provide a consistent system which will allow monitoring of providers and carriers to ensure system effectiveness and consistency of application. The intent of the rule changes are to affect and protect all injured employees, regardless of who their doctor is. The language changes are proposed with the medical benefits of the employee in mind. Two surgeons need to agree on the type of procedure to be performed, i.e. fusion. Currently, of the approximately 90% of surgical procedures concurred upon, approximately 5.0% have a difference of opinion with regard to the type of procedure. It is this 5.0% that have a 30% rate for recommendation for further surgery compared to the general workers' compensation spinal surgery population in Texas that has an approximate 15% reoperation rate. The language changes to the definition of concurrence aim to bring this part of the spinal surgery population more in line with the rest of the spinal surgery patient population in terms of reoperation rate. Medical Review recognizes that 85% of spinal surgery procedure recommendations are currently agreed upon by the second opinion doctor. The proposed amendment to the definition of concurrence will not affect this portion of the spinal surgery recommendations. There is no "burden of proof" involved; if the second opinion doctor believes that the type of surgery recommended is not likely to benefit the patient, it is a non-concurrence.

COMMENT: Commenters requested to know who wrote the changes, based on what data and justification. The commenter stated it appears TWCC is charged with saving the poor uninformed injured worker from care that TWCC is not in a position to evaluate.

RESPONSE: The Commission disagrees. Amendments to the spinal surgery second opinion rule were made by Commission staff in accordance with the APA rule making process. TWCC's role is to ensure the second opinion process is timely, fair, objective and well monitored. Need is assessed by second opinion surgeons by evaluating whether there are pathologies within the spine that would be benefitted by the proposed type of spinal surgery recommended by the treating surgeon. TWCC does not determine what care is given, but establishes the process to be followed and the criteria to be met in obtaining the statutorily required second opinion when spinal surgery is recommended.

COMMENT: Commenter requested scientific evidence from the Commission's data base regarding a number of issues.

RESPONSE: The issues raised by commenter have been included in the summaries of similar comments and have been responded to using information available to the Commission, including the analysis of Commission data. Method and results of data analysis, together with an explanation of how the analysis was related to the issues in the spinal surgery second opinion process are contained throughout this preamble.

COMMENT: Some commenters suggested the proposed rule changes serve only to further limit and control spinal surgery and to deny benefits promised and paid for injured employees. Commenter suggested if quality of medical care is to be maintained, the rule should not be changed. Some commenters stated approval of the proposed changes would not be in the patient's best interest but would add further stumbling blocks to the entire process and impair the ability of injured employees to receive all health care reasonably required by the nature of the injury as and when needed. Commenter expressed concern that the adoption of the proposed rule would hinder physicians ability to take care of patients and return injured individuals to gainful employment. It will serve to lengthen the amount of time that it takes a patient to return to his job and adds an unnecessary layer of detail. Commenter recommended the development of a system that rewards efficiency and compassion. Commenter stated it is the responsibility of the Commission to protect the injured workers of the state as mandated in the Texas Workers Compensation Act. Commenters stated they felt the Commission should continue to honor the state's Medical Boards directive granting physicians independent medical decision making ability. Commenter felt the rule amendments are in violation of the medical practice act expressed concern for the rule amendments as they are seen (in the opinion of the commenter) to be in violation of the medical practice act.

RESPONSE: The Commission disagrees. The purpose of the amendment is to improve a process which has proven to meet the goals set forth for it. The adopted amendment enhances the patients' right to quality medical cares. Doctors will continue to base their judgments as to the best interest of the patient on medical information. The second opinion process may require additional time for a very few injured employees who require an additional second opinion, however this is expected to be offset by avoiding unnecessary surgeries. Retrospective review of the medical necessity of additional care which is generally related to the spinal surgery does not deny patients care at the time it is needed, but does allow the carrier to request documentation of the relatedness and medical necessity of the care, and makes dispute resolution services available to both parties if there is continued disagreement. The Commission does not stipulate to the physician what care is provided. Second opinion concurrence or non-concurrence is by another licensed medical practitioner who is a qualified spinal surgeon.

COMMENT: Commenter felt the spinal surgery second opinion process is beneficial but because the field of orthopedic surgery is a manually oriented specialty the type of surgery to be performed is best left to the operating surgeon based on that surgeon's skills.

RESPONSE: The Commission disagrees. It is the treating surgeon who initially recommends the type of surgery to be performed. One of the two second opinion doctors needs to agree with the surgeon that the type of surgery recommended is likely to be beneficial to the injured employee for the carrier to be liable. For example if the surgeon recommends a fusion, one of the two second opinion doctors needs to agree that a fusion is likely to benefit the injured employee. The actual number of levels fused, the approach (anterior, posterior, posterior-lateral,

etc.) type of hardware, site and type of donor graft etc. are medical decisions made by the surgeon. TWCC data indicates that when the procedure type is not agreed upon, there is a higher than average reoperation rate for those patients.

COMMENT: Commenter requested the Commission and staff move deliberately and solicit input from the various parties as to the need for changes and the effects of such changes.

RESPONSE: The Commission agrees. The staff made these recommendations after collecting data and monitoring the second opinion process since November 1, 1994. Changes are only being made to those areas of the rule where problems are noted, complaints have been received or where confusion exists. Input from various parties was received via medical review seminars, speaking engagements and from comments and complaints received verbally by spinal surgery case managers.

COMMENT: Commenter felt the practice of both medical and surgical orthopedics in the state of Texas would be effectively destroyed by adopting the proposed rule amendments. Some commenters stated it would serve as a disservice to patients whom they are pledged to serve by the Hippocratic Oath. Some commenters expressed concern that the administrative technique used in the spinal surgery second opinion rule will be transferred to fee for service, capitated and PPO-HMO type programs.

RESPONSE: The Commission disagrees. The amendments do not contain elements that would "destroy" medical or surgical orthopedics in Texas. The staff will continue to monitor the number of surgeons who are recommending surgery. Currently, monitoring indicates an increasing number of spinal surgeons who are providing services to injured employees. Requiring a second opinion concurrence with the type of surgery recommended is not a disservice to the injured employee; it provides an additional medical opinion regarding the necessity for a surgical procedure. The spinal surgery second opinion process is required by the Texas Workers' Compensation Act.

COMMENT: Commenter stated that there were some good things about the new law but there were also some very serious problems, the first of which is that carriers are using the limits of their allowances, because they have the right to do so, to make decisions while a patient is in need of treatment.

RESPONSE: The Commission disagrees. Subsection (b)(3) limits what carriers may retrospectively dispute and stipulates the manner in which the carrier must review the bill prior to disputing. This paragraph also gives fair warning to carriers that the division may recommend administrative violation proceedings when a carrier unreasonably denies benefits which are medically necessary.

COMMENT: Commenter stated the carrier was found liable for 91% of the surgeries and believed it to be improbable that only 9.0% are truly unnecessary. Commenter recommended the Commission dispense with the second and third opinion processes and substitute a single physician selected by the Commission on a rotating basis much like that which selects the Designated Doctor. Commenter alternatively recommended that the claimant-selected doctor be eliminated and the third doctor be selected by the Commission on a rotating basis as designated doctor and that the doctor's opinion be given presumptive weight. Commenter felt that the claimant selection of the third doctor was unfair and that what the Commission should be about, what carriers and claimants should be about is to narrow the field and allow surgeries only where they're really needed. Commenter felt that the process in place at the current time was not accomplishing that goal. This commenter felt this process would make the process fair, simplify the paperwork and expedite the process to the advantage of the injured employee. Commenter suggested carriers be allowed to choose a second opinion doctor (not from a Commission list) when a dispute arises a Commission selected third doctor break the tie and mediate between them.

RESPONSE: The Commission disagrees. The process described by the commenter is similar to the process that was in place under repealed §§133.200 - 133. 205. Under the current rule, §133.206, integrity of the second opinion process is achieved by: ensuring a list of qualified practicing surgeons are available to provide second opinions, providing randomly created sublists to both the carrier and the claimant, ensuring the doctors on the sublist are not economically or financially associated with the treating doctor or the surgeon, and by ensuring a maximum allowable reimbursement for second opinions. The commenter does not indicate how the process he proposes would improve the integrity or decrease timeframes, however monitoring indicates that §133.206 provides for fair and objective second opinions.

COMMENT: Some commenters requested further clarification on the statistics presented and a determination of the validity of the statistics. The commenter questioned what is meant by repeat surgery and does that definition include planned future surgeries. Commenter recommended a review of the data used to justify the proposed change by an nonpartisan medical panel. Comments expressed confusion in attempting to use the data cited in the preamble to this rule to reach the same conclusion as the Commission that the rate of repeat surgeries is high in a particular segment of injured workers who receive spinal surgery. A commenter stated use of 1997 data was unfair because we have not had time to evaluate whether these patients had repeat surgeries.

RESPONSE: The Commission disagrees that the data analyses used to evaluate the spinal surgery second opinion process is unclear. Data reported is obtained directly from TWCC-63 forms submitted by spinal surgeons since November 1, 1994. Monitoring of the process results indicates that there is a subset of injured workers, approximately 5.0%, who have repeat surgery recommended at about twice the rate of the rest of the spinal surgery population. Repeat surgeries are represented by subsequent recommendations for surgery, excluding those for removal of instrumentation or removal of bone growth stimulators. The general spinal surgery population, for worker's compensation in Texas has an approximate 15% reoperation rate. The 5.0% of spinal surgery candidates who have a different type of surgery recommended by second opinion doctors, from the procedure recommended by the surgeon, have a 31% rate for recommendation for a second, third, fourth or more surgeries. The change in definition for injured workers who are currently experiencing a high rate of recommendations for further surgeries, should help to ensure that the first surgery is more likely to be beneficial. By having agreement with the type of surgery to be performed (i.e. fusion, laminectomy etc.) we anticipate improved outcome for injured workers. Additionally the group of patients referred to, had their first surgical recommendation in 1995. Subsequent surgical recommendations occurred in 1996, 1997, or 1998.

COMMENT: Commenter challenged the statement in the preamble that the proposed the rule amendment was in response to complaints received. The commenter contended that his understanding was that there were only about eight complaints received which out of 7,000 second opinion evaluations equates to a percentage of .001(1000th of a complaint). The commenter concluded that there did not appear to be much of a problem and suggested that the data be analyzed by an unbiased source.

RESPONSE: The Commission disagrees. The Medical Review Division is unclear as to the source of this commenter's statistic of eight complaints. The Division has received complaints from participants regarding each of these issues.

COMMENT: Commenter supported the rule changes and stated the re-operation rate for spinal surgery is unacceptably high.

RESPONSE: The Commission agrees. The data shows a much higher re-operation rate for those injured employees for whom a second opinion doctor recommended a different procedure than for those injured employees for whom the second opinion doctor concurred with the recommendation of the surgeon. The general spinal surgery population, for workers' compensation in Texas has an approximate 15% reoperation rate. The 5.0% of spinal surgery candidates who have a different type of surgery recommended by second opinion doctor, than the procedure recommended by the surgeon, have a 30% rate for recommendation for a second, third, fourth, or more surgeries.

COMMENT: Commenter felt that only the State Board of Medical Examiners is authorized to regulate the practice of medicine and the entire spinal surgery second opinion process is in violation of the medical practice act.

RESPONSE: The Commission disagrees. The spinal surgery second opinion process is a process to determine carrier liability based on medical necessity as determined by practicing spinal surgeons.

COMMENT: Commenter felt that the provisions of the rule do not speak specifically to emergency surgery and the carriers liability but do allow retrospective review of charges by the carrier withholding payment.

RESPONSE: The Commission disagrees. Carriers are liable for the reasonable and necessary medical care provided to the injured employee. Retrospective review of the medical necessity, including review of emergency provisions if performed, should be performed in accordance with any rules and laws regarding regulation of utilization review. Carriers must pay or deny bills within 45 days of receipt. A provider who wishes to dispute the carriers decision regarding bill payment may avail themselves to Medical Dispute Resolution. Subsection (b)(1)(A) provides for carrier liability for spinal surgery in a medical emergency. This provision has not been amended. In addition, the rule provides a definition of medical emergency in subsection (a)(2).

COMMENT: Commenter expressed concern about time delays resulting from proposed rule changes as a third surgical opinion would be necessary to determine concurrence due to disagreement regarding levels of the particular type of surgery.

RESPONSE: The Commission agrees in part. In a very few cases, a third appointment i.e. employee selected second opinion, will need to occur. The Commission hopes that for these few injured workers' the higher quality of second opinion will be beneficial in that fewer patients will require second, third, fourth surgeries. Disagreement between the second opinion doctor(s) and the surgeon regarding specific levels of the spine to be operated upon, is not considered a nonconcurrence. A nonconcurrence is a difference of opinion regarding the type of surgery to be performed. For example, if the surgeon recommends a fusion and both second opinion doctors recommend a discectomy, this is considered a nonconcurrence.

COMMENT: Commenter expressed concern over the time requirements in place for carriers and providers but the lack of time requirements in place for TWCC. The time it takes to verify information on the TWCC-63 form can cause system delays. Commenter also expressed concern over the lack of a time requirement within which notification is required, by TWCC to the other parties of a concurrence or nonconcurrence. Commenter expressed concern that the rule does not require that the recommending surgeon, treating doctor, and insurance carrier be notified by TWCC.

RESPONSE: The Commission disagrees. The goal established for the system at its inception to decrease the processing time frame for the second opinion process has been achieved as is supported in the 1997 data presented showing a reduction of 59 to 35 days to case closure. The Commission further disagrees that the parties who require notification are not notified in a timely manner. The rule does require notification of all parties by TWCC. Upon closure, finding of liability determined by concurrence or non-concurrence, letters are generated within 24 hours and sent to the carrier, surgeon, treating doctor, injured employee, and employees legal representative(if represented). Furthermore, staff consistently evaluate the second opinion process and make recommendations and take actions both internally and as relates to system participants to improve processing time.

COMMENT: Commenter expressed the opinion that the rule already meets the Texas Workers Compensation Act provision that "the Commission shall adopt rules necessary to ensure that an examination required under this section is performed without undue delay" and that the amendment will increase the amount of time and money it requires to treat injured workers.

RESPONSE: The Commission agrees that the rule does meet the requirements under the Texas Workers Compensation Act. As discussed elsewhere, the Commission disagrees that the amendments will cause increased costs and time delays. The second opinion process may requires additional time for a very few injured employees who requires an additional second opinion, however, this is expected to be offset by avoiding surgeries that are not likely to benefit the injured employee's condition.

COMMENT: Commenter expressed concern that due to delays, denials and challenges faced by health care providers and the injured workers a significant percentage, probably 50% of patients with work related injuries have some form of psychological problems.

RESPONSE: The Commission neither agrees nor disagrees. The commenter did not cite the reference for this data. No data is presented to demonstrate what percentage of these injured employees had pre-existing psychological problems and what percentage had psychological problems which arose subsequent to their injury. No data is presented to suggest that the work related injury or "delays, denials and challenges faced by health care providers and the injured workers" was the

causative factor in the psychological problems. The coexistence of two variables cannot be assumed to demonstrate causation.

COMMENT: Commenter suggested that the claimant and his or her chosen doctor decide whether they want the surgery before they start the paperwork flurry. The commenter felt that would give the claimant all of the second opinions needed before the request is made.

RESPONSE: The Commission disagrees. The decision to pursue surgery is decided by the surgeon and the injured employee before the TWCC-63 process is initiated. The Commission has no reason to believe injured employees are not informed about spinal surgery before the process is initiated. The Commission disagrees that the injured employee's second opinions should be obtained before the recommendation is made. The second opinion process assures that second opinions are rendered by qualified spinal surgeons who are selected in as non-biased a fashion as possible. The Commission is also able to monitor and expedite the process to assure that the rights and responsibilities of all parties as set out in the rule are maintained.

COMMENT: Some commenters expressed concern that the TWCC medical advisory committee was not party to the drafting of the proposed rule amendments. A commenter requested information on which spinal surgeons were consulted when the preamble was drafted.

RESPONSE: The MAC was not asked for input or recommendations regarding this rule proposal because there are no spinal surgeons on the MAC. Preamble is written by Commission staff.

COMMENT: Commenter urged communication with physicians on any rule changes.

RESPONSE: The Commission agrees. The Commission will make the amended rule available to system participants.

COMMENT: Commenter recommended that: TWCC convene a small group consisting of spinal surgeons, representative of carriers and appropriate Commission staff to look at the current and proposed rules, analyze existing data and medical information and make recommendations about how best to prevent abuses by all parties and provide timely and appropriate care to the worker; temporarily extend the sunset date until the group makes its recommendations; set a reasonable time limit for completion of the work. A further suggestion was to add a physician medical director to the Commission staff.

RESPONSE: The Commission disagrees. Revisions to the rule are recommended as a result of tracking and analysis over the last three and one half years. The amendments have been written to clarify the rule and to promote cost effective, quality care for injured employees requiring spinal surgery.

COMMENT: Commenter stated TWCC has placed themselves in an adversarial position with the spine surgeons, giving the appearance of an alliance with the insurance carriers being in a position to enhance the already enormous profits of insurance companies.

RESPONSE: The Commission disagrees. The Commission has not formed an alliance with either carriers or providers but remains in a neutral position to ensure system integrity and quality for the injured worker and the employer.

COMMENT: Commenters opposed the deletion of language in subsection (i)(3) stating that it is useful for the narrative report to discuss why there are differences of opinion and why there are differences in recommendations.

RESPONSE: The Commission disagrees. The language was deleted because differences of opinion may in fact affect carrier liability for spinal surgery. However, the absence of this language does not prevent a second opinion doctor from including such information in the report or from discussing their opinions with the surgeon.

The amendment is adopted under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code, §402.072, which mandates that only the Commission can impose sanctions which deprive a person of the right to practice before the Commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §408.022, which requires an employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the Commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code, §408.026, which establishes when a carrier is liable for costs relating to spinal surgery and mandates that the Commission adopt rules necessary to effectuate the statute; the Texas Labor Code Chapter 410, which provides procedures for the adjudication of disputes; the Texas Labor Code, §413.031, which provides a process for dispute resolution for disputes involving medical services; the Texas Labor Code, §415.034, which allows a party charged with an administrative violation or the Executive Director of the Commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

These statutory provisions authorize the Commission to adopt a rule such as §133.206 which establishes the process by which a carrier becomes liable for spinal surgery and sets out the procedures and requirements to effectuate the second opinion process.

§133.206. Spinal Surgery Second Opinion Process.

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

(1) Division - the Medical Review division of the Texas Workers' Compensation Commission.

(2) Medical emergency - A diagnostically documented condition including but not limited to:

(A) unstable vertebral fracture of such critical nature that increased impairment may result without immediate surgical intervention;

(B) bowel or bladder dysfunction related to the spinal injury;

(C) severe or rapidly progressive neurological deficit; or

(D) motor or sensory findings of spinal cord compression.

(3) Treating doctor - The doctor who is primarily responsible for coordinating the injured employee's health care for a compensable injury.

(4) Surgeon - The doctor listed on the form TWCC-63 as the surgeon to perform spinal surgery.

(5) Acknowledgment date - The earlier of the date on which the insurance carrier representative in Austin signs for the TWCC-63 form or narrative report, or the day after the date the TWCC-63 form or narrative report is placed in the carrier's box.

(6) List - A list maintained by the division of surgeons whose current practice includes performing spinal surgery.

(7) Sublist - A sublist of five qualified doctors from the List, selected as required by subsection (c) of this section, and provided by the division to the injured employee and the carrier for selection of a second opinion doctor.

(8) Qualified doctor - A doctor who meets the minimum qualifications as listed in subsection (d) of this section.

(9) Carrier-selected doctor - A qualified doctor selected by a carrier within 14 days of the acknowledgment date, to render a second opinion on spinal surgery.

(10) Employee-selected doctor - A qualified doctor other than the treating doctor or surgeon, selected by an employee to render a second opinion on spinal surgery.

(11) Commission-selected doctor - A qualified doctor selected by the commission to render a second opinion on spinal surgery.

(12) Second opinion doctor - A commission-selected doctor, an employee-selected doctor and\or a carrier-selected doctor, provided that the injured employee and the carrier each may select only one second opinion doctor.

(13) Concurrence - A second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e. cervical, thoracic, lumbar, or adjacent levels of different areas of the spine) that are likely to improve as a result of the surgical intervention. Types of spinal surgery include but are not limited to: stabilizing procedures (e.g. fusions); decompressive procedures (e.g. laminectomy); exploration of fusion/removal of hardware procedures; and procedures related to spinal cord stimulators.

(14) Nonconcurrence - A second opinion doctor's disagreement with the surgeon's recommendation that a particular type of spinal surgery is needed.

(15) Refusal - Refusal to perform second opinion exam except when due to absence from the office because of illness, accident or personal leave.

(16) Change of condition - A documented worsening of condition, new or updated diagnostic test results and/or the passage of time providing further evidence of the condition, or follow up of treatment recommendations outlined by a second opinion doctor.

(b) Carrier Liability for Spinal Surgery Costs.

(1) Subject to the provisions of paragraph (4) of this subsection, the carrier is liable in any of the following situations for the reasonable and necessary costs of the proposed type of spinal surgery and the medically necessary care related to the spinal surgery. The surgery must be related to the compensable injury and performed by a surgeon who was on the List at the time the TWCC-63 was filed with the commission by the treating doctor or the surgeon . The carrier is liable in the following situations:

(A) medical emergencies;

(B) carrier waiver of second opinion;

(C) no carrier request within 14 days of acknowledgment date, for a second opinion;

(D) concurrence by both second opinion doctors;

(E) no timely appeal after two second opinions, only one of which is a concurrence;

(F) final and nonappealable commission order to pay.

(2) The medically necessary care related to the spinal surgery generally includes the services of the surgeons and ancillary providers for the hospital admission, and the hospital services.

(3) If a carrier becomes liable for spinal surgery pursuant to the provisions of this section, disputes regarding the proposed and concurred upon type of spinal surgery shall be limited to a dispute as to the reasonableness of the fees charged. A carrier may challenge whether medical care related to the spinal surgery is medically necessary. A carrier's bill review for medical necessity must be performed in accordance with any applicable rules and regulations regarding utilization review. In dispute resolution proceedings regarding medical necessity, carriers are required to provide documentation indicating compliance with applicable rules and regulations regarding utilization review. A carrier shall not unreasonably deny benefits which are medically necessary. The division may recommend administrative violation proceedings when a carrier unreasonably denies benefits.

(4) Determinations of carrier liability made pursuant to paragraph (1)(B), (C), (D), (E), or (F) of this subsection are valid for one year from the date the determination is made. After one year, medical necessity for the proposed spinal surgery shall be reevaluated before surgery occurs.

(A) If the carrier liability determination resulted from a situation described in paragraph (1)(B), or (C) of this subsection, the spinal surgery second opinion process shall be reinitiated through submission of a new TWCC-63 form in accordance with subsection (e) of this section.

(B) If the carrier liability resulted from a situation described in paragraph (1)(D), (E), or (F) of this subsection or from concurrence by only one second opinion doctor, the treating doctor or surgeon shall submit a copy of the original TWCC-63 to the division and all second opinion doctors with documentation indicating the continued medical necessity for the type of spinal surgery. The second opinion doctor(s) shall review the documentation, examine the injured employee if indicated, and submit an addendum report in accordance with subsection (l)(2) and (3) of this section. Addendum decisions, reports, records, and payments, and appeal to a CCH are governed by all of the provisions of this section.

(c) Commission List and Sublist.

(1) The division will maintain a list of surgeons who perform spinal surgery, including specialty, any specialty training/certification in spinal surgery, and names of spinal surgeons with whom the surgeon is economically associated or shares office space.

(2) The initial List will consist of all doctors who have billed for spinal surgery under the Texas Workers' Compensation Act (the Act), as indicated in the division's billing data base, and who have provided the required information set out in paragraph (1) of

this subsection. The division will request the required information from each of these doctors. Failure of the doctor to timely respond may result in an order to respond to the division's request, issued pursuant to §102.9 of this title (relating to Submission of Information Requested by the Commission). A doctor may be added to the List by filing with the division a written request which includes both a statement that the doctor performs spinal surgery, and the additional information required by the division for the List.

(3) If requested by an injured employee, a treating doctor or surgeon on behalf of the injured employee, or a carrier, the division will provide a sublist of five qualified doctors from which a second opinion doctor may be chosen. The sublist will be composed of qualified doctors located within 75 miles of the injured employee's residence, and will be selected from the List by the division on a rotating basis. If the List does not include five qualified doctors located within 75 miles of the injured employee's residence, the division will include on the sublist the qualified doctors who are located at a greater distance. The treating doctor or surgeon must, within seven days of receiving the sublist from Medical Review, notify Medical Review of the employee's selection of second opinion doctor, and the date and time of the employee-selected second opinion appointment.

(4) A doctor may be removed from the List for just cause in compliance with the following procedures, for any of the following actions:

(A) two refusals, within a 90 day period or two consecutive refusals to perform within the required time frames a requested second opinion for which the doctor is qualified;

(B) two untimely submissions, within 90 day period or two consecutive untimely submissions of second opinion narrative reports or any reports, records, or forms required by this section to be filed or provided;

(C) intentionally postponing or delaying a recommendation for surgery while suspended from the List.

(5) A doctor who has been referred for an administrative violation pursuant to subsection (d)(5) of this section and meets the criteria of paragraph (4) of this subsection will be suspended from the List by the division for 30 days.

(6) The division will notify a doctor by delivery, return receipt requested, of suspension from the List. The suspension will be effective from the date of receipt of the notice by the doctor. A doctor who has been suspended from the List for 30 days may be reinstated to the List by filing with the division a written request which includes a commitment to perform timely and appropriate second opinions and to submit timely reports, records, and forms in compliance with this section.

(7) The commissioners may suspend a doctor from the List for up to a one-year period, if a doctor who was suspended for 30 days and reinstated to the List, again meets the criteria of paragraph (4) of this subsection.

(8) The division will again suspend the doctor from the List for 30 days, notify the doctor as required in paragraph (6) of this subsection and prepare a recommendation to the commissioners that the doctor be suspended from the List for a period of up to one year.

(9) The division will notify the doctor by delivery, return receipt requested, of the division's intent to recommend to the commissioners that the doctor be suspended from the List. Within 20 days after receiving the notice, a doctor may request a hearing to be held as provided by §145.3 of this title (relating to Requesting a Hearing) or as provided by §148.3 (relating to Requesting a Hearing) as applicable. The request must be in writing to the division and actually received in the commission's central office in Austin, Texas, within 20 days after the doctor's receipt of the notice of intent to suspend the doctor from the List. If a request for hearing is timely received, the commission will hold a hearing as provided in Chapter 145 of this title (related to Dispute Resolution - Hearings Under the Administrative Procedure Act) or the State Office of Administrative Hearings will hold a hearing as provided in Chapter 148 of this title (relating to Hearings Conducted be the State Office of Administrative Hearings). At the conclusion of a hearing conducted under the provisions of Chapter 145 or Chapter 148 of this title, the hearing officer shall propose a decision to the commission for final consideration and decision by the commission. If no request for a hearing is timely filed, the division's recommendation will be reviewed by the commissioners at a public meeting and a decision made to either suspend or maintain the doctor on the List.

(10) If the commissioners decide to suspend a doctor from the List, the commissioners will issue an order of suspension which states the length of the suspension and describes the effects of the suspension. The order may also state restrictions on reinstatement or impose a specific method for reinstatement to the List. The order will be delivered to the doctor, return receipt requested. After receipt, a second opinion doctor shall inform injured employees seeking second opinions on spinal surgery under the Act, of the doctor's suspension from the List and that the insurance carrier will not be liable for the costs of a second opinion exam performed by that doctor while he is suspended from the List. After receipt, a treating doctor or surgeon shall inform injured employees seeking spinal surgery under the Act, of the doctor's suspension from the List and that the insurance carrier will not be liable for the costs of spinal surgery for which the TWCC-63 is filed with the commission while that doctor is suspended from the List. Failure to inform the injured employee in the form and format prescribed by the commission may subject the doctor to administrative penalties of up to $10,000 and other sanctions as provided by the Act.

(11) Unless a different period of suspension or method of reinstatement is provided by the commission order suspending the doctor from the List, a doctor suspended from the List may be reinstated as follows. A doctor may be reinstated to the List after a six month period by written request to the division which includes a renewed commitment to perform timely and appropriate second opinions and to submit timely reports, records, and forms in compliance with this section, provided appropriate members of the doctor's staff have attended a division seminar for providers within the suspension period. After a one year period, a doctor may be reinstated by written request to the division which includes a renewed commitment to perform timely and appropriate second opinions and to submit timely reports, records, and forms in compliance with this section. The division will immediately notify a doctor who has been reinstated to the List. The reinstatement will be effective from the date of the division's action to reinstate.

(d) Second Opinion Doctor's Qualifications.

(1) The doctor rendering a second opinion must meet the following minimum qualifications:

(A) be a spinal surgeon on the List;

(B) be a spinal surgeon with specialty training in spine surgery;

(C) not be economically associated with or share office space with the treating doctor or the surgeon;

(D) not be scheduled to perform or assist with the recommended surgery; and

(E) currently active on the TWCC Approved Doctor List.

(2) The doctor rendering the second opinion cannot for a period of 12 months after rendering a second opinion become the injured employee's treating doctor or surgeon for the medical condition on which the doctor rendered a second opinion.

(3) An out-of-state doctor who is not on the List may be approved by the division as a qualified doctor if the claimant is residing out-of-state.

(4) When deemed necessary the division at its discretion may waive any of the requirements in paragraph (1) of this subsection, with the exception of paragraph (1)(B) of this subsection, to secure timely and reasonable appointments.

(5) The division may issue an order requiring timely submission of a report, record, or form required by this section, recommend administrative violation proceedings, take action to remove a doctor from the List as described in subsection (c) of this section and/or take action to remove a doctor from the Approved Doctor List in compliance with §126.8 of this title (relating to Commission Approved Doctor List) for noncompliance with the order.

(6) A second opinion doctor is responsible for performing an exam if requested by the insurance carrier, the injured employee or the commission unless the division releases the doctor from assessing a particular employee. To consider releasing a proposed second opinion doctor from the requirement to render an opinion on a specific case, Medical Review must agree that the selected second opinion doctor is not qualified due to unique or complex pathology or because the doctor's expertise excludes the involved body area.

(e) Submission of Request for Spinal Surgery and for Second Opinion by Employee-Selected Doctor; Doctors' Responsibilities and Records.

(1) To recommend spinal surgery, the treating doctor or surgeon shall submit to the division a TWCC-63 in the form and manner prescribed by the division. The TWCC-63 may be faxed directly to the division.

(2) The doctor submitting the TWCC-63 shall advise the injured employee of the injured employee's right to obtain a second opinion from a qualified doctor. If the injured employee decides to seek a second opinion, the injured employee or the treating doctor or surgeon on behalf of the employee, shall request that the division provide a sublist of qualified doctors. The injured employee with assistance from the treating doctor or surgeon shall select a qualified second opinion doctor from the sublist and schedule the appointment date prior to submitting the TWCC-63. The second opinion appointment should be scheduled to occur within 30 days from the date the TWCC-63 is submitted to the division. The name of the selected doctor and the appointment information shall be submitted on the TWCC-63 in the form and manner prescribed by the division.

(3) The surgeon shall ensure that all medical records and films arrive at each second opinion doctor's office prior to the date of the scheduled second opinion.

(4) The doctor submitting the TWCC-63 shall maintain accurate records to reflect:

(A) medical information regarding emergency conditions;

(B) injured employee notification of right to a second opinion;

(C) the submission date of the TWCC-63, and any amended TWCC-63s;

(D) the date and time of any second opinion appointment scheduled with employee-selected doctor; and

(E) the date the medical records were sent by the surgeon to each second opinion doctor.

(f) Commission Notification to Carrier. The division will notify the carrier via the carrier representative in Austin of the receipt of any required TWCC-63's by placing copies in the carrier representative's box. The division will also provide a sublist to the carrier. The carrier representatives shall sign for the forms. The carrier representative is responsible for the receipt of and the response to TWCC-63s.

(g) Carrier Waiver of or Request for Second Opinion by Carrier-Selected Doctor; Carrier Records.

(1) The carrier must waive the second opinion or request a second opinion exam be performed by a carrier-selected doctor. This decision and choice of the carrier-selected doctor from a sublist must be made and submitted to the division on a TWCC-63 in the form and manner prescribed by the division and without undue delay but no later than 14 days after the acknowledgment date. The TWCC-63 may be faxed or delivered directly to the division.

(2) The carrier shall set the appointment and include appointment information on the TWCC-63 in the form and manner prescribed by the division. The appointment date set by the carrier should be within 14 days and must not exceed 30 days from the acknowledgment date.

(3) A carrier will be deemed to have waived a second opinion if the carrier chooses a doctor not on the sublist or sets an appointment which exceeds 30 days from the acknowledgment date or fails to timely notify the injured employee, the surgeon, and the treating doctor of the scheduled second opinion examination. Notification of the examination must be sent at least ten calendar days prior to the appointment.

(4) The carrier shall notify in writing the injured employee, the treating doctor, and the surgeon of the appointment information. This notification shall be in the form and manner prescribed by the division and shall include a copy of the TWCC-63, and a narrative explanation of the purpose of the exam.

(5) The carrier representative shall maintain accurate records to reflect:

(A) the acknowledgment date of the TWCC-63;

(B) the date the TWCC-63 required by paragraph (1) of this subsection was submitted to the division;

(C) the date the notice required by paragraph (4) of this subsection was given;

(D) if applicable, the name of the carrier-selected doctor and the date and time of the scheduled exam; and

(E) the acknowledgment date of the narrative report required by subsection (i) of this section.

(h) Division Notification to Employee of Option to Obtain a Second Opinion From an Employee-Selected Doctor.

(1) If the carrier elects to have a second opinion and the employee has not already scheduled a second opinion from an employee-selected doctor, the division shall notify the employee of the following:

(A) that the carrier will be obtaining a second opinion from a carrier-selected doctor and the date and time;

(B) that the employee may obtain a second opinion from an employee-selected doctor;

(C) the sublist from which the employee may select an employee-selected doctor; and

(D) the procedures and the time deadlines for obtaining a second opinion from an employee-selected doctor;

(2) The treating doctor or surgeon must within five days of receiving notification from the division, notify the division if the employee is going to select an employee-selected doctor.

(3) If the injured employee elects to have an employee-selected second opinion, the injured employee shall select a qualified second opinion doctor from the sublist. The injured employee may seek assistance from the treating doctor or surgeon in selecting a doctor from the sublist. The appointment must be scheduled prior to the treating doctor's or surgeon's submission of an amended TWCC-63 which contains the information required by subsection (e) of this section. The amended TWCC-63 must be filed with the division no later than ten days after the treating doctor's or surgeon's receipt of notification from the division.

(4) The second opinion exams scheduled in this subsection shall be set for a date later than the carrier-selected doctor second opinion appointment.

(5) If the second opinion of the carrier-selected doctor is a concurrence the appointment scheduled in this subsection may be canceled.

(6) Decisions, reports, records, and payments for second opinions obtained pursuant to this subsection shall be governed by the same provisions applicable to second opinions pursuant to subsections (i) and (j) of this section.

(7) If the carrier selected second opinion exam results in a nonconcurrence and the division has not received notice of the employee's choice of second opinion doctor, the division will notify the employee, treating doctor and surgeon of the following:

(A) that the carrier selected second opinion exam resulted in a nonconcurrence;

(B) that in order for the carrier to become liable for the costs of surgery, the employee must receive a concurrence from one of the doctors on the employee sublist; and

(C) that failure to inform the division of the employee's selection of a second opinion doctor, within 14 days of nonconcurrence notification from the division, will result in withdrawal of the recommendation for spinal surgery.

(8) If a recommendation is withdrawn, the treating doctor or surgeon may resubmit in accordance with subsection (l)(1) of this section.

(i) Second Opinion Decisions and Reports; Second Opinion Doctors' Records.

(1) A second opinion doctor must provide appointments for requested second opinions within the 30-day time frames required by subsections (e)(2) and (g)(2) of this section.

(2) The second opinion doctor's opinion must be based on physical examination of the injured employee and review of the medical records and films forwarded by the surgeon. The second opinion doctor shall call the designated phone number at the division within two days after the exam to submit the results of a second opinion. The message must include the injured employee's name and social security number, the date and time of the exam, the name of the second opinion doctor and a clear decision of a "concurrence" or "nonconcurrence" with the need for the recommended type of spinal surgery. The second opinion doctor shall return any films within three days to the doctor who submitted the films.

(3) The second opinion doctor must complete a narrative report regarding the second opinion exam which indicates the second opinion doctor's decision, and submit it to the division, the treating doctor, the surgeon, and the carrier, within ten days of the exam. The division will notify the employee of the decision(s) of the second opinion doctor(s).

(4) A second opinion doctor shall maintain accurate records to reflect the following for second opinions:

(A) the date for which the exam was scheduled;

(B) the circumstances regarding a cancellation, no show or other situations where the exam did not occur as scheduled;

(C) the date of the examination;

(D) the second opinion doctor's decision;

(E) the date the decision was called into the division;

(F) the date the narrative was mailed to the treating doctor, the surgeon, and the carrier; and

(G) the date the narrative was sent to the division.

(j) Payment for the Second Opinion Exam.

(1) The division shall notify the carrier via the carrier representative of narrative reports received by the division. The carrier representative shall sign and acknowledge receipt of notice of narrative reports. Carriers shall not pay a doctor for a second opinion exam until receipt of notice of the narrative report. A carrier's time frame for payment of the bill for a second opinion begins with the receipt of the bill from the doctor or the acknowledgment date of notice of the narrative report from the division, whichever is the later of the two dates, regardless of the time frame or process established by Chapter 134 of this title (relating to Guidelines for Medical Services, Charges, and Payments).

(2) The insurance carrier is responsible for paying the reasonable costs of a second opinion exam by a qualified doctor whether requested by the injured employee or the carrier. The second opinion doctor's bill and the carrier's payment for second opinion exams shall be inclusive of the exam, review of records and films, and the preparation and submission of the reports, and shall be the lesser of the charged amount or the following fees for the applicable service:

(A) $350 for second opinions (use code WC001);

(B) $100 if the injured employee fails to show up for a scheduled second opinion exam or if a scheduled second opinion exam is cancelled by the employee with less than 24 hours notice (use code WC002); or

(C) $150 to reconsider an earlier decision (use code WC003).

(3) A carrier shall pay for the reasonable travel expenses for an injured employee to attend a second opinion appointment.

(4) The carrier shall be responsible for the reasonable copying costs of the films and records needed to perform a second opinion.

(k) Appeal to a Contested Case Hearing (CCH).

(1) An employee may appeal to a CCH if there is no second opinion concurrence.

(2) A carrier may appeal to a CCH if there is a second opinion nonconcurrence.

(3) The appeal must be filed within 10 days after receipt of notice from the commission regarding carrier liability for spinal surgery. The appeal must be filed in compliance with §142.5(c) of this title (relating to Sequence of Proceedings to Resolve Benefit Disputes). The contested case will be scheduled to be held within 20 days of commission receipt of the request for a CCH. The hearings and further appeals shall be conducted in accordance with Chapters 140 - 143 of this title (relating to Dispute Resolution/ General Provisions, Benefit Review Conference, Benefit Contested Case Hearing, and Review by the Appeals Panel).

(4) Of the three recommendations and opinions (the surgeon's, and the two second opinion doctors'), presumptive weight will be given to the two which had the same result, and they will be upheld unless the great weight of medical evidence is to the contrary. The only opinions admissible at the hearing are the recommendation of the surgeon and the opinions of the two second opinion doctors.

(l) Resubmitting the Issue of Spinal Surgery.

(1) If the injured employee has a change of condition at any time after a nonconcurrence, the treating doctor or surgeon may submit a TWCC-63 to the division and to both the second opinion doctors with documentation indicating the change of condition as defined in subsection (a)(16) of this section. The second opinion doctors will review the documentation for the purpose of evaluating the presence of criteria listed in subsection (a)(16) prior to submission of an addendum report. If in the doctor's opinion the documentation does not meet the criteria of subsection (a)(16), the second opinion doctor shall submit a report to the division and the treating doctor or surgeon indicating there is no change in condition. If documentation meets the criteria in subsection (a)(16), the second opinion doctors shall issue an addendum to the original decision and send a copy to the division, the treating doctor, the surgeon, and the carrier with the word "ADDENDUM" clearly indicated on the narrative report. Addendum decisions, reports, records, and payments, and appeal to a CCH are governed by all of the provisions of this section. If the addendum second opinions result in carrier liability, any pending appeal shall be dismissed.

(2) Addendum decisions, reports, records, and payment shall be governed by subsections (i) and (j) of this section with the following exception. The narrative report shall be submitted within 10 days of the reviewing doctor's receipt of the request for an addendum opinion or within 10 days of a subsequent physical examination of the patient.

(3) The treating doctor or surgeon may communicate with the second opinion doctors to exchange medical information and knowledge; however, communication as described in the Texas Labor Code, §418.001(a) (relating to Penalty For Fraudulently Obtaining or Denying Benefits) is prohibited.

(m) This section shall be effective for all Form TWCC-63's filed with the commission on or after July 1, 1998. Form TWCC-63's filed prior to July 1, 1998 shall be subject to the rule in effect at the time the form was filed with the Commission.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809117
Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: June 30, 1998
Proposal publication date: March 20, 1998
For further information, please call: (512) 440–3972

♦ ♦ ♦

Chapter 134. Benefits-Guidelines for Medical Services, Charges, and Payments

Subchapter K. Treatment Guidelines

28 TAC §134.1002

The Texas Workers' Compensation Commission (Commission) adopts an amendment to §134.1002, concerning the Upper Extremities Treatment Guideline with changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1905).

As required by the Government Code, §2001.033(1), the Commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. The reasoned justification is contained in this preamble, and throughout this preamble, including how and why the Commission reached the conclusions it did, why the rule is appropriate, the factual, policy, and legal bases for the rule, a restatement of the factual basis for the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the Commission disagrees with some of the comments and proposals.

Changes made to the rule as proposed are in response to public comment received in writing and at a public hearing held on March 4, 1998, and are described in the summary of comments and responses section of this preamble.

Changes in the proposed text are found in: Figures (f)(6)(G), (f)(3)(A)-(C), (f)(4)(A)-(C), (f)(5)(A)-(F) and (f)(6)(A)-(C); subsection (h)(4); and subsection (i). In Figure (f)(6)(G), Dupuytren's fracture has been deleted from the ICD-9 Diagnosis Codes. In Figures (f)(6)(G), (f)(3)(A)-(C), (f)(4)(A)-(C), (f)(5)(A)-(F) and (f)(6)(A)-(C) manipulation has been added as a treatment intervention. In subsection (h)(4) a definition of the term "aggravation" has been added. The bibliography in subsection (i) has been updated.

The Upper Extremities Treatment Guideline clarifies those services that are reasonable and medically necessary for nonoperative care of common diagnoses of the upper extremities for the

injured employees of Texas. The guideline is not to be used as a fixed treatment protocol, but rather identifies a normal course of treatment and reflects typical courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than is outlined. The guideline also acknowledges that in atypical cases, treatment falling outside the guideline will occasionally be necessary. However, those cases that exceed the guideline level of treatment are subject to more careful scrutiny and review and require documentation of the special circumstances that justify the treatment. The guideline does not prescribe the type and frequency of treatment; treatment must be based on patient need and professional judgement. The rule is designed to function as a guideline and is not to be used as the sole reason for denial of treatments and services.

The clinical and diagnostic treatment guidelines contained in the rule were developed in conjunction with health care providers and other parties in the workers' compensation system. The guideline is designed to achieve the following goals: (1) to assist all parties with regard to the appropriate treatment and management of upper extremities injuries; (2) to establish elements against which aspects of care can be compared; (3) to establish a guideline to identify clinically acceptable courses of treatment for specific disorders; (4) to establish documentation standards which support the appropriateness of the level of service; and (5) to provide a mechanism of prospective, concurrent, and retrospective review for efficient and effective health care utilization.

The adopted guideline promotes quality health care, injury specific treatment and appropriateness of care, by identifying clinically acceptable courses of care for specific upper extremities injuries, and by facilitating communication between all parties to achieve rapid recovery from the effects of an injury. Communication promotes a timely return to modified or full duty work that takes into account the job demands and the functional capabilities of the injured employee.

The clinical and diagnostic treatment guidelines contained in this amendment have been developed in conjunction with health care providers and other parties in the workers' compensation system. The Commission's Medical Review Division examined the TWCC medical bills database to extract the most frequently occurring diagnoses between April 1, 1996 through March 31, 1997. The result of this extract indicated that the top 200 diagnostic codes represented 80% of all workers' compensation cases. The remaining 20% of cases were distributed among several hundred codes and thus were not used. Diagnostic codes specific to upper extremities were extracted from the top-200 list and compared to codes currently in the Upper Extremities Treatment Guideline to ensure that the UETG continues to reflect the most common upper extremities diagnoses in the workers' compensation system. This analysis revealed that two diagnostic codes, 726.0 Adhesive Capsulitis and 813.42 Dupuytren's fracture, should be added to the UETG and that all codes currently contained in the UETG continue to occur with enough frequency to remain listed in the guideline. Public comment was received regarding the addition of Dupuytren's fracture. The public comment indicated that despite the appearance in the International Classification of Diseases 9th revision or ICD-9 (Practice Management Information Corporation, 1995) as an upper extremity diagnosis, this diagnosis refers to a fracture in the lower extremities and as such, is not appropriate in the UETG. The specific diagnosis code 813.42, has been deleted from the Fractures table in the adopted UETG because it is included in the more general code 813, Fracture radius and ulna.

The Medical Review Division also contacted the Upper Extremities Treatment Guideline workgroup members, composed of members from the following professions: chiropractic, medicine, physical therapy, occupational therapy and osteopathic. The Upper Extremities Treatment Guideline Workgroup assisted in drafting the guideline in 1995. Workgroup members were asked to review the guideline, recommend changes, and give feedback on the guideline's use and effectiveness since it was adopted. The Medical Review Division also conducted focus groups with medical doctors and chiropractors in Austin, Dallas, and Houston to obtain input regarding the guideline's use, effectiveness, and to obtain recommendations for changes. In addition, the Medical Review Division requested and received input from insurance carriers. The recommendations from these groups were presented to the MAC where they either concurred or differed with the recommendations. Where the MAC concurred, the recommendations were included in this revision.

The Commission's Medical Review Division, in conjunction with the Commission's Medical Advisory Committee (MAC) and a broad representation from the medical community, have worked together to develop the amendments to the Upper Extremities Treatment Guideline. By statute, the MAC advises the division in developing and administering the medical policies, fee guidelines, and utilization guidelines established under the Texas Labor Code, §413.011. The MAC is composed of members from the following fields, appointed by the Commission: public health care facility, private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a pharmacist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, a representative of employers, a representative of employees, and two representatives of the general public.

A number of adopted amendments make the text portion of the Upper Extremities Treatment Guideline consistent with the recently adopted Lower Extremities Treatment Guideline. Because musculoskeletal injuries of the lower and upper extremities are similar in the workers' compensation system and involve similar treatments, consistency between these two guidelines will minimize confusion and ensure that the guidelines are addressing similar issues in the same way.

In addition, a number of adopted amendments are for grammatical and form consistency between the Upper Extremities Treatment Guideline and the Lower Extremities Treatment Guideline and do not substantively alter the guideline.

Subsection (a)(1) corrects references to other subsections of the rule in the table of contents.

The term "Primary Gatekeeper" has been changed to "Treating Doctor" in subsections (a)(2), and (c) to make it consistent with the Lower Extremities Treatment Guideline and with terms used generally in the workers' compensation system.

The July 1, 1998 expiration date has been removed from subsection (b)(1) and that subsection specifies that the guideline applies to treatments provided after the effective date of the rule amendment. The Commission believes that the rule is functioning as intended and therefore removes the expiration date previously included in the guideline. As with all other guidelines, a periodic review of this guideline would be performed to deter-

mine its continued utility. In addition, there is no expiration date in any other treatment guideline.

Subsections (b)(2) and (3) make the Purpose and Goal statements consistent with Lower Extremities Treatment Guideline.

Throughout the adopted rule the term "plan of treatment" has been replaced with "treatment plan" for consistency with the Lower Extremities Treatment Guideline.

In a number of places throughout the guideline terms such as "will" and "should" have been changed to "shall". Also passive language has been replaced with active tense. These changes make the Upper Extremities Treatment Guideline more consistent with the Lower Extremities Treatment Guideline and, also, provide additional clarity. In addition, these adopted amendments support the Insurance Code, Article 21.58A, as amended by House Bill 3197, enacted by Acts, 75th Legislature, 1997. Such language changes are found in subsections (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), and (e)(4).

The term "chronic disability" in subsection (f)(2)(B) and (C) has been replaced with the term "a chronic condition" because the term "disability" in the Texas Workers' Compensation Act refers to an inability to obtain and retain employment. The term "disability" was used in the guideline to refer to its more general definition and not the Texas Workers' Compensation Act definition. Therefore, it has been replaced to more accurately reflect the original intent of the guideline.

Other changes to subsections (b), (c), (d), (e), and (f) were made for clarity of language, consistency with the Lower Extremities Treatment Guideline, and/or grammatical improvement.

Functional capacity evaluations (FCE) have been deleted from all primary treatment tables to make the Upper Extremities Treatment Guideline consistent with the Lower Extremities Treatment Guideline. The focus groups and the MAC advised that these FCE's were not appropriate at the primary level of treatment because this evaluation is more appropriate later in the treatment of injuries. In the primary treatment tables under treatment interventions "medication modification" has been replaced with "medications" and all medications are now listed under this heading for clarity and consistency. "Job site analysis" has been moved from the Treatment Intervention section to the Return to Work Issues section. Under the Return to Work Issues section of the primary treatment tables, the sentence "A mild level of severity allows return to work within 0-3 months, with or without modified/transitional work and /or orthoses." was deleted as a result of focus group and MAC recommendations because this statement was redundant and already a part of the definitions of levels of care. This amendment also makes the Upper Extremities Treatment Guideline consistent with the Lower Extremities Treatment Guideline.

The secondary treatment tables include the following. Under treatment interventions "medication modification" has been replaced with "medications" and all medications are now listed under this heading for clarity. "Job site analysis" and "functional capacity evaluations" have been moved from the Treatment Intervention Section to Return To Work Issues Section. These amendments were made as a result of MAC and focus group recommendations that these evaluations were not treatments and were more appropriately listed under the Return to Work Issues section. These amendments provide consistency between the Upper Extremities Treatment Guideline and the Lower Extremities Treatment Guideline. An additional item, "Transitional return to work" has been added to Return To Work Issues as a result of MAC recommendations because Transitional return to work is appropriate at this level of care and provides consistency with the Lower Extremities Treatment Guideline.

Tertiary treatment tables include the following. Under treatment interventions "medication modification" has been replaced with "medications" and all medications are now listed under this heading for clarity. "Job site analysis" and "functional capacity evaluations" have been moved from the Treatment Intervention Section to Return To Work Issues Section. These amendments were made as a result of MAC and focus group recommendations that these evaluations were not treatments and were more appropriately listed under the Return to Work Issues section. These amendments provide consistency between the Upper Extremities Treatment Guideline and the Lower Extremities Treatment Guideline. An additional item, "Transitional return to work" has been added to Return To Work Issues as a result of MAC recommendations because Transitional return to work is appropriate at this level of care and provides consistency with the Lower Extremities Treatment Guideline. Specific programs were deleted from "Treatment Interventions" because they fit under the general heading of "single or interdisciplinary program". An additional treatment intervention, "Outpatient evaluation and therapy," was listed as a result of MAC recommendations, because this intervention is appropriate for this level of care and makes the Upper Extremities Treatment Guideline consistent with the Lower Extremities Treatment Guideline.

Focus groups recommended that manipulation and acupuncture be removed as treatment interventions in the nonoperative treatment tables because they did not see these treatment interventions as reasonable and medically necessary normal courses of treatment for various upper extremities diagnoses. The MAC could not reach consensus on the focus group recommendations. A Commission analysis of the TWCC medical bills database for the period of April 1, 1996 through March 31, 1997 showed that these treatments are used in certain upper extremities diagnoses. Manipulation and acupuncture were proposed to be included in those diagnosis-specific treatment tables where the TWCC database of medical bills showed 5.0% or more of claimants with that diagnosis received these treatments. The 5.0% threshold was chosen because it offers a conservative measure that allows for the inclusion of treatment interventions that occur frequently enough in the workers' compensation system to indicate, in the absence of other data or information, a typical course of intervention. This is the same methodology used in the development of the Lower Extremities Treatment Guideline. This resulted in the proposed removal of manipulation from nine sets of treatment tables in the proposed amendment to the UETG (Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; Upper Extremities Treatment Ta-

bles, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy; Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy).

During the development phase of the Lower Extremities Treatment Guideline, health care providers in the Lower Extremities Treatment Guideline Workgroup and the Commission's Medical Advisory Committee reviewed the guideline and provided input. Neither group reached consensus on the use of manipulation and acupuncture as reasonable and medically necessary normal courses of treatment for various lower extremities diagnoses. An analysis of the TWCC medical bills database for the period April 1, 1996 through March 31, 1997 showed that these treatments are used in certain lower extremities diagnoses. The MAC Chairman asked MAC members to submit scientific, peer-reviewed studies to the Medical Review division to support the MAC members' respective positions on the use of manipulation and acupuncture for treatment of lower extremity diagnoses. The materials received by the Commission were reviewed and evaluated. The materials showed little evidence of peer review and were mostly single-subject case studies. Staff research revealed that single-subject case studies rank low as an accepted method for establishing the efficacy of treatment methods.

Manipulation and acupuncture were included in the Lower Extremities Treatment Guideline in those diagnosis-specific treatment tables where the TWCC database of medical bills showed 5.0% or more of claimants with that diagnosis received these treatments. The 5.0% threshold was chosen because it offers a conservative measure that allows for the inclusion of treatment interventions that occur frequently enough in the workers' compensation system to indicate, in the absence of other data or information, a typical course of intervention.

Extensive public comment was received regarding the removal of manipulation from nine sets of treatment tables in the proposed amendment to the UETG. Much of the public comment critiqued the methodology used to remove these treatment interventions and contended that because manipulation is widely used by chiropractors and osteopaths, removing manipulation would impinge on the injured employee's right to choose a treating doctor.

As a result of the issues raised by commenters, further analysis of the data and evaluation of the materials submitted was conducted concerning the nine sets of treatment tables where manipulation was proposed for deletion. This subsequent analysis included a further breakdown of the data that was originally collected to evaluate the frequency a particular treatment was received for a particular upper extremities injury.

In the nine sets of treatment tables where manipulation was proposed for deletion because the 5.0% threshold was not met, further analysis revealed that the injured employees who did receive manipulation, received it from primarily doctors of osteopathic and chiropractic. Osteopaths and chiropractors are included in the list of doctors in the Act from which an injured employee may choose a treating doctor. Therefore, the first part of the additional analysis was performed to give an indication of the frequency of use of manipulation by chiropractors and osteopaths. The results indicated that for the diagnoses contained in five out of the nine sets of treatment tables in question, manipulation was frequently used by these provider types. The other four sets of treatment tables showed inconsistent frequency of use by provider type. The five sets of treatment tables where manipulation was frequently used as a treatment intervention by osteopaths and chiropractors are: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The second part of this analysis consisted of looking at the number of injured employees who received treatment from an osteopath or chiropractor versus those who received any treatment from other treating doctors for upper extremity diagnoses in the nine sets of treatment tables in question. For the diagnoses listed in the five sets of treatment tables (listed previously) 7.0% to 30% of the injured employees who sought treatment for these injuries received treatment from an osteopath or a chiropractor. For the diagnoses listed in the remaining four sets of treatment tables of the nine sets proposed for deletion, only 0% to 4.0% of the injured employees who sought treatment for these injuries received treatment from an osteopath or chiropractor. These four treatment tables are: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

The next part of the analysis consisted of evaluating the studies submitted during public comment and the Texas Chiropractic Association (TCA) opinion paper, which was based on a survey of Texas chiropractors. The following parameters were developed to evaluate the materials submitted by public commenters and establish whether the materials met the general definition of scientific research: a) does the study seek to test a hypothesis; b) does the study involve multiple subjects, since single subject case studies rank low as an accepted method for establishing the efficacy of treatment methods; and c) does the study address the upper extremity diagnoses in question. The studies submitted support including manipulation in the following treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendini-

tis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The TCA strongly endorsed manipulation as being an appropriate treatment intervention for the following five treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The TCA suggested that manipulation may be an appropriate treatment intervention or was not generally considered appropriate for the following four treatment tables: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

With the additional analysis and evaluation of the materials submitted during public comment, staff agrees that manipulation is a medically necessary normal course of treatment for Hand and Wrist: Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Musculotendinitis/Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder: Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy, because: manipulation is performed by chiropractors and osteopaths with a consistently higher frequency; these diagnoses have a high patient volume; materials submitted support the use of manipulation as a normal course of treatment for these diagnoses; and the TCA strongly endorses the use of manipulation as an appropriate type of treatment for these diagnoses.

Manipulation has therefore not been deleted from the following five treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

Also, as a result of this further analysis and evaluation of the materials submitted during public comment, it was confirmed that manipulation is not a medically necessary normal course of treatment for avascular necrosis, joint instability, crush injuries and reflex sympathetic dystrophy because: manipulation was not performed by chiropractors and osteopaths with consistently high frequency in these four diagnoses; these diagnoses involve a small number of injured employees (only 42 out of 63,688 injured employees with upper extremity diagnoses received manipulation from a chiropractor or osteopath for these four diagnoses); materials submitted did not support the use of manipulation as a normal course of treatment for these diagnoses; and TCA indicated that manipulation could be an appropriate treatment or was generally not considered an appropriate treatment for these four diagnoses.

Therefore, manipulation is deleted from the following four treatment tables: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

Despite the removal of manipulation from these four treatment tables, manipulation can still be performed as an acceptable treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor.

The diagnosis of 726.0 Adhesive Capsulitis is added to the primary treatment table for Rotator Cuff: Sprain/Strain (figure 13: (f)(5)(D)). This diagnoses appeared in the top 200 most frequent diagnoses in the TWCC medical bills database. The MAC recommended this diagnosis be included in this group of diagnoses because this was the most appropriate section of the guideline to include Adhesive Capsulitis.

A tertiary level of care treatment table has been added to the diagnosis of Intra-articular pathology, Traumatic Arthritis (figure 30: (f)(6)(O)) as a result of focus group and MAC recommendations that said this was confusing and inconsistent with the rest of the guideline and to make the Upper Extremities Treatment Guideline consistent with the Lower Extremities Treatment Guideline.

Sympathetic blocks have been added to the Diagnostic Procedures section for the primary, secondary, and tertiary treatment tables for Reflect Sympathetic Dystrophy (figures 40, 41, and 42: (f)(6)(Y),(Z), and (AA)) as a result of focus group and MAC recommendation because according to their medical expertise, this is an appropriate diagnostic for this diagnosis. The MAC also recommended that the sympathetic blocks be limited to a maximum of three when used as a diagnostic procedure because based on their expertise three blocks should be sufficient. This is noted in the adopted amendment.

Changes to Surgical Indications, subsection (g), are adopted for clarification purposes. These changes were suggested by the M.D. MAC representative who is the only surgeon currently serving on the MAC. The MAC reviewed these changes and recommended them as well. Subsection (g)(1)(A) was amended to read "six week trial of conservative treatment" instead of "four to eight week trial of conservative treatment." Six weeks was recommended as a more medically reasonable conservative time frame.

Subsection (g)(1)(C) was deleted because it is included under subsection (g)(1)(A) and therefore duplicative.

Subsection (g)(2)(A)(i) was changed from "failure to respond to non-operative treatment program after six to 12 months" to "failure to respond to non-operative treatment program for six months". This change was recommended because an evaluation is medically reasonable at six months of failure to respond to non-operative treatment program. The current wording could allow the non-operative treatment to continue up to 12 months.

Subsection (g)(3)(C) was amended to add "No response to six months of conservative care." because the need for surgery should be evaluated if a patient has not responded to six months of conservative care.

Changes to the glossary, subsection (h), are adopted for clarification and to make the Upper Extremities Treatment Guideline consistent with the Lower Extremities Treatment Guideline. The addition to subsection (h)(30), the definition of Maximum Medical Improvement is adopted to make that definition consistent with the definition of that term in the Texas Labor Code, §401.011(30), following recent legislative revisions. The following terms were added to the glossary: acute, chronic, exacerbation. These additions were made as a result of focus group and MAC recommendations and the definitions were taken from MOSBY'S MEDICAL NURSING AND ALLIED HEALTH DICTIONARY, 3rd ed. TWCC staff evaluated definitions from MOSBY'S MEDICAL NURSING AND ALLIED HEALTH MEDICAL DICTIONARY, 3rd. ed., STEADMAN'S MEDICAL DICTIONARY, 26th ed., DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th ed. and TABER'S CYCLOPEDIC MEDICAL DICTIONARY, Edition 17. MOSBY'S definitions were chosen because the definitions described the conditions most accurately and MOSBY'S is a standard, recognized medical source.

Public comment received regarding the subsection (h) Glossary indicated that the term "aggravation" should be added to the glossary because there is often confusion between the terms of "exacerbation" and "aggravation." Staff research indicated that an aggravation of a preexisting condition is an injury in its own right. The term exacerbation does not indicate a new injury but an increase in the seriousness of a disease or disorder as marked by greater intensity in the signs or symptoms of the patient being treated. The following definition has been added to the glossary as subsection (h)(4): "aggravation - an act or circumstance that intensifies or makes worse a pre-existing condition".

Changes to the Bibliography in subsection (i), are adopted to reflect additional references used for the revision of the Upper Extremities Treatment Guideline.

The Commission considered all relevant statutory and policy mandates and objectives and designed this rule to achieve those mandates and objectives, including the following:

(1) the establishment of medical policies and guidelines relating to use of medical services by employees who suffer compensable injuries;

(2) the establishment of medical policies relating to necessary treatments for injuries which are designed to ensure the quality of medical care and designed to achieve effective medical cost control;

(3) the establishment of a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatment and services; and

(4) the establishment of a program for systematic monitoring of the necessity of treatments administered, for detection of practices and patterns by insurance carriers in unreasonably denying authorization of payment, and for increasing the intensity of review for compliance with medical policies or fee guidelines.

Amended §134.1002 will achieve these objectives by:

(1) identifying services that are reasonable and medically necessary for treatment of upper extremity injuries;

(2) assisting all parties with regard to the appropriate treatment and management of disorders of the upper extremities in workers' compensation healthcare;

(3) establishing a guideline against which aspects of care can be compared;

(4) identifying clinically acceptable courses of care for specific upper extremity injuries;

(5) establishing documentation standards which support the appropriateness of the level of service for assessment/evaluation and on-going treatment;

(6) providing a mechanism for prospective, concurrent, and retrospective review to ensure efficient and effective health care utilization; and

(7) establishing normal courses of treatment based on clinical indicators at different levels of healing.

In accordance with the statutory objectives and Commission policy, the Upper Extremities Treatment Guideline seeks to balance the need for cost control and review with the need for access to quality medical care by establishing typical courses of treatment, but allowing treatment outside the set parameters with additional documentation of the need for the treatment.

Quality of medical care is ensured by reliance upon input from experts and recognized studies in the field of upper extremities treatment, and establishment of normal courses of treatment and treatment parameters for specific upper extremity injuries. The guideline ensures access to health care and that quality care will be available in each individual case by its ground rules that allow for treatment outside the stated parameters.

Effective medical cost control is achieved by establishing parameters for eligibility and termination of certain treatments, by setting documentation standards which support the appropriateness of the treatment; by requiring additional documentation for treatment falling outside the guideline's parameter; and by providing that treatments for upper extremities are subject to the Commission's separate rule requiring carrier preauthorization for certain treatments as a prerequisite to payment for the services.

The guideline allows for prospective, concurrent, and retrospective review of treatment by: setting standards for eligibility and treatment and setting documentation standards. These standards are to be used by health care providers as a basis for prospective review of possible treatment. The guideline and the documentation requirements should also provide the health care provider with a means to justify treatments when questioned concurrently or retrospectively by an insurance carrier.

The guideline and documentation also provide a starting point for carriers in conducting prospective, concurrent, or retrospective review of treatment. The Medical Review Division and the Compliance and Practices Division will use the guideline and documentation as a tool for prospective, concurrent, and retrospective review of treatment, including use in conducting audits of health care providers and insurance carriers, use in the establishment of a program for systematic monitoring of the necessity of treatments administered, and use in medical dispute resolution.

The guideline also promotes quality health care, injury specific treatment and appropriateness of care, by facilitating communication between all parties in order to achieve rapid recovery from the effects of an injury. This communication will also promote a timely return to modified or full duty work that takes into account the job demands and the functional capabilities of the injured employee.

The rule will promote quality health care and injury specific treatment for injured employees by identifying clinically acceptable courses of care for specific upper extremities injuries. Another benefit will be that the rule will provide a mechanism to monitor the necessity of treatment administered and establish treatment parameters, thus providing greater efficiency in the provision of treatment to the injured employee for upper extremity injury. The number of disputes regarding upper extremities treatments and preauthorization requests should be reduced because the guideline clarifies what is a normal course of treatment and reflects typical courses of intervention. In addition, fewer disputes should result in a reduction of costs to the workers' compensation system and in more timely and appropriate treatment of an injured employee.

The public benefit anticipated as a result of enforcing the rule will be the promotion of quality health care and injury specific treatment for injured employees by identifying clinically acceptable courses of care for specific upper extremities injuries. Another benefit will be that the rule will provide a mechanism to monitor the necessity of treatment administered and establish treatment parameters, and guidelines relevant to prospective, concurrent, and retrospective review of treatment, thus providing greater efficiency in the provision of upper extremities treatment to the injured employee.

Additional public benefits are those previously listed in this document as the mandates and objectives this guideline and amendments are designed to achieve, and the items previously listed and described in this document as the way in which the Guideline and the adopted amendments achieve those objectives.

Comments generally opposing the proposed amendment to §134.1002 were received from the following individuals and groups: William L. Evans, D.C., Promenade Chiropractic; J.P. Word, Texas Chiropractic Association; Kevin D. Kanz, D.C., University Chiropractic; Harold D. Lewis, D.O., Family Practice Clinic; Stuart Watts, Academy of Oriental Medicine; Stevan Cordas, D.O.; Don H. Handley, D.C., Handley Chiropractic Center, P.C.; R. Scott Harris, D.C.; Larry R. Montgomery, D.C.; Craig R. Benton, D.C., Benton Chiropractic Clinic; David E. Laga, Apple Chiropractic Clinic; Harold B Tondera, D.C., Tondera Chiropractic; James D. Olin, D.C., Olin Chiropractic; Stacy Warner, D.C., Total Chiropractic & Diagnostic Center, P.A.; Sam Symmank, D.C., Back and Body Chiropractic, Inc.; Brad A. Cudnik, D.C., Pecan Valley Medical Center; Frank L. Means, D.C., Corsicana Chiropractic Clinic; Jeremy Rauhauser, D.C., Bill Rauhauser, D.C., Village Chiropractic Center; P.H. Cordero, D.C.; Bob Glaze, D.C., Texas House of Representatives; Brad Burdin, D.C., Chiropractic Neurology; Randy W. Butler, D.C., Wade Parkhill, C.C., The Butler Clinic; Alexander Camacho, D.C., Lou Saucedo, Jr., D.C., Mark Rayshell, D.C., Jason Brazeal, D.C., Michael C. Walther, Jr., D.C., Toole Ken Theppote, D.C., Patricia Johnson, D.C., Larry W. Parent, D.C., Cary G. Tannery, D.C., Accident & Injury Chiropractic; Robert Groff, D.C., Allen Chiropractic Clinic; R. R. LaVarta, D.C., LaVarta Chiropractic Office; Kenneth M. Perkins, D.C., Texas Chiropractic Association; Kenneth D. Peterson, D.C., Horizon Chiropractic Center; Andre A. Broussard, D.C.; Kevin E. Raef, D.C., Raef Chiropractic Clinic; J. W. Stucki, American Health Choice, Inc.; Carroll V. Guice, D.C.; Mark A. Brown, D.C., Med-Center Chiropractic; Michael A. Rihn, D.C., Rihn Family Care Chiropractic, Inc.; James L. Kirklin, D.C., Kirklin Family Chiropractic; Robert T. Tanella, Tanella Family Chiropractic; Curtis L. Storm, B.S., D.C., Tri-Cities Chiropractic Health Center; Gary W. Meeks, D.C.; William M. Leff, Leff Chiropractic Center; Michael W. Hall, D.C., Hall Chiropractic Neurology Center; Daniel J. Lohr, D.C., Americare Chiropractic Centre; Danny R. Killough, Jr., Parker Chiropractic College; Jon L. Mills, Sr., D.C., Bedford Chiropractic Center, P.C.; Clem C. Martin, D.C.; Joshua T. Acosta, D.C., Acosta Chiropractic; Thomas Klesmit, D.C., Klesmit Chiropractic Offices, P.C.; Terry R. Boucher, Texas Osteopathic Medical Association; Dennis E. Carrier, D.C., Carrier Chiropractic Office; Joanne Wisdom, D.C.; Kirk A. Proffitt, D.C., Chiropractic Health Center; Carl M. Naehritiz, III, D.C., Texas Spine Institute; Travis W. Park, D.C., New Start Chiropractic; Chris G. Dalrymple D.C., Brenham Chiropractic Clinic; P. Michelle Cordero, D.C., FIACA; Gerald L. Guest, D.C., Guest Chiropractic Clinic; Paul H. Heikkinen, D.C., Heikkinen Chiropractic Center; John B. Turner, CPS; Gregory C. Page, D.C., D.A.C.N.B., Arkansas Lane Chiropractic Center; J.P. Word, Texas Chiropractic Association; Christopher Butler, L.Ac., O.M.D.; Natalie J. Englebart, D.C., Alternative Health Solutions Chiropractic Clinic; Nancy J. Ellis, D.C., D.A.B.C.O., Ellis Chiropractic Center; Johann Van Beest, D.C.; John E. Freeman, D.C., D.A.A.P.M., Freeman Chiropractic Clinic; Robert C. Bergeron, D.C., D.A.B.C.O., Denicon Chiropractic Clinic; Barry J. Burleigh, D.C., Paul E. Liechty, American Chiropractic; Jeff Hawkins, D.C., Hawkins Chiropractic; B. Mark Hammonds, D.C., D.A.C.N.B., Behrman Chiropractic; Ron Clark, Texas House of Representatives, Randy L. Atkinson, D.C.

Comments neither generally opposing nor generally supporting the proposed amendment to §134.1002, but suggesting changes were received from the following individuals and groups: B.E. Leissner, RPh, Pharmacy Rep., Medical Advisory Committee, TWCC; Gini Seely, Healthcare Strategies; Dee Ann Newbold, Texas Acupuncture Association.

Summaries of the comments and commission responses are as follows.

DENIAL OF PAYMENT.

COMMENT: Commenter recommended that the secondary level of care definition be revised to more clearly specify when an injured worker enters the second level of care. The UETG does not include the use of antidepressants in the primary level of care but does include them in the secondary level of care. Commenter suggested that the definition of time frames is vague regarding when primary level of care ends and secondary level of care begins resulting in routine carrier denial of payment for antidepressants.

RESPONSE: The Commission disagrees with the need to revise the levels of care definitions. The focus groups and the MAC did not consider the use of antidepressants as a reasonable and medically necessary normal course of treatment for the primary level of care. However, ground rule subsection(e)(1) provides that the Commission's treatment guidelines are not to be used as fixed treatment protocols and that it is recognized that a subset of injured employees will be found to be outside the guidelines' parameters. In addition, ground rule subsection (e)(2)(F) states: "...there may be circumstances in which the injured employee may move between levels of care or utilize interventions in more than one level simultaneously, depending on clinical indicators." Ground rule subsection (e)(2)(H) clarifies that it may not always be necessary to use full durations for any given level of care before advancing to the next. Therefore, with substantiated documentation, antidepressants may be prescribed in any level of care.

5.0% THRESHOLD.

COMMENT: Many commenters stated that the rationale given by staff for the 5.0% threshold unfairly discriminates against manipulative treatments because manipulations are not billed by specific area. Some commenters stated that most chiropractors and osteopaths use Evaluation and Management service codes for both spinal and extremity disorders which do not specify body areas. Therefore, a review of billing records to determine the frequency of manipulative treatment for the upper extremity is inappropriate and inherently inaccurate. The commenters asserted that because of this, TWCC does not have valid statistics to determine the frequency of the use of manipulation in the treatment of upper extremity injuries. A commenter expressed concern about which diagnosis codes and CPT codes were utilized to perform the computer analysis. In addition, the commenter states osteopathic manipulative treatment is coded by treatment to specific anatomical areas of the body rather than a specific medical diagnosis. Commenter stated that he follows Commission ground rules to bill for manipulation and that based on those rules he cannot understand how a 5.0% determination can be made.

One commenter stated that this methodology unfairly discriminates against health care practitioners who treat a small percent of the total number of injured employees, but may utilize manipulation for a large percent of the patients they treat.

RESPONSE: The Commission agrees in part. The analysis of the medical bills database consisted of looking at all medical bills where there was an upper extremity diagnosis for the year of April 1, 1996 through March 31, 1997. Initially only bills where an upper extremity diagnosis appeared as the primary diagnosis were considered. Subsequently, bills were considered where an upper extremity diagnosis appeared anywhere in the diagnosis field. The next part of the analysis consisted of counting all bills that had any of the following PHYSICIANS' CURRENT PROCEDURAL TERMINOLOGY (CPT) (copyright 1994 American Medical Association) manipulation codes:

97260–manipulation (cervical , thoracic, lumbosacral, sacroiliac, hand, wrist) performed by physician, one area;

97261–manipulation each additional area;

97265–joint mobilization, one or more areas (peripheral or spinal);

98925–osteopathic manipulative treatment (OMT), one to two body regions;

98926–OMT, three to four body regions,

98927–OMT, five to six body regions;

98928–OMT seven to eight body regions;

98929–OMT nine to ten body regions; and

any CPT code with an "MP" modifier which indicates manipulation.

The analysis, therefore, included all manipulation codes in the calculation of the 5.0% threshold. This further validates the accuracy of the data used to determine the frequency of manipulation in upper extremity diagnoses.

Further analysis of the data and evaluation of the materials submitted was conducted concerning the nine sets of treatment tables where manipulation was proposed for deletion. This subsequent analysis included a further breakdown of the data that was originally collected to evaluate the frequency a particular treatment was received for a particular upper extremities injury.

In the nine sets of treatment tables where manipulation was proposed for deletion because the 5.0% threshold was not met, further analysis revealed that the injured employees who did receive manipulation, received it from primarily doctors of osteopathic and chiropractic. Osteopaths and chiropractors are included in the list of doctors in the Act from which an injured employee may choose a treating doctor. Therefore, the first part of the additional analysis was performed to give an indication of the frequency of use of manipulation by chiropractors and osteopaths. The results indicated that for the diagnoses contained in five out of the nine sets of treatment tables in question, manipulation was frequently used by these provider types. The other four sets of treatment tables showed inconsistent frequency of use by provider type. The five sets of treatment tables where manipulation was frequently used as a treatment intervention by osteopaths and chiropractors are: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The second part of this analysis consisted of looking at the number of injured employees who received treatment from an osteopath or chiropractor versus those who received any treatment from other treating doctors for upper extremity diagnoses in the nine sets of treatment tables in question. For the diagnoses listed in the five sets of treatment tables (listed previously) 7.0% to 30% of the injured employees who sought treatment for these injuries received treatment from an osteopath or a chiropractor. For the diagnoses listed in the remaining four sets of treatment tables of the nine sets proposed for deletion, only 0% to 4.0% of the injured employees who sought treatment for these injuries received treatment from an osteopath or chiropractor. These four treatment tables are: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

The next part of the analysis consisted of evaluating the studies submitted during public comment and the Texas Chiropractic Association (TCA) opinion paper, which was based on a survey of Texas chiropractors. The following parameters were developed to evaluate the materials submitted by public commenters and establish whether the materials met the general definition of scientific research: a) does the study seek to test a hypothesis; b) does the study involve multiple subjects, since single subject case studies rank low as an accepted method for establishing the efficacy of treatment methods; and c) does the study address the upper extremity diagnoses in question. The studies submitted support including manipulation in the following treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The TCA strongly endorsed manipulation as being an appropriate treatment intervention for the following five treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The TCA suggested that manipulation could be an appropriate treatment intervention or was not generally considered appropriate for the following four treatment tables: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

With the additional analysis and evaluation of the materials submitted during public comment, The Commission agrees that manipulation is a medically necessary normal course of treatment for Hand and Wrist: Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder: Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy, because: manipulation is performed by chiropractors and osteopaths with a consistently higher frequency; these diagnoses have a high patient volume; materials submitted support the use of manipulation as a normal course of treatment for these diagnoses; and the TCA strongly endorses the use of manipulation as an appropriate type of treatment for these diagnoses.

Manipulation has therefore not been deleted from the following five treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy. Also, as a result of this further analysis and evaluation of the materials submitted during public comment, it was confirmed that manipulation is not a medically necessary normal course of treatment for avascular necrosis, joint instability, crush injuries and reflex sympathetic dystrophy because: manipulation was not performed by chiropractors and osteopaths with consistently high frequency in these four diagnoses; these diagnoses involve low number of injured employees (42 out of 63,688 claimants with upper extremity diagnoses who received manipulation from a chiropractor or osteopath); materials submitted did not support the use of manipulation as a normal course of treatment for these diagnoses; and TCA indicated that manipulation could be an appropriate treatment or was generally not considered an appropriate treatment for these four diagnoses.

Therefore, manipulation is deleted from the following four treatment tables: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

Despite the removal of manipulation from these four treatment tables, manipulation can still be performed as an acceptable treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor. (See subsection (e) Ground Rules)

COMMENT: Some commenters stated that manipulation is often included in the office visit charge when performed by a doctor of chiropractic and a modifier is used to show that manipulation was performed rather than a separate CPT code. The commenters therefore contended that the billing record review is faulty.

RESPONSE: The Commission disagrees. The billing record review is not faulty because all CPT codes with an "MP" modifier, which indicates that the injured employee received manipulation, were included in the calculation of the 5.0% threshold.

COMMENT: Commenters critiqued the 5.0% threshold as an absurd and an arbitrary methodology that has no justification.

RESPONSE: The Commission disagrees. The purpose of the UETG is to identify a course of treatment that is a reasonable and medically necessary normal course of treatment. Due to the differences of opinion regarding manipulations among focus groups and MAC members, staff analyzed the TWCC medical bills database to determine the frequency with which manipulation is used for upper extremity diagnoses. The 5.0% threshold is a conservative measure because it allows for treatments that appear in at least 5.0% of the injured employee population to be included as a medically necessary normal course of treatment. The 5.0% threshold allows for the inclusion of treatment interventions that occur frequently enough in the workers' compensation system to indicate, in the absence of other data, a typical course of treatment.

COMMENT: Commenter stated that the reason acupuncture did not meet the 5.0% threshold is because practitioners are routinely denied payment for acupuncture as not medically necessary. Commenter stated that two-thirds of his profession are Asian-Americans with a poor mastery of the English language and when denied payment, they do not pursue payment due to their inability to argue with the insurance carrier. In his own experience as an acupuncturist the commenter states that he routinely must threaten to complain to TWCC in order to get his bills paid. Commenter suggested that this is why less than 5.0% of claimants receive acupuncture treatment.

RESPONSE: The Commission disagrees. An objective of the UETG is to establish a typical or normal course of treatment for upper extremity diagnoses. Through further analysis of the TWCC medical bills database, it was determined that acupuncture as a treatment intervention was utilized in less than 1.0% of all injured employees with upper extremity diagnoses. The analysis included all bills for acupuncture whether or not they were reimbursed by insurance carriers. Since acupuncture was utilized in less than 1.0% of injured employees, acupuncture was not identified as a typical or normal course of treatment.

Despite the removal of acupuncture from the treatment tables, acupuncture can still be performed as an acceptable treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor. (See subsection (e) Ground Rules)

COMMENT: Some commenters questioned that the 5.0% threshold was only applied to manipulation and acupuncture and not to other treatments in the tables. Commenters contended that this application discriminates against osteopaths and chiropractors because medical doctors far outnumber the osteopaths and chiropractors combined. Another commenter contended that the 5.0% threshold is an attempt to limit the use of manipulative treatment because this treatment is not understood. Commenter added that most medical procedures performed in a hospital have not passed a scientific investigation query, but are still accepted as standard procedures.

RESPONSE: The Commission disagrees. Focus groups recommended that manipulation and acupuncture be removed as treatment intervention in all nonoperative treatment tables because they did not see these treatment interventions as reasonable and medically necessary normal courses of treatment. The focus groups' recommendations regarding manipulative treatment were brought before the MAC, but the MAC members did not reach consensus on the focus groups' recommendations. As a result, the Commission staff further analyzed the TWCC medical bills database for the period of April 1, 1996 to March 31, 1997 to determine the frequency of the use of manipulation in the treatment of certain upper extremity diagnoses. In the proposed amendments, manipulation was included in those diagnosis-specific treatment tables where the TWCC database showed 5.0% or more of injured employees with that diagnosis received manipulation. Acupuncture did not reach the 5.0% threshold and therefore is not included in any of the treatment tables.

The 5.0% threshold is a conservative measure because it allows for treatments that appear in at least 5.0% of the injured employee population to be included as a medically necessary normal course of treatment. The 5.0% threshold allows for the inclusion of treatment interventions that occur frequently enough in the workers' compensation system to indicate, in the absence of other data or information, a typical course of treatment.

Due to public comment concerning the use of the 5.0% threshold for inclusion of manipulation in upper extremity treatment tables, an additional analysis was performed to determine how many injured employees, who were being treated by chiropractors and osteopaths, received manipulations for treatment of the diagnoses in question. A full description of this analysis and results is contained elsewhere in this preamble.

COMMENT: Commenter stated that when TWCC staff deleted manipulation from treatment tables because of the 5.0% threshold, they did not determine what is actually medically necessary or cost-effective. By doing so, commenter believes TWCC does a disservice to the employees and the employers of Texas.

RESPONSE: The Commission disagrees. The UETG clarifies services that are reasonable and medically necessary for nonoperative treatment of upper extremity injuries for the injured employees of Texas. The 5.0% threshold allows for the inclusion of treatment interventions that occur frequently enough in the

workers' compensation system to indicate, in the absence of other data or information, a typical course of treatment. This threshold serves the majority of the injured employee population seeking medical treatment by allowing treatments that appear in at least 5.0% of the injured employee population to be included as a medically necessary typical course of treatment.

As described in detail previously in response to public comment, an additional analysis has been performed based on the differences in treatment of upper extremity diagnoses by treating doctors of different licensure. As a result of this additional analysis, manipulation has been placed back in five sets of the treatment tables where the proposed amendment would have deleted them.

COMMENT: Commenter opined that if the workers' compensation system did not pay over 5.0% of the medical budget for manipulation this should be used as a reason to leave manipulation in the treatment table.

RESPONSE: The Commission disagrees. The TWCC medical bills database included all treatments rendered to the injured employee with upper extremity diagnoses. The database included all bills for these treatments, whether or not they were reimbursed by the insurance carrier. The analysis involved a comparison of how frequently manipulation was used as a treatment for upper extremity injuries, not an analysis of how much has been reimbursed to providers for manipulative treatment.

COMMENT: Commenter states that the statute does not establish only treatments that exceed 5.0% to be included in the treatment guidelines. The commenter felt that TWCC is violating the injured worker's freedom of choice for treating doctor by eliminating payment for treatments provided by certain providers.

RESPONSE: The Commission disagrees. The Commission values the injured employee's right to choose his/her treating doctor. Treatment guidelines do not eliminate payment for treatments. The Upper Extremities Treatment Guideline clarifies those services that are reasonable and medically necessary for nonoperative care of the upper extremities for the injured employees of Texas. The guideline is not to be used as a fixed treatment protocol, but rather identifies a normal course of treatment and reflects typical courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than is outlined. The guideline also acknowledges that in atypical cases, treatment falling outside the guideline will occasionally be necessary. However, those cases that exceed the guideline level of treatment are subject to more careful scrutiny and review and require documentation of the special circumstances that justify the treatment. The guideline does not prescribe the type and frequency of treatment; treatment must be based on patient need and professional judgement. The rule is designed to function as a guideline and is not to be used as the sole reason for denial of treatments and services.

The Commission considered all relevant statutory and policy mandates and objectives and designed this rule to achieve those mandates and objectives, including the following:

(1) the establishment of medical policies and guidelines relating to use of medical services by employees who suffer compensable injuries;

(2) the establishment of medical policies relating to necessary treatments for injuries which are designed to ensure the quality of medical care and designed to achieve effective medical cost control;

(3) the establishment of a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatment and services; and

(4) the establishment of a program for systematic monitoring of the necessity of treatments administered, for detection of practices and patterns by insurance carriers in unreasonably denying authorization of payment, and for increasing the intensity of review for compliance with medical policies or fee guidelines.

Amended §134.1002 will achieve these objectives by:

(1) identifying services that are reasonable and medically necessary for treatment of upper extremity injuries;

(2)assisting all parties with regard to the appropriate treatment and management of disorders of the upper extremities in workers' compensation healthcare;

(3) establishing a guideline against which aspects of care can be compared;

(4) identifying clinically acceptable courses of care for specific upper extremity injuries;

(5) establishing documentation standards which support the appropriateness of the level of service for assessment/evaluation and on-going treatment;

(6) providing a mechanism for prospective, concurrent, and retrospective review to ensure efficient and effective health care utilization; and

(7) establishing normal courses of treatment based on clinical indicators at different levels of healing. ACUPUNCTURE.

ACUPUNCTURE.

COMMENT: Some commenters opposed the removal of acupuncture from the UETG treatment tables. Commenter stated that the National Institute of Health is conducting studies which have revealed that much is unknown and misunderstood about acupuncture, but it is consistently effective in treating a wide range of disorders. The commenter noted that pain syndromes are especially responsive to acupuncture and that restricting access to this treatment method will not serve the public interest.

Another commenter stated that acupuncture is a new field and practitioners are still learning how to utilize workers' compensation, how to file claims, and how to follow up with clients that need acupuncture.

Commenter supported leaving both acupuncture and chiropractic treatments in the UETG because they are effective and practical for disorders of the upper body. Commenters submitted documents in support of this position.

Commenter felt that deletion of acupuncture based on the frequency of its use for upper extremity diagnoses was a convoluted way to determine a therapy's effectiveness. The commenter stated that prejudices exist in the insurance industry against osteopaths, chiropractors and acupuncturists. Commenter further contended that because alternative treatments are inexpensive alternatives to surgery and expensive therapy, surgeons and physicians feel threatened and do everything possible to discredit alternative therapies in spite of scientific research that acupuncture is effective.

RESPONSE: The Commission disagrees that acupuncture should not be deleted from the five treatment tables where it is listed in the current UETG. An objective of the UETG is to establish a typical or normal course of treatment for upper extremity diagnoses. Based on additional analysis of the TWCC medical bills database, the Commission concluded that acupuncture as a treatment intervention was utilized in less than 1.0% of all claims submitted with upper extremity diagnoses. Therefore, acupuncture was not identified as a typical or normal course of treatment. Commenters submitted materials in support of keeping acupuncture in the five primary treatment tables where it is proposed for deletion. During development of the Lower Extremities Treatment Guideline, the MAC recommended that scientific studies regarding treatments be considered. Similar studies were sought for consideration regarding treatments for the upper extremities. Scientific research generally should seek to test a hypothesis and have multiple subjects. The following parameters were developed to evaluate the materials submitted by public commenters and establish whether the materials met the general definition of scientific research: a) does the study seek to test a hypothesis; b) does the study involve multiple subjects, since single subject case studies rank low as an accepted method for establishing the efficacy of treatment methods; and c) does the study address the upper extremity diagnosis in question.

Four documents were submitted during the public comment period for the UETG. After applying the parameters, one of these documents was considered an applicable scientific study. The remainder did not meet the criteria established for the following reasons: one was the NATIONAL INSTITUTES OF HEALTH (NIH) CONSENSUS DEVELOPMENT CONFERENCE STATEMENT ON ACUPUNCTURE (November 3-5, 1997). This document was an independent report of the panel and not a policy statement of the NIH or the Federal Government; one was a single subject case study; and one was an article that discussed how to treat various diagnoses with acupuncture.

As a result of the additional analysis and evaluation of the materials submitted during public comment, it was confirmed that acupuncture is not a medically necessary course of treatment for: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(D)-(F), which include the diagnoses of Olecranon Bursitis and Olecranon Impingment; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnosis of Neuropathy.

Acupuncture as a treatment intervention was utilized in less than 1.0% of all claims submitted with upper extremity diagnoses. In addition, although materials submitted in support of the use of acupuncture for shoulder conditions did meet the criteria established for scientific studies, it was not sufficient to justify adding acupuncture to the treatment tables as a normal course of treatment due to the small number of injured employees who receive acupuncture treatment for upper extremities.

AGGRAVATION.

COMMENT: Commenter recommended that the term "aggravation" be added to the glossary because there is often confusion between the terms of "exacerbation" and "aggravation." The commenter suggested the definition for aggravation be "an act or circumstance that intensifies or makes worse a pre-existing condition."

RESPONSE: The Commission agrees to add the term aggravation to the glossary. Staff research indicated that an aggravation of a preexisting condition is an injury in its own right. The term exacerbation does not indicate a new injury but an increase in the seriousness of a disease or disorder as marked by greater intensity in the signs or symptoms of the patient being treated. The following definition has been added to the glossary as subsection (h)(4): "aggravation - an act or circumstance that intensifies or makes worse a pre-existing condition."

DISPUTES.

COMMENT: Commenter stated that the proposed changes to the UETG will result in dramatic increases in medical disputes despite the Commission's statement that disputes should go down. Commenter believed that osteopaths and chiropractors will be responsible for the increase in disputes due to the proposed deletion of manipulation from the UETG. Commenter added that in "real life" the provider will spend an inordinate amount of time trying to document and fight the insurance carrier for payment because the treatment is not listed in the guideline.

RESPONSE: The Commission disagrees. Manipulation has not been removed from all treatment tables. See detailed discussion elsewhere in this preamble regarding the analysis of manipulation which resulted in its return to five of the nine sets of treatment tables from which it was proposed to be removed. In four of the nine sets of treatment tables manipulation continues to be deleted. Due to the very low volume of injured employees receiving manipulation or acupuncture treatment for these diagnoses removal should not result in an increase in disputes.

LANGUAGE CHANGES.

COMMENT: Commenter recommended amending subsection (e)(4) relating to Documentation Requirements for Unrelated or Intercurrent Illness. The commenter suggested adding: "if an injured worker has a condition, such as Diabetes, that impacts surgery or the treatment, services necessary to stabilize the patient are reimbursable as provided by the Medical Fee Guideline. The health care practitioner should clearly document the rationale for such treatment and its relation to the compensable injury."

Another commenter suggested changing subsection (d)(2)(E) so it reads as follows: " . . . If a healthcare provider's treatment deviates from this guideline, specific documentation criteria developed by the TWCC would be required to clearly delineate the need for the treatment. "

RESPONSE: The Commission disagrees with amending subsection (e)(4) relating to Documentation Requirements for Unrelated or Intercurrent Illness because the current language is sufficient in allowing for this treatment and further amendment is not necessary.

The Commission disagrees with the wording change to subsection (d)(2)(E) because specific documentation criteria developed

by the Commission is referenced under subsection (e)(3) General Documentation Requirements and subsection (e)(4) Documentation Requirements for Unrelated or Intercurrent Illness.

DUPUYTREN'S.

COMMENT: Commenter suggested a wording change in the Fractures treatment tables [figure 22: (f)(6)(G)] from Dupuytren's fracture to Dupuytren's contracture because Dupuytren's fracture is a lower extremity fracture involving the ankle. Dupuytren's contracture should be added as an upper extremity diagnosis listed under soft tissue or tendon problems.

RESPONSE: The Commission agrees in part. The specific diagnosis code 813.42, Dupuytren's fracture, radius, will be deleted from the Fractures table because it is included in the more general code 813, Fracture, radius and ulna. Dupuytren's contracture will not be added as an upper extremity diagnosis. Research and public comment shows this diagnosis is mostly associated with the lower extremities despite its appearance in the ICD-9 as an upper extremity diagnosis.

FCEs.

COMMENT: Commenter suggested that functional capacity evaluations should be left unchanged because these evaluations are used to determine a patient's progress from one stage of care to another. Another commenter supported the move of functional capacity evaluations from Treatment Interventions to Return To Work Issues. Commenter stated that this was appropriate because functional capacity evaluation is an evaluation tool not a method of treatment.

RESPONSE: The Commission agrees that FCEs should be moved to the Return to Work Issues section in the Secondary and Tertiary Levels of Care Tables. The Commission disagrees that FCEs should remain unchanged because the focus groups, and the MAC recommended that this evaluation tool was inappropriate in the Primary Level of Care; and, the MAC recommended that FCEs should be moved from the Treatment Interventions section to the Return to Work Issues section.

FISCAL.

COMMENT: Commenter disagreed with the statement that a minimal fiscal impact will result from the deletion of acupuncture and manipulation from the UETG. Commenter added that osteopathic physicians who see a large number of TWCC patients will experience a substantial negative financial impact because of the removal of osteopathic manipulative treatment (OMT) from the UETG. Commenter further stated that osteopathic physicians will also have increased costs because they will need to hire additional employees to provide the additional documentation required to provide OMT to injured workers. Another commenter expressed that the proposed deletion of manipulative and acupuncture treatment will steer patients away from potentially useful treatment and insurance administrators will not view manipulation or acupuncture as alternatives. The commenter further stated that nationwide the sick and injured are increasingly utilizing alternative health care as their primary healing method. The commenter recommended that the Commission adopt the attitude of the general public: we are responsible for our own health care decisions, allow us to choose how we are healed.

RESPONSE: The Commission disagrees. Manipulation has not been removed from all treatment tables. See detailed discussion elsewhere in this preamble regarding the analysis of manipulation which resulted in its return to five of the nine sets of treatment tables from which it was proposed to be removed. As a result, the financial impact should not be as substantial as predicted by commenter. Manipulation is being removed from four treatment tables which have a very low volume of injured employee utilization. Physicians should not therefore experience an increase in documenting the need for manipulation.

The Upper Extremities Treatment Guideline clarifies those services that are reasonable and medically necessary for nonoperative care of the upper extremities for the injured employees of Texas. The guideline is not to be used as a fixed treatment protocol, but rather identifies a normal course of treatment and reflects typical courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than is outlined. The guideline also acknowledges that in atypical cases, treatment falling outside the guideline will occasionally be necessary. However, those cases that exceed the guideline level of treatment are subject to more careful scrutiny and review and require documentation of the special circumstances that justify the treatment. The guideline does not prescribe the type and frequency of treatment nor does it limit the injured employee's choice of treating doctor; treatment must be based on patient need and professional judgement. The rule is designed to function as a guideline and is not to be used as the sole reason for denial of treatments and services.

Despite the removal of manipulation from these four treatment tables, manipulation can still be performed as an acceptable treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor. (See subsection (e) Ground Rules.)

FOCUS GROUPS.

COMMENT: Some commenters were dismayed that members of the osteopathic profession were not selected to participate in the UETG focus groups and were not able to present evidence. The commenter stated that the selection of two professions for input seems to discriminate against the other health groups that are represented on the Medical Advisory Committee. The commenter further elaborated that recommendations to remove manipulation from treatment tables came from allopathic focus groups that have no training in manipulation. The commenter felt this was in violation of antitrust laws and that the Commission is assisting the medical profession to eliminate chiropractic and osteopathic medicine providers from the TWCC system.

Another commenter suggested that the Commission has ignored the findings and recommendations of the Medical Advisory Committee in favor of focus groups. The commenter further pointed out that focus groups were held in certain locations, with certain individuals and professions invited, and the Commission reports the findings of these focus groups as gospel. The commenter described this course of action as "flies in the face the Texas Legislature purposed for the MAC." The commenter accused the Commission of choosing people of like opinion to have preconceived notions validated which led to the elimination of manipulation from the UETG and the Lower Extremities Treatment Guideline.

RESPONSE: The Commission disagrees. The Medical Review Division collects information from many parties in the workers' compensation system in reviewing guidelines. The revision of the UETG included contacting the original UETG workgroup

members, who assisted in drafting the 1996 UETG. They were asked to review the 1996 UETG, recommend changes and give written feedback on the guideline's use and effectiveness. The workgroup was composed of members from the following professions: chiropractic, medicine, physical therapy, occupational therapy and osteopathic. The osteopathic member of the original workgroup declined to review the 1996 UETG and declined to recommend changes and give feedback. In addition insurance carriers were also asked to review the UETG and give written feedback on the guideline's use and effectiveness.

Focus groups were held with chiropractic and medical doctors in Dallas, Houston and Austin. Commission resources did not allow for focus groups in additional cities or with additional provider types.

Summaries of comments from original workgroup members, insurance carriers and focus groups were presented to the MAC. The MAC reviewed and discussed summaries of comments and made recommendations for the revision of the UETG. The MAC has osteopathic physician representation. In addition many osteopathic physicians have contributed to the revision of the UETG by submitting public comment during the public comment period.

MAC.

COMMENT: Many commenters stated they understood that the Medical Advisory Committee voted not to enact the proposed guidelines and that despite this, Commission staff continues to recommend the adoption of the rule.

Some commenters stated that they understood the Medical Advisory Committee voted unanimously to keep manipulation of the extremities in place as an accepted method of treatment. A commenter further stated that he does not understand why the Commission ignores the MAC when they have the best interest of the people of Texas at heart. A commenter noted that this is not an effective cost-containment measure.

Another commenter noted that the UETG proposal preamble references the M.D. MAC representative as making a recommendation, but that the osteopathic and chiropractic MAC representatives are not referenced as making recommendations on manipulation. The commenter questioned whether one MAC member has more power to change a proposed rule than another MAC member does.

RESPONSE: The Commission disagrees. The MAC needed more time to review the UETG than was available because the UETG's sunset (termination) date was July 1, 1998. In order to avoid expiration of the guideline, a motion was approved at the January 16, 1998 MAC meeting to leave the guideline as written for the present and defer on the issue of manipulation, acupuncture and other controversial modalities of treatment until such time as a subcommittee on standardization could meet and make appropriate recommendations. At the March 20, 1998 MAC meeting, the MAC Chairman indicated the intent of the guideline standardization subcommittee was to come up with reasonable criteria to use in evaluating the appropriateness of care and reiterated that the MAC had not made any recommendations specifically regarding manipulation or acupuncture.

The advice of the MAC is important to the Medical Review Division and is considered fully together with all the other information available. Input from all MAC members is accepted equally, although staff may further seek clarification from individual MAC member(s) when necessary. Changes to the Surgical Indicators in the UETG were suggested by the M.D. MAC representative who is the only surgeon currently serving on the MAC. The MAC reviewed these changes and recommended them as well.

MANIPULATION.

COMMENT: Many commenters stated that deleting manipulative treatment is an aggressive attempt to remove appropriate chiropractic care, osteopathic and certain orthopaedic treatments from options available to injured employees. Commenters further indicated that this is not acceptable and not in the best interest of injured employees in Texas.

Many commenters requested that the Commission reconsider leaving manipulation in the UETG. A commenter submitted an addendum to their public comment which was a paper representing chiropractors opinions with respect to the use of manipulation in some upper extremity diagnoses. The opinion paper stated that manipulation is considered an appropriate treatment intervention for the diagnoses of tendinitis/tenosynovitis/musculotendinitis; epicondylitis; bicipital tenosynovitis/rotator cuff/supraspintus syndrome; rotator cuff sprain and strain/tear/shoulder impingement/fibrositis/adhesive capsulitis; and neuropathy. The opinion paper stated that manipulation is not considered advisable for fractures, but that manipulation may be considered as an appropriate treatment intervention after the fracture site has completed a reasonable phase of healing and that orthopaedic consultation and co-management is generally indicated. The opinion paper stated that manipulation can be considered as an appropriate intervention in avascular necrosis, joint instability and reflex sympathetic dystrophy. The opinion paper also stated that manipulation is generally not considered to be indicated for crush type injuries, but that sub-acute phases of crush injury involving soft-tissue adhesion and secondary joint dysfunction would benefit from manipulation techniques to help achieve restoration of function.

Many commenters stated that the United States Department of Health and Human Services' Agency for Health Care Policy and Research endorsed manipulation as being highly effective for symptomatic and functional improvement of joint problems. The commenters further indicated that there is high quality, broad-based evidence suggesting that manipulation is both appropriate and effective in the restoration of pain-free movement to the musculoskeletal system following injury.

Some commenters stated that eliminating manipulation from the UETG will limit the injured worker's legal right to choose his/her own doctor and treatment. Commenters also added that this will lead to poor outcomes, the workers' return to work prior to full recovery, and further injury. Another commenter expressed that it would be detrimental to the recovery of injured workers to remove manipulation from the UETG. Similarly, a commenter stated that this would negate osteopaths' and chiropractors' ability to use one of their most effective tools in the management of on-the-job injuries. The commenter also noted that the injured workers will suffer from this action since they will no longer receive OMT to lessen their symptoms and promote the healing process. Another commenter stated that by not beginning treatment early with mobilization, the patient is not receiving adequate care. Commenter stated that the proposed changes to the UETG are for the exclusive purpose of eliminating chiromantic and acupuncture from the treatment options available to injured employees.

Commenters expressed that the Commission is attempting to define chiropractors' scope of practice through the UETG. The commenter advised that manipulation of joints of the extremities is within the current scope of the chiropractic act. The commenter indicated that decisions on scope can only come from the Texas Legislature and the Attorney General's Office. Other commenters stated that the proposed changes to the UETG would place a hardship on chiropractic providers. Commenters stated that the proposed removal of manipulation from the UETG not only limits the scope of practice for chiropractors and osteopaths, but is discriminatory against the specialties.

Some commenters expressed that manipulation for upper extremities has proven to be an extremely valuable and effective treatment that restores joint mobility and eliminates pain in their patients. One commenter stated that doctors of chiropractic have used and proved the effectiveness of manipulative treatment since its founding by B. J. Palmer in 1895. Commenters stated that manipulative treatments are recognized by many of the medical professions, and it is part of the curriculum in chiropractic colleges. Commenter further added that all governmental studies performed have shown the efficacy of chiropractic manipulation over other forms of treatment.

Another commenter stated that OMT has been a medically accepted treatment for soft tissue injuries and somatic dysfunction of the upper extremities for decades. The commenter also stated that the Commission presents no scientific, peer reviewed studies to prove that OMT has no efficacy in the treatment of upper extremity injuries.

Commenter stated that manipulation is very effective for problems dealing with the body joints. The commenter noted that manipulation has been used for thousands of years and that it is twice as effective and half as expensive for treatment of joint problems. Commenter stated that manipulation is criticized because it is not well understood. The commenter described the manipulation process in detail explaining the physiological changes that occur during each phase of the manipulation. Commenter also stated that manipulation benefits patients with upper extremity-type injuries by increasing motion and faster healing, thus returning the patient back to work.

Commenter explained that in his practice most patients completely recover from an upper extremity injury without surgery by using manipulation. Commenter is also treating patients with failed surgeries who seek chiropractic treatment to better their condition.

Commenter opined that manipulation is the most appropriate method of treatment for many health problems and/or injuries involving the upper extremities. Another commenter expressed that manipulation of the spine and extremities is a key component of appropriate treatment of the injured worker. Commenters stated that manipulation treatment of carpal tunnel and pronator syndromes as opposed to surgical intervention can save millions of dollars. The commenters also noted that manipulation is incredibly safe compared to surgical interventions. Commenter further stated that employees and employers deserve authorized access to a more safe method of treatment and a quicker return to work.

A commenter explained that the proposed changes prevent chiropractors from treating upper extremities relative to the spine and that it limits chiropractors from treating the patient thoroughly and professionally. A commenter requested that the Commission reconsider the proposed changes to the UETG.

A commenter submitted articles in support of retaining manipulation in the following treatment tables: Hand and Wrist Treatment Tables 28 TAC §134.1002(f)(3)(A)-(C); Elbow Treatment Tables 28 TAC §134.1002(f)(4)(A)-(C); Olecranon Bursitis and Olecranon Impingment 28 TAC §134.1002(f)(4)(D)-(F); Shoulder Treatment Tables 28 TAC §134.1002(f)(5)(A)-(C); Shoulder Treatment Tables 28 TAC §134.1002(f)(5)(D)-(F); Upper Extremities Treatment Tables 28 TAC §134.1002(f)(6)(A)-(C), 28 TAC §134.1002(f)(6)(J)-(L), 28 TAC §134.1002(f)(6)(P)-(R), 28 TAC §134.1002(f)(6)(V)-(X), 28 TAC §134.1002(f)(6)(Y)-(AA).

Commenter explained that the vast majority of complaints related to carpal tunnel syndrome are successfully and appropriately treated via fast-stretch manipulation of the involved upper extremity.

Commenter stated that manipulation is extremely important in resolving extremity injuries with both soft tissue and osseous involvement. Commenters stated that the proposed changes to the UETG are discriminatory against the chiropractic profession and would take away a much needed treatment for the injured workers.

Commenter urged the Commission to consider the benefits of manipulation which he described as a conservative, cost-effective, non-invasive treatment. Commenters noted that it is well documented in the literature that proper range of motion of any joint is directly related to the health of that joint.

Commenter stated that manipulation is a warranted treatment for all levels of care and for nearly every condition included in the UETG, except for acute fractures, complete tears of the rotator cuff, avascular necrosis and lacerations. Commenter further suggested that joint mobilization should replace manipulation for the treatment tables that address joint instability.

Another commenter indicated that there are certain contraindications for the use of manipulation such as presurgical rotator cuff tear, avascular necrosis or malignancy. Commenter then stated that manipulation is extremely valuable in treating adhesive capsulitis, post surgical rehabilitation, and carpal tunnel syndrome.

Commenter stated that in all cases of carpal tunnel syndrome that she has treated resulted in significant to complete relief. Commenter added that this is the most compelling reason to retain manipulation in the guideline.

Commenter stated that the Commission will conduct the same type of manipulation analysis on the UETG as was used for the Lower Extremities Treatment Guideline.

Commenter stated that he found upper extremity disorders were most effectively treated with non-medicated, non-surgical approach used by chiropractors. Commenter further added that manipulation and the use of physical medicine modalities proved to be the most satisfactory from both a monetary and worker-preference perspective. Commenter continued to elaborate that since chiropractors are licensed health care providers they are permitted and compelled by law to use techniques at their disposal to improve or resolve injuries of those seeking care from them.

Studies regarding manipulation to upper extremities were submitted.

Commenter stated that medical or surgical interventions are more expensive than alternative therapies.

Commenter further added that he has found that injured workers who sought manipulation have a lower recurrence rate than those who received medication as treatment.

Commenter stated that his understanding of the proposed changes to the UETG will eliminate doctors of chiropractic and osteopathy as sources of medical help for injured workers with upper extremity injuries.

Commenter stated that it is a well known fact that manipulative treatment has been proven to decrease symptomatic expression and increase functional improvement to the affected joints.

RESPONSE: The Commission agrees in part. The Upper Extremities Treatment Guideline clarifies those services that are reasonable and medically necessary for nonoperative care of the upper extremities for the injured employees of Texas. The guideline is not to be used as a fixed treatment protocol, but rather identifies a normal course of treatment and reflects typical courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than is outlined. The guideline also acknowledges that in atypical cases, treatment falling outside the guideline will occasionally be necessary. However, those cases that exceed the guideline level of treatment are subject to more careful scrutiny and review and require documentation of the special circumstances that justify the treatment. The guideline does not prescribe the type and frequency of treatment; treatment must be based on patient need and professional judgement. The rule is designed to function as a guideline and is not to be used as the sole reason for denial of treatments and services.

The Commission disagrees with the commenters' assertion that the Commission is attempting to remove appropriate chiropractic and osteopathic care from the UETG. Focus groups recommended that manipulation be removed as a treatment intervention in nonoperative treatment tables because they did not see these treatment interventions as reasonable and medically necessary normal courses of treatment. The focus groups' recommendations regarding manipulative treatment for upper extremities were brought before the MAC, but the MAC did not reach consensus on the focus groups' recommendations. As a result, the Commission further analyzed the TWCC medical bills database for the period of April 1, 1996 through March 31, 1997 to evaluate frequency of the use of manipulative treatment for upper extremity injuries in the workers' compensation system. Manipulation was included in those diagnosis-specific treatment tables where the TWCC database showed 5.0% or more of injured employees with that diagnosis received manipulation. The 5.0% threshold was chosen because it offers a conservative measure that allows for the inclusion of treatment interventions that occur frequently enough in the workers' compensation system to indicate, in the absence of other data or information, a typical course of treatment.

The proposed amendment was not an attempt to limit the injured employee's right to choose a treating doctor. Through public comment it was brought to the Commission's attention that the methodology used to calculate the 5.0% threshold did not take into consideration that the majority of injured employees receiving manipulative treatment for upper extremity injuries were receiving those treatments from chiropractors and osteopaths. Therefore, staff further analyzed the data and materials submitted concerning the nine sets of treatment tables where manipulation was proposed for deletion. This subsequent analysis included a further breakdown of the data that was originally collected to calculate the 5.0% threshold.

In the nine sets of treatment tables where manipulation was proposed for deletion because the 5.0% threshold was not met, further analysis revealed that the injured employees who did receive manipulation, received it from primarily doctors of osteopathic and chiropractic. Osteopaths and chiropractors are included in the list of doctors in the Act from which an injured employee may choose a treating doctor. Therefore, the first part of the additional analysis was performed to give an indication of the frequency of use of manipulation by chiropractors and osteopaths. The results indicated that for the diagnoses contained in five out of the nine sets of treatment tables in question, manipulation was frequently used by these provider types. The other four sets of treatment tables showed inconsistent frequency of use by provider type. The five sets of treatment tables where manipulation was frequently used as a treatment intervention by osteopaths and chiropractors are: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The second part of this analysis consisted of looking at the number of injured employees who received treatment from an osteopath or chiropractor versus those who received any treatment from other treating doctors for upper extremity diagnoses in the nine sets of treatment tables in question. For the diagnoses listed in the five sets of treatment tables (listed previously) 7.0% to 30% of the injured employees who sought treatment for these injuries received treatment from an osteopath or a chiropractor. For the diagnoses listed in the remaining four sets of treatment tables of the nine sets proposed for deletion, only 0% to 4.0% of the injured employees who sought treatment for these injuries received treatment from an osteopath or chiropractor. These four treatment tables are: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

The next part of the analysis consisted of evaluating the studies submitted during public comment and the Texas Chiropractic Association (TCA) opinion paper, which was based on a survey of Texas chiropractors. The following parameters were developed to evaluate the materials submitted by public commenters and establish whether the materials met the general definition of scientific research: a) does the study seek to test a hypothesis; b) does the study involve multiple sub-

jects, since single subject case studies rank low as an accepted method for establishing the efficacy of treatment methods; and c) does the study address the upper extremity diagnoses in question. The studies submitted support including manipulation in the following treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The TCA strongly endorsed manipulation as being an appropriate treatment intervention for the following five treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

The TCA suggested that manipulation could be an appropriate treatment intervention or was not generally considered appropriate for the following four treatment tables: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

With the additional analysis and evaluation of the materials submitted during public comment, The Commission agrees that manipulation is a medically necessary normal course of treatment for Hand and Wrist: Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder: Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy, because: manipulation is performed by chiropractors and osteopaths with a consistently higher frequency; these diagnoses have a high patient volume; materials submitted support the use of manipulation as a normal course of treatment for these diagnoses; and the TCA strongly endorses the use of manipulation as an appropriate type of treatment for these diagnoses.

Manipulation has therefore not been deleted from the following five treatment tables: Hand and Wrist Treatment Tables, 28 TAC §134.1002(f)(3)(A)-(C), which include the diagnoses of Tendinitis, Stenosing Tenosynovitis, Musculotendinitis, Musculotendinous Problems; Elbow Treatment Tables, 28 TAC §134.1002(f)(4)(A)-(C), which include the diagnoses of Musculotendinitis/ Tendinitis: Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(A)-(C), which include the diagnoses of Tendinitis: Bicipital, Supraspinatus (rotator cuff), Musculotendinous and Periarticular Problems of the Shoulder; Shoulder Treatment Tables, 28 TAC §134.1002(f)(5)(D)-(F), which include the diagnoses of Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome; and Upper Extremities Treatment Tables, 28 TAC §134.1002(f)(6)(A)-(C), which include the diagnoses of Neuropathy.

Also, as a result of this further analysis and evaluation of the materials submitted during public comment, it was confirmed that manipulation is not a medically necessary normal course of treatment for avascular necrosis, joint instability, crush injuries and reflex sympathetic dystrophy because: manipulation was not performed by chiropractors and osteopaths with consistently high frequency in these four diagnoses; these diagnoses involve low number of injured employees (42 out of 63,688 claimants with upper extremity diagnoses who received manipulation from a chiropractor or osteopath); materials submitted did not support the use of manipulation as a normal course of treatment for these diagnoses; and TCA indicated that manipulation could be an appropriate treatment or was generally not considered an appropriate treatment for these four diagnoses.

Therefore, manipulation is deleted from the following four treatment tables: Upper Extremities, 28 TAC §134.1002 (f)(6)(J)-(L), which includes the diagnosis of Avascular Necrosis; Upper Extremities, 28 TAC §134.1002 (f)(6)(P)-(R), which includes the diagnosis of Joint Instability; Upper Extremities, 28 TAC §134.1002 (f)(6)(V)-(X), which includes the diagnosis of Crush Injuries; and Upper Extremities, 28 TAC §134.1002 (f)(6)(Y)-(AA), which includes the diagnosis of Reflex Sympathetic Dystrophy.

Despite the removal of manipulation from these four treatment tables, manipulation can still be performed as an acceptable treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor.

The Commission neither agrees nor disagrees with the commenters' statement that the United States Department of Health and Human Services endorses manipulation as being highly effective for symptomatic and functional improvement of joint problems because neither copies nor citations of this endorsement were made available to staff for review.

The Commission disagrees that the Commission is attempting to define a chiropractor's scope of practice. The Upper Extremities Treatment Guideline clarifies those services that are reasonable and medically necessary for nonoperative care of the upper extremities for the injured employees of Texas. The guideline is not to be used as a fixed treatment protocol, but rather identifies a normal course of treatment and reflects typical

courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than is outlined. The guideline also acknowledges that in atypical cases, treatment falling outside the guideline will occasionally be necessary. However, those cases that exceed the guideline level of treatment are subject to more careful scrutiny and review and require documentation of the special circumstances that justify the treatment. The guideline does not prescribe the type and frequency of treatment nor the doctor to be used by the injured employee; treatment must be based on patient need and professional judgement. The rule is designed to function as a guideline and is not to be used as the sole reason for denial of treatments and services. Because the guideline does not prescribe the type and frequency of treatment, a chiropractors' scope of practice is not impinged upon.

Despite the removal of manipulation from these four treatment tables, manipulation can still be performed as an acceptable treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor. (See subsection (e) Ground Rules.)

The Commission agrees that manipulation is a medically necessary normal course of treatment for Carpal Tunnel Syndrome, Adhesive Capsulitis, and other soft tissue with osseus involvement injuries based on additional analysis conducted and described previously. Manipulation will not be deleted from Upper Extremities Treatment, 28 TAC §134.1002 (f)(6)(A)-(C) which addresses Neuropathy which includes Carpal Tunnel Syndrome; Shoulder Treatment Table, 28 TAC §134.1002 (f)(5)(D)-(F) which addresses diagnoses for Rotator Cuff: Sprain/Strain, Tear Shoulder Impingement Syndrome which includes Adhesive Capsulitis; as well as the following three treatment tables which include soft tissue with osseus involvement injuries, Hand and Wrist Treatment Tables, 28 TAC §134.1002 (f)(3)(A)-(C), Elbow Treatment Tables, 28 TAC §134.1002 (f)(4)(A)-(C), and Shoulder Treatment Tables, 28 TAC §134.1002 (f)(5)(A)-(C).

The Commission agrees in part that manipulation needs to be included for post-surgical rehabilitation. Post-surgical treatment is already addressed throughout the primary, secondary and tertiary treatment tables of the guideline, therefore manipulation is included in those treatment tables where it has been determined to be a medically necessary and normal course of treatment based on an additional analysis conducted and described previously.

The Commission disagrees that joint mobilization should replace manipulation in the treatment tables for joint instability. Manipulation is being deleted from the treatment tables for joint instability because an additional analysis (described previously) determined that manipulation was not a medically necessary normal course of treatment for joint instability. Despite the removal of manipulation from these treatment tables, manipulation can still be performed as an acceptable treatment modality provided that sufficient documentation is submitted by the treating doctor.

In addition, joint mobilization is considered a part of "Outpatient Evaluation and Therapy" which is already included in these tables.

METHODOLOGY.

COMMENT: Some commenters stated that it was their understanding that the Commission considers all literature, reference materials, case studies and outcome measurements to be non-scientific. The commenters questioned whether the Commission considered the federal government's view of manipulation as being highly effective and safe to be non-scientific as well.

Commenter added that manipulation is recommended for conditions, such as carpal tunnel, as outlined in peer-reviewed journals and can save thousands of dollars in unnecessary surgery.

Commenter stated that medical literature reports the restoration of proper motion of injured joints allows for the facilitation of soft tissue healing and decreases the likelihood of long term disability in an injured joint. The commenter further added that his diagnostic texts list algorithms that include joint manipulation as a protocol for several upper extremity conditions. The commenter then questioned why the Commission's guidelines would deviate from established and recognized medical texts.

Commenter expressed confusion as a result of the Commission's refusal to accept a textbook as scientific. The commenter questioned why an unpublished draft is used as a source in the UETG's bibliography. The commenter stated that this is an unequal requirement for determining what is a "scientific" publication and added that medical textbooks are published only after the treatment modalities presented in them are scientifically proven.

Commenter stated that he was in the original workgroup that first developed the UETG and that extracts and articles that appeared in peer-reviewed journals were submitted to substantiate the necessity of manipulation in certain conditions.

RESPONSE: The Commission disagrees that the standard used to qualify reliable studies was inappropriate. During development of the Lower Extremities Treatment Guideline (LETG), the MAC recommended that scientific studies regarding treatments be considered. Similar studies were sought for consideration regarding treatment for the upper extremities. Scientific research generally should seek to test a hypothesis and to have multiple subjects. The following parameters were developed to evaluate the materials submitted by public commenters and establish whether the materials met the general definition of scientific research: a) does the study seek to test a hypothesis; b) does the study involve multiple subjects, since single subject case studies rank low as an accepted method for establishing the efficacy of treatment methods; and c) does the study address the upper extremity diagnoses in question.

One hundred thirty two documents supporting manipulation were submitted during the public comment period for the UETG. After applying the parameters, only 26 of these documents were considered applicable scientific studies. The remainder did not meet the specified criteria for the following reasons:

21 could not be evaluated because only the title was submitted with no summary or abstract;

23 were single-subject case studies;

46 were articles that discussed how to perform manipulation or described various conditions;

12 were research studies that were not related to any upper extremity diagnoses in question; and

four were other documents such as chapters from textbooks, surgical procedures and research committee publications.

The 26 research studies used evaluated manipulation and had positive findings for the following conditions: general shoulder problems, frozen shoulder, tennis elbow, and carpal tunnel

syndrome. Manipulation has been retained in the treatment tables which include these diagnoses.

The Commission neither agrees nor disagrees with the remaining commenters' statement concerning manipulation as being highly effective according to peer-reviewed journals, algorithms, the federal government, and other medical literatures because copies of these cited sources were not made available to staff.

The Commission neither agrees nor disagrees with the commenters' statement that the United States Department of Health and Human Services endorses manipulation as being highly effective for symptomatic and functional improvement of joint problems because neither copies nor citations of this endorsement were made available to staff for review.

Textbook chapters were submitted and evaluated along with other documents. These textbook chapters did not meet the criteria established for scientific studies. Similarly, the unpublished draft that a commenter referenced was a general resource used to develop the 1996 UETG and not used to evaluate proposed revisions.

Other sources of information were also used in developing the amendments to the UETG. See the detailed discussion of additional analysis of TWCC data elsewhere in this preamble.

COMMENT: Commenter critiqued the Commission's analysis as simplistic and described it as another example of how imprecision causes misunderstanding. The commenter stated that by assuming that because a certain diagnosis is used it is the proper or primary diagnosis and that it is used consistently from profession to profession has introduced error into the analysis. The commenter stated that error was also introduced into the analysis when insurance billing records were used to compare treatments because many physicians do not bill for each and every service rendered on a visit.

RESPONSE: The Commission disagrees. The TWCC Medical Fee Guideline specifically instructs providers on the correct billing of manipulation. It is assumed that health care providers are properly billing in accordance with the TWCC rules and guidelines. Additional analysis was performed when public comment brought to the Commission's attention the issues about the use of manipulation being concentrated in the practice of chiropractic and osteopathy. As a result of that analysis, the amendment to the UETG was changed. See the description of this analysis detailed previously in this preamble.

COMMENT: Commenter stated that while the Commission rejected literature as non-scientific in regard to evaluating the effectiveness of osteopathic manipulation, it used a non-scientific, anti-osteopathic, and anti-chiropractic biased method of deleting manipulation from treatment guidelines.

Commenter stated that the proposed changes to the UETG are poorly substantiated and do not reflect the benefits of manipulation and acupuncture to the injured employees. Commenter requested that the Commission not adopt the proposed changes until further comment and professional input can be made.

Commenter stated that the Commission is not allowing sufficient time for the medical community to respond to the proposed changes to the UETG with scientific literature, papers, personal experience and outcome studies. The commenter felt that this is arbitrary and discriminatory.

RESPONSE: The Commission disagrees. The Commission's method of analyzing the issues and re-analyzing the issues in response to public comment is detailed elsewhere in this preamble. The standards set for scientific literature are also explained in detail elsewhere in this preamble. The explanation of the methodology and the results of analysis are evidence that the Commission has not engaged in a biased exercise to delete manipulation from the UETG.

The Commission disagrees that the medical community has not had sufficient time to respond to the proposed changes to the UETG. The medical community has had several different avenues for providing comment beginning in July of 1997 when the original work group members that worked on the 1996 UETG were contacted to evaluate the UETG and recommend revisions. In September and October of 1997, focus groups were held with members of the medical community to gather input into the revision process. The MAC discussed revisions to the UETG at their November 1997 and January 1998 meetings. The medical community further contributed to the revisions of the UETG by submitting comments during the public comment period between February 27, 1998 and March 30, 1998.

NUTRITIONAL SUPPLEMENT.

COMMENT: Commenter stated that nutritional supplements are only included for neuropathy and should be included in all treatment tables.

RESPONSE: The Commission disagrees. MAC members and focus groups did not recommend the need for addition of nutritional supplements for any diagnosis other than neuropathy. The treating doctor can recommend nutritional supplement with documentation for medical necessity. Each case will be evaluated retrospectively on an individual basis.

OBJECTIVE FINDINGS.

COMMENT: Commenter recommended that in subsection (h)(33) the word "competent" be removed from the phrase "competent medical evidence" as it appears in the definition of "objective findings" because the assumption should be that physicians practicing in the workers' compensation system are competent. The commenter also recommended that the last sentence, "without reliance on the subjective symptoms perceived by the employee" be deleted from the definition of "objective findings," because the AMA guides allow impairment for pain which is in conflict with the last statement.

RESPONSE: The Commission disagrees. The definition in the UETG of "objective findings" is taken from §401.011(33) of the Texas Worker's Compensation Act.

OUTPATIENT EVALUATIONS.

COMMENT: Commenter expressed concern that manipulation was proposed to be removed for osteopathic physicians and chiropractors but that the guideline would allow physical therapists to perform manipulation under the treatment "outpatient evaluation and therapy". Commenter recommended that "outpatient evaluation and therapy" be removed from all treatment tables because it is discriminatory.

RESPONSE: The Commission disagrees. Outpatient Evaluation and therapy includes more modalities than just manipulation. No input from the work group members, focus groups or MAC members indicated that outpatient evaluation and therapy was not a medically necessary normal course of treatment.

Despite the removal of manipulation from four sets of treatment tables, manipulation can still be performed as an acceptable

treatment modality for the diagnoses listed in those tables, provided that sufficient supporting documentation is submitted by the treating doctor.

OPPOSED.

COMMENT: Commenter questioned the purpose of the guideline–if the purpose is to point out what most people do, the commenter expressed that the Commission's limited review accomplishes this. However, if the purpose is to provide the insurance administrators with a guideline for acceptable treatment, the commenter does not believe that the Commission has accomplished this. Commenter stated that the Commission is again attempting to undermine legislative mandate by the proposed changes to the UETG. The commenter recommends the Commission reconsider and not make any changes to the UETG.

RESPONSE: The Commission disagrees. The purpose of the UETG is to identify a normal course of treatment and reflect typical courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than outlined. The rule is designed to function as a guideline and is not to be used as a sole reason for denial of treatment and services. The guideline fulfills the legislative objectives mandate by:

(1) identifying services that are reasonable and medically necessary for treatment of upper extremity injuries;

(2) assisting all parties with regard to the appropriate treatment and management of disorders of the upper extremities in workers' compensation healthcare;

(3) establishing a guideline against which aspects of care can be compared;

(4) identifying clinically acceptable courses of care for specific upper extremity injuries;

(5) establishing documentation standards which support the appropriateness of the level of service for assessment/evaluation and on-going treatment;

(6) providing a mechanism for prospective, concurrent, and retrospective review to ensure efficient and effective health care utilization; and

(7) establishing normal courses of treatment based on clinical indicators at different levels of healing.

PEER REVIEW.

COMMENT: Commenter recommended that subsection (d)(2)(D) be amended to read "This rationale shall include elements of the guideline" instead of "This rationale may . . ." because the insurance carrier should be held to the same standard as the health care provider.

RESPONSE: The Commission disagrees. The use of the word "shall" as stated by commenter, implies that the insurance carrier is restricted to this treatment guideline as the only consideration in evaluating medical necessity of treatment. The use of the word "may" acknowledges that there are considerations in addition to the UETG which carriers should evaluate before making a decision regarding reimbursement. Examples of additional considerations include (but are not limited to): was pre-authorization obtained; is this a duplicate charge; and is the injury compensable. In addition, carriers are not precluded from requiring additional doucumentation or disputing a treatment contained in the UETG for a particular injured employee. Therefore, "may" is used in subsection (d)(2)(D).

TREATMENT.

COMMENT: Commenter recommended subsection (e)(1) be amended to read "However, cases that utilize treatment not listed in the guidelines' level of treatment shall require documentation of the special circumstances justifying that treatment."

RESPONSE: The Commission disagrees. The commenter's recommendation would change the intent of this sentence. The sentence as written includes the listed treatments, but also includes the frequency and the timeliness of the treatment. Making the recommended change would eliminate the frequency and the timeliness of the treatment.

The amendment is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, the Texas Labor Code, §413.011, which authorizes the commission to establish by rule medical policies and guidelines relating to necessary treatments for injuries, and the Texas Labor Code, §413.013, which authorizes the commission to establish by rule a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; and to establish by rule a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the commission to ensure that the medical policies or guidelines are not exceeded. These statutory provisions clearly authorize the Commission to adopt a rule such as §134.1002 which includes guidelines relating to necessary treatments for injuries and promotes resolution of disputes regarding health care treatments and services.

§134.1002. Upper Extremities Treatment Guideline.

(a) Table of Contents. The following headings and their corresponding subdivisions comprise a table of contents for this section:

(1) Introduction - subsection (b):

(A) Effective Date - subsection (b)(1);

(B) Purpose - subsection (b)(2);

(C) Goals - subsection (b)(3);

(D) Development Process - subsection (b)(4);

(E) Philosophy of Care - subsection (b)(5);

(2) Role of the Treating Doctor - subsection (c):

(A) Statutory Requirements - subsection (c)(1);

(B) Treating Doctor Responsibilities - subsection (c)(2);

(C) Referrals - subsection (c)(3);

(D) Diagnostics - subsection (c)(4);

(E) Expectations and Compliance - subsection (c)(5);

(3) Application Instructions for Involved Parties/Concepts and Governing Principles - subsection (d);

(4) Ground Rules - subsection (e):

(A) Introduction - subsection (e)(1);

(B) Ground Rules - subsection (e)(2);

(C) General Documentation Requirements - subsection (e)(3);

(D) Documentation Requirements for Unrelated or Intercurrent Illness - subsection (e)(4);

(5) Nonoperative Treatment Tables - subsection (f):

(A) Introduction to Treatment Tables - subsection (f)(1);

(B) Definition of Levels of Care - subsection (f)(2);

(C) The Hand and Wrist - subsection (f)(3);

(D) The Elbow - subsection (f)(4);

(E) The Shoulder - subsection (f)(5);

(F) Upper Extremity - subsection (f)(6);

(6) Surgical Indicators - subsection (g):

(A) Hand and Wrist - subsection (g)(1);

(B) Elbow - subsection (g)(2);

(C) Shoulder - subsection (g)(3);

(D) Upper Extremities - subsection (g)(4);

(7) Glossary - subsection (h); and

(8) Bibliography - subsection (i).

(b) Introduction.

(1) Effective Date. This version of the guideline shall be effective for all medical treatments and services provided on or after the effective date of this guideline. Medical treatments and services provided prior to the effective date of this version of the guideline shall be subject to the version of the Upper Extremities Treatment Guideline in effect at the time the medical treatments and services were provided.

(2) Purpose. The purpose of this guideline is to clarify those services that are reasonable and medically necessary for treatment of upper extremity injuries for the injured workers of Texas. There may be injured workers who will require more or less treatment than is recommended in this guideline. *This is a guideline and shall not be used as the sole reason for denial of treatments and services.*

(3) Goals. The primary goals of this guideline are:

(A) to assist all parties with regard to the appropriate treatment and management of upper extremity injuries;

(B) to establish elements against which aspects of care can be compared;

(C) to establish a guideline to identify services that are reasonable and medically necessary for treatment of specific diagnoses;

(D) to establish documentation standards which support the appropriateness of the level of service; and

(E) to provide a mechanism of prospective, concurrent, and retrospective review for efficient and effective health care utilization.

(4) Development Process. The Texas Workers' Compensation Commission (TWCC), in conjunction with health care providers and other parties in the system, have developed clinical and diagnostic treatment guidelines. Three major components in the guideline development process are as follows:

(A) Design and Methodology. A search of all 50 workers' compensation state agencies revealed that only a few had developed treatment guidelines. The format and design of these guidelines were mainly in narrative presentation. The focus of this treatment guideline is toward a matrix approach versus straight text.

(B) Provider Work Group. Research into successful guidelines developed in the private sector identified that involvement from provider work groups achieves the best outcome regarding clinical policy development.

(C) Public Evaluation. The evaluation of the developed guideline should be broad and include comments from employees, employers, health care providers and insurance carriers.

(5) Philosophy of Care. The health care of the injured worker is a coordinated team effort. All parties including employees, employers, health care providers, insurance carriers and the Texas Workers' Compensation Commission should promote quality health care, injury specific treatment and appropriateness of care. Communication between all parties must remain open in order to achieve rapid recovery from the effects of the injury. This communication should promote a timely return to modified or full duty work that takes into account the job demands and the functional capabilities of the injured worker.

(c) Role of Treating Doctor (Primary Doctor\Gatekeeper).

(1) Statutory Requirements. The following sections of the Texas Labor Code and specific Commission rules address key areas pertaining to those services that are reasonable and necessary for treatment of the upper extremity.

(A) Section 408.021(a). An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

(i) cures or relieves the effects naturally resulting from the compensable injury;

(ii) promotes recovery; or

(iii) enhances the ability of the employee to return to or retain employment.

(B) Section 408.021(b). Medical benefits are payable from the date of the compensable injury.

(C) Section 408.021(c). Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.

(D) Section 408.025(b). The commission by rule shall adopt reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations.

(E) Section 408.025(c). The treating doctor shall be responsible for maintaining efficient utilization of health care.

(2) Treating Doctor Responsibilities.

(A) The role of the treating doctor is an important role which requires the treating doctor to monitor all health care services being provided for the injured worker. These responsibilities of the treating doctor are vital aspects of the goal to ensure that the injured worker receives quality health care. This monitoring extends to ensure:

(i) the identification of the extent and severity of the injury initially;

(ii) the appropriateness of all services;

(iii) the relatedness of all services to the workers' compensation injury;

(iv) separation and referral of nonrelated health care services for management by other health plans;

(v) whether the treatment is duplicative, necessary and/or effective;

(vi) the appropriate cost of the services;

(vii) the quality of the treatment; and

(viii) enhancement and promotion of effective communication among all involved parties.

(B) Refer to Commission §126.9 of this title (relating to Choice of Treating Doctor and Liability for Payment) and §133.3 of this title (relating to Responsibilities of Treating Doctor) for responsibilities of the treating doctor.

(3) Referrals. The treating doctor is responsible for recommending timely and appropriate referrals. The treating doctor must clearly delineate the clinical rationale for all referrals. The documentation contained in the TWCC required reports should clearly outline whether the purpose of the referral is to corroborate the diagnosis and/or proposed course of treatment or to initiate ongoing treatment. Once a consultation or referral has occurred, the consulting or referral doctor should submit a summary report or initiate a case management phone call back to the treating doctor.

(4) Diagnostics. Diagnostic work should be performed in accordance with the recommended testing and timeframes contained in this guideline. If the need arises to deviate from the guideline, then a clinical rationale must be provided which adequately substantiates the need for this deviation. The need to repeat previously completed diagnostic procedures due to the quality of the study may trigger a review. All health care providers involved in the treatment of an injured worker must share copies of all diagnostic studies, films, and reports in order to avoid unnecessary duplication of procedures. Section 133.2 of this title (relating to Sharing Medical Reports and Test Results) addresses the need to share medical records, including diagnostic studies, to avoid duplication. Section 133.106 of this title (relating to Fair and Reasonable Fees for Required Reports and Records) addresses reimbursement for copies of records.

(5) Expectation and Compliance.

(A) All health care providers must encourage injured workers to be active participants in their health care treatment regimens and must communicate to the injured worker realistic expectations regarding the potential outcome of this treatment as it relates to his/her physical functioning and/or ability to return to work. Therefore, documenting the injured worker's compliance with his/her treatment regimen is important when reporting the progress of his/her recovery.

(B) Health care providers must explain to the injured worker in clear terms the extent and severity of the injury and the treatment needed. Health care providers must define the symptomatology that is directly and/or indirectly related to the injury and specify treatment not covered under workers' compensation.

(d) Application Instructions for Involved Parties - Concepts and Governing Principles.

(1) Health care provider. This guideline shall be used as a tool by the health care provider to establish the required elements to initiate and continue treatment. If, a healthcare provider's treatment deviates from this guideline, documentation of the medical condition that specifically requires treatment outside the guideline parameters would be required to clearly delineate the need for the treatment

(A) This guideline identifies typical treatment based on normal tissue healing responses for the average injured worker.

(B) This guideline recognizes that a subset of injured workers will be found to be outside the parameters of this guideline. If a healthcare provider's treatment deviates from this guideline, documentation would be required to clearly delineate the need for the treatment.

(C) This guideline should be used as a tool which identifies the recommended treatment parameters for treatment of injured workers within the workers' compensation system.

(D) This guideline identifies the need to provide documentation which clearly explains the reason for the treatment, the relatedness to the workers' compensation injury and alternative treatment.

(E) The health care provider is responsible for educating the injured worker about health care treatment appropriate to the workers' compensation injury.

(F) This guideline recommends timely return to work of either full or modified job duties based upon the injured worker's functional capacity which includes ability, clinical status, and either full or modified job requirements.

(G) The health care provider is responsible for formulating a treatment plan and revising the treatment plan based on response to treatment. The treatment plan should be provided to the insurance carrier as early as possible.

(2) Insurance Carriers. The insurance carrier shall use this guideline to compare treatment prospectively, concurrently and retrospectively with the predetermined elements contained in the guides.

(A) This document and its parameters serve only as a guideline and shall not be used as the sole reason for denial or requirement of treatments and services.

(B) This guideline provides a tool by which to monitor the injured worker's recovery process.

(C) This guideline serves as a tool to assist the insurance carriers in the medical audit process.

(D) This guideline shall not be used to direct care toward a specific health care discipline or to a specific type of treatment. The insurance carrier is responsible for providing their specific documentation and rationale if treatment is denied. This rationale may include elements of the guideline. Additional information regarding the rationale for denial of treatment may also be derived from the injured worker's medical records and from the professional opinion of a peer review, if utilized.

(E) A subset of injured workers will be found to be outside the parameters of this guideline. If a healthcare provider's treatment deviates from this guideline, documentation would be required to clearly delineate the need for the treatment.

(F) The insurance carrier is responsible for performing a focus review of injury. This focus review shall primarily consist of case management. The focus review must clarify and attempt to

reach agreement that the proposed treatment is appropriate as early as possible. Concurrent case management and bill review activities should address and focus on:

(i) adherence to treatment plans;

(ii) clinical progress;

(iii) return to work issues;

(iv) medical necessity;

(v) injured worker compliance with the treatment;

(vi) services provided consistent with treatment plan;

(vii) response to treatment;

(viii) improvement in injured workers' progress;

(ix) recommendations for changes in treatment in situations where there is no compliance, plateau, and/or there is minimal or no progress; and

(x) achievement. of goals, improvement sooner than treatment plan indicated.

(3) Medical Review Division. The Medical Review Division shall use the guideline as a tool for the basis of their administrative review of prospective, concurrent and retrospective treatment. This guideline shall also be used as a tool in conducting on-site and desk audits for both health care providers and insurance carriers.

(4) Consulting or Peer Review Health Care Provider. This guideline shall be used as a reference in advising the Medical Review Division and to determine when the need for an unbiased medical opinion is indicated. The peer reviewer should use his/her clinical expertise in conjunction with the clinical intent of the guideline to address issues.

(5) Injured Worker. The injured worker must understand his or her role in complying with recommended treatment. The recovery process requires active cooperation of the injured worker. The health care provider is responsible for educating the injured worker about health care treatment appropriate to the workers' compensation injury. (as stated in paragraph (1)(E) of this subsection).

(6) Employer. The employer shall be responsible for reporting the compensable injury in a timely fashion to ensure that there is no delay in the treatment of the compensable injury. The employer should, when appropriate, be responsible for working with the insurance carrier and health care providers to ensure that the injured worker is afforded the opportunity to return to work in either a modified or full employment capacity as rapidly as possible within the medical limitations of his or her injury.

(e) Ground Rules.

(1) Introduction. Texas Workers' Compensation Commission treatment guidelines are not to be used as fixed treatment protocols. The guidelines reflect services that are reasonable and medically necessary for treatment of upper extremity injuries. The guidelines recognize that a subset of injured workers will be found to be outside the guidelines' parameters. However, cases exceeding the guidelines' level of treatment shall be subject to more careful scrutiny and review and shall require documentation of the special circumstances justifying that treatment. The guidelines should not be seen as prescribing the type, frequency, or duration of treatment. Treatment must be based on the injured worker's need and the doctor's professional judgment.

(2) Ground Rules.

(A) Notwithstanding any other provision of this rule, treatment of a work related injury must be:

(i) adequately documented;

(ii) evaluated for effectiveness and modified based on clinical changes;

(iii) provided in the least intensive setting;

(iv) cost effective;

(v) consistent with this guideline which may include providing a documented clinical rationale for deviation from this guideline;

(vi) objectively measured and demonstrate functional gains; and

(vii) consistent in demonstrating ongoing progress in the recovery process by appropriate re-evaluation of the treatment.

(B) Communication between all health care providers involved in treating the injured worker must ensure that all previous treatment and diagnostic tests are considered when developing a treatment plan. All reports and records shall be made available to all health care providers to prevent unnecessary duplication of tests and examinations. (Refer to subsection (c)(2), (3), and (4) of this section.)

(C) Patient education is an essential component in ensuring patient compliance to all treatment. Education is essential for the active cooperation of the patient in all aspects of health care and as a means to prevent re-injury. The patient must understand his or her role in the recovery and return to work processes. The health care provider is responsible for educating the injured worker about health care treatment appropriate to the workers' compensation injury. (as stated in subsection (d)(1)(E) of this section).

(D) All parties in the workers' compensation system should work together to ensure that the injured worker returns to work at the earliest medically appropriate time. Return-to-work is an important therapeutic approach which benefits the injured worker. The health care provider shall communicate with the injured worker, employer and the insurance carrier to coordinate a successful return to work.

(E) The level of service shall be the same as the health care provider's usual and customary level of service regardless of the payor system.

(F) Although not the typical course of treatment, there may be circumstances in which the injured worker may move between levels of care or utilize interventions in more than one level of care simultaneously, depending on clinical indicators.

(G) All health care providers treating an injured worker are responsible for substantiating in their documentation the level of service for which they request reimbursement. All payors have the responsibility to review all documentation submitted as the basis for the treatment and services provided.

(H) Treatment durations are cumulative; it may not always be necessary to use full durations for any given level of care.

(I) Any new treatment must meet acceptable standards of care (as defined in the Glossary - subsection (h) of this section) and may be subject to review by Texas Workers' Compensation Commission.

(J) Preauthorization of any treatments or services shall be as required in the Commission's preauthorization rule.

(K) When the injured worker displays signs and symptoms which may require further evaluation by a Qualified Mental Health Provider, refer to §134.1000 of this title (relating to the Mental Health Treatment Guideline) for parameters regarding documentation, evaluation and treatment.

(L) When an injured worker must travel in order to obtain appropriate and necessary medical care for a compensable injury, reimbursement for travel expenses is governed by §134.6 of this title (relating to Travel Expenses).

(3) General Documentation Requirements.

(A) The health care provider's documentation is vital as an information source of the injured worker's injury and treatment, and also provides information which impacts income benefits. For these reasons, many of the Commission's rules have set time requirements for submission of required reports. For more information, refer to Chapter 133 Subchapter B of this title, (relating to Required Reports).

(B) Documentation shall be provided by the health care provider to determine the level of care to be provided and the necessity for that care. The elements of the documentation may include:

(i) a description of the injury, including the events surrounding that injury and the extent and severity of that injury;

(ii) a description of any pre-existing condition(s), complicating conditions and/or any non-related conditions;

(iii) a treatment plan, including proposed methods of treatment, expected outcomes, and probable duration of treatment;

(iv) updates to the treatment plan as needed, including the clinical progress of the injured worker, and any revisions needed to the treatment plan based on the injured worker's response to treatment;

(v) education/information provided to the injured worker regarding his or her injury and treatment plan, and the injured worker's compliance with this treatment plan; and

(vi) documentation substantiating the need for deviation from the guideline, if necessary.

(C) Permanent impairment for compensable injuries in workers' compensation shall be limited to those injuries and illnesses for which doctors are able to demonstrate objective findings.

(D) The need for emergency treatment must be based on the doctor's professional judgment. This documentation must provide a clear explanation of the nature of the emergency, the injured worker's medical condition, complications which could occur, as well as any irreversible conditions which occurred or could occur, as a result of the emergency.

(4) Documentation Requirements for Unrelated or Intercurrent Illness. Situations may arise where certain medical conditions need to be delineated or clarified prior to intervention. Treatment administered to other body areas (not a part of the original injury) or for a pre-existing medical condition(s) must be identified and the relation of this treatment to the compensable injury must be documented by the health care provider. If this treatment appears not to be related to the compensable injury, then the health care provider should inform the injured worker that this treatment may not be covered by the insurance carrier. The health care provider should clearly document the rationale for such treatment and its relation to the compensable injury.

(f) Nonoperative Treatment Tables. (Refer to subsection (g) of this section for Surgical Indications).

(1) Introduction to Nonoperative Treatment Tables. The treatments, set out in the following tables, represent treatment that is reasonable and medically necessary for a given period of time according to the diagnosis(es). The "Treatment Interventions" sections and "Diagnostic Procedures" sections of the Treatment Tables are in alphabetical order and do not infer numerical sequence. There will be some injured workers who require less treatment, and other injured workers who require more treatment than is outlined. This document serves as a guideline and should not be used as the sole reason for denial or requirement of treatment. The provision of specific services to an injured worker is dependent on the injured worker's diagnosis, and response to treatment.

(2) Definition of Levels of Care.

(A) Primary Level of Care. This level of care is generally considered to be appropriate for injured workers immediately following the compensable injury; however, the injured worker in this level of care may also be an early postoperative patient or may be experiencing an acute exacerbation of his or her chronic condition. Since partial or total cessation of work over a brief period of time is also considered to be part of the primary level of care, further treatment by a health care provider may not be considered necessary at this level of care. Little or no deconditioning has occurred due to the injury, immobilization or decreased activity. The goals are to prevent disease, alleviate or minimize the effects of the illness or injury and to maintain function.

(B) Secondary Level of Care. This level of care is for those injured workers who have not returned to productivity after the normal healing process. This level of care is designed to facilitate return to productivity, including return to work in either full or modified duty, before the onset of a chronic condition. This level of care may also be indicated for the injured worker whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. It is individualized, time limited and of limited intensity. The injured worker has a history of a limited-to-good response to early primary treatment with persistent symptoms limiting activities of daily living. The objective physical examination demonstrates findings suggestive of early deconditioning including loss of range of motion and/or strength with limitation of activities of daily living. Evidence of mental health or psychosocial barriers may be present which impede the injured worker's clinical progress.

(C) Tertiary Level of Care. This level of care is interdisciplinary, individualized, coordinated, and intensive. It is designed for the injured worker who demonstrates physical and psychological changes consistent with a chronic condition. In general, differentiation from secondary treatment includes medical direction, intensity of services, severity of injury, individualized programmatic protocols with integration of physician, mental health, and disability or pain management services and specificity of physical/psychosocial assessment. This level includes a documented history of persistent failure to respond to nonoperative or operative treatment which surpasses the usual healing period for that injury. Psychosocial issues such as substance abuse, affective disorders, and other psychological disorders may be present. This level of care is indicated by a documented inhibition of physical functioning evidenced by pain sensitivity, loss of sensation, and nonorganic signs such as fear which produce a physical inhibition or limited response to reactivation

treatment. This level of care may also be indicated for the injured worker whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. This situation would be evidenced by an excessive transitional period of light duty or significant episodes of lost work time due to the need for continued medical treatment. This level of care is also indicated for those injured workers who cannot tolerate either primary or secondary levels of care.

(D) Criteria to Distinguish Between Secondary and Tertiary Level of Care. Many factors may determine the choice between secondary and tertiary levels of care. In general, if lower cost secondary treatment can be effective, this level of care is preferred over the more expensive tertiary care. However, if the documented condition of the injured worker indicates the need for more intensive treatment, the tertiary level of care may be more appropriate. Key factors in determining the need for secondary versus tertiary care include:

(i) the time elapsed since injury;

(ii) the presence of psychosocial barriers to recovery such as but not limited to depression, substance abuse, personality disorder, etc., and the severity of these barriers;

(iii) the lack of responsiveness to previously attempted treatment;

(iv) the severity of physical/functional deconditioning; and/or

(v) socioeconomic barriers to recovery.

(3) Hand and Wrist Treatment Tables.

(A) Figure 1: 28 TAC §134.1002 (f)(3)(A).

(B) Figure 2: 28 TAC §134.1002 (f)(3)(B).

(C) Figure 3: 28 TAC §134.1002 (f)(3)(C).

(4) Elbow Treatment Tables.

(A) Figure 4: 28 TAC §134.1002 (f)(4)(A).

(B) Figure 5: 28 TAC §134.1002 (f)(4)(B).

(C) Figure 6: 28 TAC §134.1002 (f)(4)(C).

(D) Figure 7: 28 TAC §134.1002 (f)(4)(D).

(E) Figure 8: 28 TAC §134.1002 (f)(4)(E).

(F) Figure 9: 28 TAC §134.1002 (f)(4)(F).

(5) Shoulder Treatment Tables.

(A) Figure 10: 28 TAC §134.1002 (f)(5)(A).

(B) Figure 11: 28 TAC §134.1002 (f)(5)(B).

(C) Figure 12: 28 TAC §134.1002 (f)(5)(C).

(D) Figure 13: 28 TAC §134.1002 (f)(5)(D).

(E) Figure 14: 28 TAC §134.1002 (f)(5)(E).

(F) Figure 15: 28 TAC §134.1002 (f)(5)(F).

(6) Upper Extremities Tables.

(A) Figure 16: 28 TAC §134.1002 (f)(6)(A).

(B) Figure 17: 28 TAC §134.1002 (f)(6)(B).

(C) Figure 18: 28 TAC § 134.1002 (f)(6)(C).

(D) Figure 19: 28 TAC § 134.1002 (f)(6)(D).

(E) Figure 20: 28 TAC § 134.1002 (f)(6)(E).

(F) Figure 21: 28 TAC § 134.1002 (f)(6)(F).

(G) Figure 22: 28 TAC § 134.1002 (f)(6)(G).

(H) Figure 23: 28 TAC § 134.1002 (f)(6)(H).

(I) Figure 24: 28 TAC § 134.1002 (f)(6)(I).

(J) Figure 25: 28 TAC § 134.1002 (f)(6)(J).

(K) Figure 26: 28 TAC § 134.1002 (f)(6)(K).

(L) Figure 27: 28 TAC § 134.1002 (f)(6)(L).

(M) Figure 28 : 28 TAC § 134.1002 (f)(6)(M).

(N) Figure 29: 28 TAC §134.1002 (f)(6)(N).

(O) Figure 30: 28 TAC § 134.1002 (f)(6)(O).

(P) Figure 31: 28 TAC § 134.1002 (f)(6)(P).

(Q) Figure 32: 28 TAC § 134.1002 (f)(6)(Q).

(R) Figure 33: 28 TAC § 134.1002 (f)(6)(R).

(S) Figure 34: 28 TAC § 134.1002 (f)(6)(S).

(T) Figure 35: 28 TAC § 134.1002 (f)(6)(T).

(U) Figure 36: 28 TAC § 134.1002 (f)(6)(U).

(V) Figure 37: 28 TAC § 134.1002 (f)(6)(V).

(W) Figure 38: 28 TAC § 134.1002 (f)(6)(W).

(X) Figure 39: 28 TAC § 134.1002 (f)(6)(X).

(Y) Figure 40: 28 TAC § 134.1002 (f)(6)(Y).

(Z) Figure 41: 28 TAC § 134.1002 (f)(6)(Z).

(AA) Figure 42: 28 TAC §134.1002 (f)(6)(AA).

(BB) Figure 43: 28 TAC §134.1002 (f)(6)(BB).

(CC) Figure 44: 28 TAC §134.1002 (f)(6)(CC).

(DD) Figure 45: 28 TAC §134.1002 (f)(6)(DD).

(g) Surgical Indications. Indications for surgery include but are not limited to the following list.

(1) Hand and Wrist. Indications for surgery in Tendinitis/Stenosing Tenosynovitis/Musculotendinitis/Musculotendinous Problems include, but are not limited to:

(A) unresponsive to at least a six week trial of conservative treatment;

(B) tendon is locked in position.

(2) Elbow.

(A) Indications for surgery in Musculotendinitis/Tendinitis (Lateral Epicondylitis, Medial Epicondylitis, Musculotendinous and Periarticular Problems of the Elbow) include, but are not limited to:

(i) failure to respond to non-operative treatment program for six months;

(ii) no improvement after a total of three corticosteroid injections;

(iii) presence of atrophy or weakness of the forearm extensors; and/or

(iv) early surgical intervention (before six months), may be considered if the patient is severely disabled.

(B) Indications for surgery in Olecranon Bursitis include, but are not limited to:

(i) infection is present; or

(ii) bursitis is recurrent despite aspiration.

(3) Shoulder. Indications for surgery in Rotator Cuff (Sprain/Strain, Tear, Shoulder Impingement Syndrome) include, but are not limited to:

(A) confirmed tear on Magnetic Resonance Imaging (MRI);

(B) profound weakness;

(C) no response to six months of conservative care.

(4) Upper Extremities.

(A) Neuropathy.

(i) Indications for Surgery in Carpal Tunnel Syndrome. Indications for surgery include, but are not limited to:

(I) failure to respond to non-operative treatment;

(II) presence of thenar atrophy or weakness or significant hyperesthesia/dysesthesia (especially with objective impairment of sensibility as determined by two point discrimination or by light touch);

(III) progressive symptoms;

(IV) presence of space-occupying lesion in carpal canal; and/or

(V) presence of compartment syndrome or extensive injury to forearm and wrist.

(ii) General Indications for surgery include, but are not limited to EMG/NC studies indicative of compressive neuropathy accompanying positive physical findings and symptoms that are persistent despite conservative management.

(B) Muscle/Ligament/Capsular Injuries (Acute/Chronic).

(i) Indications for Surgery in Ulnar Collateral Ligament Injury of the Thumb (Sprain/Tear) include, but are not limited to:

(I) any displaced or avulsed fracture of joint with ligament attachment;

(II) complete ligament disruption;

(III) Stener's lesion (displacement of the ulnar collateral ligament superficial to the abductor tendon);

(IV) open joint injury;

(V) contaminated wound.

(ii) Indications for Surgery in DeQuervain's Stenosing Tenosynovitis include, but are not limited to:

(I) incomplete response to nonoperative treatment after six weeks of treatment;

(II) presence of a condition which is not amenable to nonsurgical treatment (e.g., separate abductor pollicis longus and extensor pollicis brevis tendon compartments).

(iii) General Indications for surgery include, but are not limited to:

(I) joint instability;

(II) joint malalignment;

(III) pain impairing the functional use of the joint.

(C) Fractures.

(i) Indications for Surgery in Clavicle Fracture include, but are not limited to:

(I) displaced fractures or;

(II) open fractures.

(ii) Indications for Surgery in Fracture Surgical Neck, Humerus include, but are not limited to:

(I) displaced or angulated fracture reduction;

(II) joint involvement;

(III) associated neurologic or vascular injury present;

(IV) open fracture.

(iii) Indications for Surgery in Distal Radius Fracture include, but are not limited to:

(I) displaced fracture;

(II) intra-articular fracture;

(III) open fracture;

(IV) acute carpal tunnel syndrome;

(V) associated complex soft-tissue injury (consideration of compartment syndrome).

(iv) General Indications for surgery include, but are not limited to:

(I) displaced fracture;

(II) intra-articular fracture;

(III) open fracture;

(IV) nonunion of fracture.

(D) Avascular Necrosis.

(E) Intraarticular Pathology (Traumatic Arthritis). Indications for surgery include, but are not limited to:

(i) persistent synovitis;

(ii) locking of the joint;

(iii) painful arthritis documented radiologically, uncontrollable with NSAID.

(F) Joint Instability. Indications for surgery include, but are not limited to repeated episodes of instability despite conservative therapy.

(G) Lacerations (Tendons, Nerves). Indications for surgery include, but are not limited to:

(i) loss of function;

(ii) contaminated wound.

(H) Crush Injuries Indications for surgery include, but are not limited to:

(i) open fracture(s);

(ii) nail bed disruption;

(iii) malalignment of fragments.

(h) Glossary.

(1) Acceptable standards of care.

(A) Standard - something established by authority, custom, or general consent as a model or example; the generally accepted norm for quality and quantity.

(B) Acceptable standards of care - outlines of the types of tests and treatments which are established as normal and warranted for a specific type of injury.

(2) Active care vs. passive care.

(A) Active care - modes of treatment or care requiring that the injured worker participate in the level of care received.

(B) Passive care - modes of treatment or care which do not require the injured worker to participate in his or her care; i.e., the care is "done to" or "applied to" the injured worker (e.g., hot packs or cold packs)

(3) Acute - beginning abruptly with marked intensity or sharpness then subsiding after a relatively short period of time.

(4) Aggravation - an act or circumstance that intensifies or makes worse a pre-existing condition.

(5) Algorithm - a step-by-step procedural pathway for solving a problem or accomplishing some end.

(6) Assessment/Evaluation - the act or process of inspecting or testing for evidence of injury, disease or abnormality.

(7) Chronic - developing slowly and persisting for a long period of time, often for the remainder of the lifetime of the individual.

(8) Chronic pain management - a program which provides coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning, and decrease the dependence on the health care system of persons with chronic pain syndrome.

(9) Clinical plateau - a period of time of relative stability in which the injured worker displays minimal or minor changes in his/her condition.

(10) Clinical progress versus lack of clinical progress.

(A) Clinical progress - documented improvement in the condition of the injured worker, in response to the injured worker's current treatment program.

(B) Lack of clinical progress - documented absence of change in the condition of the injured worker over a period of time of no less than one month, requiring re-evaluation of the injured worker's condition and re-evaluation of the current treatment program.

(11) Consulting doctor - a doctor who provides an opinion or advice regarding the evaluation and/or management of a specific problem, as requested by the treating doctor, the Commission, or the insurance carrier. A consulting doctor may only initiate diagnostic and/or therapeutic services with approval from the treating doctor (see the definition of "referral doctor" in paragraph (40) of this subsection).

(12) Decompensation - the inability of the body to maintain adequate functioning in the presence of an injured, abnormal, or nonfunctioning body system

(13) Denial parameters - a set of established elements or boundaries beyond which testing or treatment may be denied.

(14) Diagnosis - the art or act of identifying a disease or injury from evaluation of its signs and symptoms.

(15) Diagnostic module - a standard which establishes normal parameters or boundaries of time within which to perform studies to assist in identifying a disease, injury, or abnormality.

(16) Diagnostic tests - objective studies performed to assist in identifying a disease, injury, or abnormality.

(17) Doctor - a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) Exacerbation - an increase in the seriousness of a disease or disorder as marked by greater intensity in the signs or symptoms of the patient being treated.

(19) Examination - the act or process of inspecting or testing for evidence of disease, injury, or abnormality.

(20) First doctor.

(A) First - preceding all others in time

(B) First doctor - the initial doctor who evaluates and treats the injured worker, and who may or may not become the treating doctor.

(21) Focus review - to critically examine the prospective, concurrent, and retrospective care received by the injured worker as related to the compensable injury.

(22) Frequency of intervention - the number of occurrences in a specified time in which the health care provider acts to treat the injured worker.

(23) Functional capacity evaluation - a battery of tests administered and evaluated to determine the injured worker's ability to perform tasks related to both his or her daily activities and his or her job performance. This evaluation consists of the following elements:

(A) a physical examination and neurological evaluation which includes an assessment of the physical appearance of the injured worker, flexibility of the extremity joint or spinal region, posture and deformities, vascular integrity, the presence or absence of sensory deficit, muscle strength and reflex symmetry;

(B) a physical capacity evaluation which includes quantitative measurements of range of motion and muscular strength and endurance; and

(C) a dynamic functional abilities test which includes activities of daily living, hand function tests, cardiovascular endurance tests, and static positional tolerance.

(24) Health care facility - a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(25) Health care practitioner -

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a non-licensed individual who provides or renders health care under the direction or supervision of a doctor.

(26) Health care provider - a health care facility or health care practitioner

(27) Impairment - any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(28) Interdisciplinary programs - programs in which the delivery of services is provided by more than one type of health care service (e.g., occupational therapy, physical therapy, counseling services, medical services) and in which there is a coordination between the disciplines regarding the care plan and the delivery of care to the injured worker. This type of program includes work hardening, outpatient medical rehabilitation and chronic pain management.

(29) Intervention - the act or fact of interfering with a condition to modify it or with a process to change its course.

(30) Level of service - refers to primary, secondary, or tertiary care.

(31) Maximum Medical Improvement (MMI) - the earlier of the following three items:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated; or

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

(C) the date determined as provided by §408.104 of the Texas Labor Code.

(32) Medical necessity - the determination that the tests or treatment provided is required based on the presenting signs and symptoms.

(33) Module - a standard or unit of measurement

(34) Objective findings - signs, or test results that can be measured or quantified or are otherwise perceptible to persons other than the affected individual. A medical finding of impairment resulting from a compensable injury, based on competent medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(35) Outpatient medical rehabilitation - a program of coordinated and integrated services, evaluation, and/or treatment with emphasis on improving the functional levels of the persons served. The program is interdisciplinary in nature and is applicable to those persons who have severe functional limitations of recent onset or recent regression or progression or those persons who have not had prior exposure to rehabilitation. Services may be directed toward the development and/or maintenance of the optimal level of functioning and community integration of the persons served.

(36) Primary/secondary/tertiary levels of care.

(A) Primary Level of Care. This level of care is generally considered to be appropriate for injured workers immediately following the compensable injury; however, the injured worker in this level of care may also be an early postoperative patient or may be experiencing an acute exacerbation of his or her chronic condition. Since partial or total cessation of work over a brief period of time is also considered to be part of the primary level of care, further treatment by a health care provider may not be considered necessary at this level of care. Little or no deconditioning has occurred due to the injury, immobilization or decreased activity. The goals are to prevent disease, alleviate or minimize the effects of the illness or injury and to maintain function.

(B) Secondary Level of Care. This level of care is for those injured workers who have not returned to productivity after the normal healing process. This level of care is designed to facilitate return to productivity, including return to work in either full or modified duty, before the onset of a chronic condition. This level of care may also be indicated for the injured worker whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. It is individualized, time limited and of limited intensity. The injured worker has a history of a limited-to-good response to early primary treatment with persistent symptoms limiting activities of daily living. The objective physical examination demonstrates findings suggestive of early deconditioning including loss of range of motion and/or strength with limitation of activities of daily living. Evidence of mental health or psychosocial barriers may be present which impede the injured worker's clinical progress.

(C) Tertiary Level of Care. This level of care is interdisciplinary, individualized, coordinated, and intensive. It is designed for the injured worker who demonstrates physical and psychological changes consistent with a chronic condition. In general, differentiation from secondary treatment includes medical direction, intensity of services, severity of injury, individualized programmatic protocols with integration of physician, mental health, and disability or pain management services and specificity of physical/psychosocial assessment. This level includes a documented history of persistent failure to respond to nonoperative or operative treatment which surpasses the usual healing period for that injury. Psychosocial issues such as substance abuse, affective disorders, and other psychological disorders may be present. This level of care is indicated by a documented inhibition of physical functioning evidenced by pain sensitivity, loss of sensation, and nonorganic signs such as fear which produce a physical inhibition or limited response to reactivation treatment. This level of care may also be indicated for the injured worker whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. This situation would be evidenced by an excessive transitional period of light duty or significant episodes of lost work time due to the need for continued medical treatment. This level of care is also indicated for those injured workers who cannot tolerate either primary or secondary levels of care.

(37) Proper clinical documentation - written records which meet the requirements outlined by statute and rule and which convey the following information to the required parties:

(A) a description of the injury, including the extent, and severity and events surrounding that injury;

(B) a description of any pre-existing, complicating, and/or any non-related conditions;

(C) a treatment plan, including proposed methods, frequency, and probable duration of treatment, with expected outcomes;

(D) updates to the treatment plan as needed, including the clinical progress of the injured worker and any revisions needed to the treatment plan in light of the injured worker's response to treatment;

(E) education/information provided to the injured worker regarding his or her injury and treatment plan, and the injured worker's compliance with this treatment plan; and

(F) documentation substantiating the need for deviation from the guideline, if necessary.

(38) Reason for denial - refer to paragraph (13) of this subsection on denial parameters.

(39) Referral - the process of directing or redirecting (as a medical case or a patient) to an appropriate specialist or agency for definitive treatment.

(40) Referral doctor - a consulting doctor who initiates health care treatments at the request or with the consent of the treating doctor.

(41) Secondary treatment - refer to paragraph (36)(B) of this subsection regarding secondary level of care.

(42) Self-referral - the direction of a patient to another doctor, institution or facility wherein the referring doctor has a financial or conflict of interest element.

(43) Significant neurological deficit - rapidly progressing symptoms of sensory impairment, progressive numbness, or increased physiological impairment such as severe weakness, bowel or bladder dysfunction directly related to the spinal injury.

(44) Single point of contact - one person whom the doctor/health care provider(s) may contact for all questions regarding a specific injured worker.

(45) Sprain - an injury to a ligament.

(A) Mild (Grade 1) - only a few fibers are torn; ligament is mostly intact and the joint is stable;

(B) Moderate (Grade 2) - more fibers are torn, resulting in some instability with abnormal joint motion and some functional loss;

(C) Severe (Grade 3) - ligaments are completely disrupted and instability may be severe (synonymous with marked).

(46) Static - characterized by a lack of movement or change.

(47) Strain - an injury to a muscle.

(A) Mild (Grade 1) - only a few fibers are torn; muscle is mostly intact and functional;

(B) Moderate (Grade 2) - more muscle fibers are torn resulting in muscle pain with contraction;

(C) Severe (Grade 3) - tendons are completely disrupted, extreme pain and loss of use of muscle.

(48) Tertiary treatment - refer to paragraph (36)(C) of this subsection regarding tertiary level of care.

(49) Subjective complaints - report of signs or symptoms, perceivable only by the injured employee, relating to the injury and which cannot be independently verified or confirmed by recognized laboratory or diagnostic tests or signs observable by physical examination.

(50) Time limited - a specific duration of clock or calendar time which is not exceeded on a routine basis.

(51) Treating doctor - the doctor primarily responsible for the employee's health care for an injury (synonymous with the terms "primary gatekeeper" and "gatekeeper").

(52) Treatment duration - calendar time allowed for treatment for a specific level of care.

(53) Treatment module - a standard which establishes routine parameters of time within which to provide therapy for the illness or injury.

(54) Treatment plan - a written document which must contain the following components:

(A) type of intervention/treatment modality;

(B) frequency of treatment;

(C) expected duration of treatment;

(D) expected clinical response to treatment; and

(E) specification of a re-evaluation timeframe.

(55) Work conditioning - a highly structured, goal-oriented, individualized treatment program using real or simulated work activities in conjunction with conditioning tasks. Work conditioning is a single disciplinary approach.

(56) Work hardening - a highly structured, goal-oriented, individualized treatment program designed to maximize the ability of the persons served to return to work. Work hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured worker. Work hardening provides a transition between management of the initial injury and return to work while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served.

(i) Bibliography. The following items comprise a bibliography for this guideline.

(1) The American Academy of Orthopaedic Surgeons. REVISED CLINICAL POLICY DRAFTS. May, 1995.

(2) The American Academy of Orthopaedic Surgeons. PHASE ONE DRAFT ALGORITHMS. National Orthopaedic Leadership Conference. May, 1995.

(3) The American College of Occupational and Environmental Medicine, Committee on Practice Parameters. UPPER EXTREMITY GUIDELINE. Unpublished, 1994.

(4) American Society for Surgery of the Hand. REGIONAL REVIEW COURSE IN HAND SURGERY SYLLABUS. 1993.

(5) Anderson, D., Zyribulis, R., Ciullo, J. "Scapular Manipulation for Reduction of Anterior Shoulder Dislocations." CLINICAL ORTHOPAEDICS AND RELATED RESEARCH. 1982. (164). pp 181-3.

(6) Anderson. H., Johannsen H.V., Stephen, O., Sjbjerg, J.O., "Frozen Shoulder. Arthroscopy and Manipulation in General Anesthesia' Followed by Early Passive Mobilization." UGESKR LAEGER, 1996 JAN 8, 158 (2):147-50.

(7) Bonebrake, Alan R., Fernandez,Jeffrey E., Marley, Robert J., Dahalan, Jalauddin B., and Kilmer, Kelvin J. "A Treatment

for Carpal Tunnel Syndrome: Evaluation of Objective and Subjective Measures." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 13, No. 9. November/December, 1990.

(8) Bonebrake, A., Fernandez, J. Dahalan, J., Marley, R. "A Treatment for Carpal Tunnel Syndrome: Results of a Follow-Up Study." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS 1993 MAR 16(3) pp. 125-39.

(9) Brier, Steven R. "Rotator Cuff Disease: Current Trends in Orthopedic Management." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 15, No. 2. February, 1992.

(10) Brox, Jens Ivar, Staff, Peer H., Ljunggren, Anne Elisabeth, and Brevik, John Ivar. "Arthroscopic Surgery Compared with Supervised Exercises in Patients with Rotator Cuff Disease (Stage II Impingement Syndrome)." BMJ. Vol. 307. October 9, 1993.

(11) Burton, A. "A Comparative Trial of Forearm Strap and Topical Antiinflammatory as Adjuncts to Manipulative Therapy in Tennis Elbow." MANUAL MEDICINE. 1988. 3(4). pp 141-3.

(12) Campbell, Donald T. and Stanley, Julian C. "Experimental and Quasi-Experimental Designs for Research." Hougton Miffling Co., 1963.

(13) Cantu, Robert I. and Grodin, Alan J. MYOFASCIAL MANIPULATION: THEORY AND CLINICAL APPLICATION. Aspen Publishers, Inc. 1992.

(14) Crawford, John P. and Noble, William John. "Anterior Interosseous Nerve Paralysis: Cubital Tunnel (Kiloh-Nevin) Syndrome." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 11, No. 3. June, 1988.

(15) De Branche, B "Epicondylian Tendinitis Treated by Cervical Manipulation: A Study in 58 Patients." ANNALES READAPTATION ET DE MEDICINE PHYSIQUE. 1986. 29. pp 65-74.

(16) Dobrusin, Richard. "An Osteopathic Approach to Conservative Management of Thoracic Outlet Syndromes." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 89, No. 8. August, 1989.

(17) Duncan, K.H., Lewis, R.C. Jr., Raez, G., Nordyke, M.D., "Treatment of Upper Extremity Reflex Sympathetic Dystrophy with Joint Stiffness Using Sympatholytic Bier Blocks and Manipulation." ORTHOPEDICS 1988 JUN 11(6) pp. 883-886.

(18) Eddie, G. "A Series of 43 Patients Complaining of Shoulder Pain Who Responded to Treatment of the First Rib." JOURNAL OF ORTHOPAEDIC MEDICINE. 1995. 17(2). pp 62-5.

(19) Ekelund, Al, Rydell, N. "Combination Treatment for Adhesive Capsulitis of the Shoulder." CLINIAL ORTHOPEDICS. 1992 SEP; 282:105-109.

(20) Feinberg, Ed. "Bicipital Tendinitis: The Glass Arm Pitcher." ICA INTERNATIONAL REVIEW OF CHIROPRACTIC. Vol. 49. May/June, 1993.

(21) Garland, D., Razza, B., Waters, R. "Forceful Joint Manipulation in Head-Injured Adults with Heterotopic Ossification." CLINICAL ORTHOPAEDICS AND RELATED RESEARCH. 1982 SEP. 169. pp 133-8.

(22) Gelvberman, Richard H., Eaton, Richard, and Urbaniak, James R. "Peripheral Nerve Compression." INSTRUCTIONAL COURSE LECTURES. The American Academy of Orthoapaedic Surgeons, James D. Heckman, Editor. March, 1994.

(23) Gilkey, David P. and Williams, Holly A. "Ergonomics & CTDs: The Problems, Causes, Enforcement and Solutions." ACA JOURNAL OF CHIROPRACTIC. August, 1994.

(24) Goff, Charles W., Alden, John O., and Aldes, John H. TRAUMATIC CERVICAL SYNDROME AND WHIPLASH. J.B. Lippincott Company.

(25) Greenman, Philip E. PRINCIPLES OF MANUAL MEDICINE. Williams & Wilkins.

(26) Hammer, Warren I. FUNCTIONAL SOFT TISSUE EXAMINATION AND TREATMENT BY MANUAL METHODS: THE EXTREMITIES. Aspen Publishers, Inc. 1991.

(27) Hill, JJ JR., Bogumill, H. "Manipulation in the Treatment of Frozen Shoulder." ORTHOPEDICS 1988 SEP; 11(9):1255-1260.

(28) Hosshmand, Hooshang. CHRONIC PAIN: REFLEX SYMPATHETIC DYSTROPHY PREVENTION AND MANAGEMENT. CRC Press, Inc. 1993.

(29) Irowa, G. Ozin. "Avascular Necrosis of the Carpal Lunate: A Case Report." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 10, No. 6. December, 1987.

(30) Jahn, Warren T. "Spontaneously Reduced Partial Shoulder Dislocation: A Case Report and Literature Review." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 5, No. 1. March, 1982.

(31) Jaskoviak, Paul A. and Schafer, R.C. APPLIED PHYSIOTHERAPY: PRACTICAL CLINICAL APPLICATIONS WITH EMPHASIS ON THE MANAGEMENT OF PAIN AND RELATED SYNDROMES. Second Edition. The American Chiropractic Association.

(32) Kushner, Shirley and Reid, David C. "Manipulation in the Treatment of Tennis Elbow." THE JOURNAL OF ORTHOPAEDIC AND SPORTS PHYSICAL THERAPY. Vol. 7, No. 5. March, 1986.

(33) Lea & Febiger, Publisher. ARTHRITIS AND ALLIED CONDITIONS: A TEXTBOOK OF RHEUMATOLOGY. Vol. 12. Twelfth Edition. 1993.

(34) Levine, David Z. "Burning Pain in an Extremity: Breaking the Destructive Cycle of Reflex Sympathetic Dystrophy." POSTGRADUATE MEDICINE. Vol. 90, No. 2. August, 1991.

(35) Levy, O., Rath, E., Atar, D. "Combined Treatment for Adhesive Capsulitis of the Shoulder." HAREFUAH 1997 NOV 2; 133(9):357-359.

(36) Liebenson, Craig S. "Thoracic Outlet Syndrome: Diagnosis and Conservative Management." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 11, No. 6. December, 1988.

(37) Mariano, Kurt A., McDougle, Mark A., and Tanksley, Gary W. "Double Crush Syndrome: Chiropractic Care of an Entrapment Neuropathy." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 14, No. 4. May, 1991.

(38) Mierau, D., Cassidy, J., Bowen, V., Dupuis, P., Noftall, F. "Manipulation and Mobilization of the Quantitative

Radiographic and Range of Motion Study." MANUAL MEDICINE. 1988. 3(4). pp 135-40.

(39) Mior, Silvano A. and Dombrowsky, N. "Scapholunate Failure: A Long-Term Clinical Follow-Up." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 15, No. 4. May, 1992.

(40) Muramatsu, K., Kawai, S., Akino, T., Sunago, K. Doi, K., "Treatment of Chronic Regional Pain Syndrome Using Manipulation Therapy and Regional Anesthesia." J. TRAUMA 1998 JAN 44(1) pp. 189-192.

(41) Nause, E. "Efficient treatment of epicondylitis." MANUELLE MENDIZIN. 1987. 25. pp 82-85

(42) Ogilvie-Harris, D.J.; Biggs, D.J., Fitsialos, D.P., Mackay, M. "The Resistant Frozen Shoulder." Manipulation Versus Arthroscopic Release. CLIN ORTHOP, 1995 OCT (319): 238-48.

(43) Quigley. T.,"Checkerein Shoulder: A Type of "Frozen" Shoulder" CLINICAL ORTHOPEDICS AND RELATTED RESEARCH 1982 (164) pp. 4-9.

(44) Reed, Presley, Editor. THE MEDICAL DISABILITY ADVISOR. Second Edition. LRP Publications. 1994.

(45) Rizk,T., Christopher, R., Pinals, R., Higgins, A., Frix, R. "Adhesive Capsulitis (Frozen Shoulder): A New Approach to its Management." ARCHIVES OF PHYSICAL MEDICINE AND REHABILITATION. 1983. 64. pp 29-33.

(46) Rogoff, Joseph B., Editor. MANIPULATION, TRACTION AND MASSAGE. Second Edition. Williams & Wilkins.

(47) Roubal, P.J., Dorbitt, D., Placzek, J.D. "Glenohumeral Gliding Manipulation Following Interscalene Brachial Plexus Block in Patients with Adhesive Capsulitis." J ORTHOPEDIC SPORTS PHYSICAL THERAPY. 1996 AUG; 24(2): 66-77.

(48) Schafer, R.C. CHIROPRACTIC MANAGEMENT OF SPORTS AND RECREATIONAL INJURIES. Williams & Wilkins.

(49) Schnatz, Peter and Steiner, Charles. "Tennis Elbow: A Biomechanical and Therapeutic Approach." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 93, No. 7. July, 1993.

(50) Schultz, August L. THE SHOULDER, ARM AND HAND SYNDROME.

(51) Shrode, Larry W. "Treating Shoulder Impingement Using the Supraspinatus Synchronization Exercise." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 17, No. 1. January 1994.

(52) Sin, Y.M., Sedgewick, A.D., Muckay, A.R., Bates, M.B., and Willoughby, D.A. "Effect of Electric Acupuncture Stimulation on Acute Inflammation." AMERICAN JOURNAL OF ACUPUNCTURE. Vol 11, No. 4. October-December, 1983.

(53) State of California, Department of Industrial Relations, Division of Workers' Compensation. UPPER EXTREMITY GUIDELINES. Unpublished.

(54) State of Oregon, Department of Consumer and Business Services, Workers' Compensation Division. CARPAL TUNNEL SYNDROME: DIAGNOSIS AND TREATMENT GUIDELINE. Draft, 10/10/94.

(55) Steiner, Charles. "Osteopathic Manipulative Treatment: What Does It Really Do?" THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 94, No. 1. January, 1994.

(56) Sucher, Benjamin M. "Myofascial Manipulative Release of Carpal Tunnel Syndrome: Documentation with Magnetic Resonance Imaging." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 93, No. 12. December, 1993.

(57) Sucher, Benjamin M. "Myofascial Release of Carpal Tunnel Syndrome." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 93, No. 1. January, 1993.

(58) Sucher, Benjamin M. "Palpatory Diagnosis and Manipulative Management of Carpal Tunnel Syndrome." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 94, No. 8. August, 1994.

(59) Sucher, Benjamin M. "Thoracic Outlet Syndrome – A Myofascial Variant: Part 1. Pathology and Diagnosis." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 90. No. 8. August, 1990.

(60) Sucher, Benjamin M. "Thoracic Outlet Syndrome – A Myofascial Variant: Part 2. Treatment." THE JOURNAL OF THE AMERICAN OSTEOPATHIC ASSOCIATION. Vol. 90, No. 9. September, 1990.

(61) Thomas, D., Williams, R.A., and Smith, D.S. "The Frozen Shoulder: A Review of Manipulative Treatment." RHEUMATOLOGY AND REHABILITATION. Vol. 19, No. 3. 1980.

(62) Urist, Marshall R., Editor-in-Chief. CLINICAL ORTHOPAEDICS AND RELATED RESEARCH. Number Two Hundred Eighty-Two. J.B. Lippincott Co.

(63) Vernon, Howard. "The Role of Plethysmography in the Chiropractic Management of Costoclavicular Syndromes: Review of Principles and a Case Report." JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS. Vol. 5, No. 1. March, 1982.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809118
Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: June 30, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 440–3972

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 113. Control of Air Pollution From Toxic Materials

The commission adopts new §113.1, concerning Definitions and the repeal of §113.21, concerning Beryllium, without changes to the proposed text as published in the April 3, 1998 issue of the *Texas Register* (23 TexReg 3416). The commission also adopts the deletion of the division, Beryllium, and the change of the Subchapter A title from "Hazardous Air Pollutants" to "Definitions."

EXPLANATION OF ADOPTED RULES This adoption is part of the regulatory reform effort. Regulatory reform projects identify rules and regulations which need clarification for the benefit of the public; are outdated; impose regulatory requirements in excess of their contribution to the commission's mission; or are duplicated, unnecessary, or inconsistent.

The adopted repeal will reduce duplication by controlling beryllium air emissions by individual New Source Review (NSR) permit instead of by rule. Permit requests with beryllium emissions submit technical representations stating that they comply with the beryllium emission standard in Chapter 113. The NSR Permit Division reviews the technical representations and includes the emissions limit in the Maximum Allowable Emissions Rate Table. After the repeal of the state beryllium standard, any permit request will be subject to a standard NSR permit review which includes computer dispersion modeling and an impacts analysis using Effects Screening Levels (ESLs). The permit review will be conducted at the same level as the repealed Chapter 113 beryllium standard.

The adopted new subchapter for definitions will make the Chapter 113 format more consistent with other air regulations. The adopted new definition for "Section 111(d) State Plan" in Subchapter A partially implements the Federal Clean Air Act (FCAA), §111(d) concerning performance standards for existing sources. The definition is being adopted in preparation for rulemaking to implement the Municipal Solid Waste Landfills Emissions Guidelines, and the Hospital/Medical/Infectious Waste Incinerator Emissions Guidelines and associated §111(d) State Plan revisions as required by the federal rules promulgated on March 12, 1996 (61 *Federal Register* 9905) and on September 15, 1997 (62 *Federal Register* 48347) respectively.

FINAL REGULATORY IMPACT ANALYSIS The commission has reviewed the 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 this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to reduce duplication and improve compliance by controlling beryllium air emissions by individual New Source Review permit instead of by rule, and make the Chapter 113 format more consistent with other air regulations through the addition of a subchapter for definitions. Promulgation and enforcement of this rulemaking will not affect private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource 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 for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations (40 CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This proposal does not change existing requirements which already comply with regulations at 40 CFR, and is therefore consistent with this policy.

HEARING AND COMMENTERS A public hearing on the proposal was held in Austin on April 28, 1998, in Austin, however, there were no attendees at the hearing. The comment period closed on May 4, 1998, and only the U.S. Environmental Protection Agency (EPA) submitted written comments.

ANALYSIS OF TESTIMONY EPA stated that the proposed new definition, "Section 111(d) State Plan," accurately reflects the intent of §111(d) of the FCAA.

Subchapter A. Definitions

30 TAC §113.1

STATUTORY AUTHORITY The new section is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purposes of this rulemaking are to rescind a subchapter which contains an air emission standard which is redundant to the permitting process, and to add a new Subchapter A, concerning Definitions, to make air regulations more consistent in format with each other. The new section is also adopted under the TCAA, §382.011 which provides the commission with the authority to control the quality of the state's air, and §382.012 which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

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

Filed with the Office of the Secretary of State on June 3, 1998.

TRD-9808953
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 23, 1998
Proposal publication date: April 3, 1998
For further information, please call: (512) 239-1970

♦ ♦ ♦

30 TAC §113.21

STATUTORY AUTHORITY The repeal is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

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

Filed with the Office of the Secretary of State on June 3, 1998.

TRD-9808954
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 23, 1998
Proposal publication date: April 3, 1998
For further information, please call: (512) 239-1970

♦ ♦ ♦

Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §330.4, and new §330.26, concerning municipal solid waste management. Section 330.4 is adopted with changes to the proposed text as published in the March 6, 1998, issue of the *Texas Register* (23 TexReg 2253). Section 330.26 is adopted without changes to the proposed text as published and will not be republished.

EXPLANATION OF ADOPTED RULE These adopted sections are based on legislation passed by the 75th Texas Legislature in 1997. The purpose of these rules is to establish additional general rules for the storage and disposal of litter generated and disposed of on an individual's property. The statutory basis for the rules is found in House Bill (HB) 717, 75th Legislature, which amended the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012; Senate Bill (SB) 1782, 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.011. HB 717 directs the commission to establish rules to regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent. These rules establish a permit exemption in new §330.4(v) following the directive from HB 717 that a landowner may dispose of litter or other solid waste on his own land without commission authorization if the litter or other solid waste is generated and disposed of on land the individual owns, and the disposal is not for commercial purposes. Commercial purpose as quoted from the Texas Litter Abatement Act means the purpose of economic gain. Additionally, these rules follow direction from SB 1782 by adding a permit exemption to new §330.4(w) regarding the disposal of animal carcasses for roadway maintenance. New §330.26 establishes rules regulating the temporary storage for future disposal of litter or other solid waste as required by HB 717. New §330.26 simply requires waste from this source to be stored in the normal manner currently established in existing §330.22 for similar wastes.

FINAL REGULATORY IMPACT ANALYSIS The commission has reviewed the rulemaking in light of the regulatory analysis requirement of Texas Government, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because the rule does not meet the full applicability of a "major environmental rule" as defined in the act. The adopted rule will not have an adverse affect in a material way on the economy, environment or public health and safety of any sector of the state. The adopted rule does not exceed any federal standard and is required by state law. The adopted rule does not exceed any expressed requirement of state law. There is no delegation agreement or contract directly applicable to the adopted rule. The rule adoption is made under specific law.

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 regulate activities associated with temporary storage and future disposal of litter and other solid waste by a person on land owned by that person. The rules will establish that agency authorization in the form of a registration or the previously required permit are not required for the disposal of litter or other solid waste generated by an individual and disposed of by that individual on land owned by that individual. The rules will provide the specific standards for storage of such waste. The rules are necessary to advance the agency's mission of providing adequate public health and safety relative to the management of municipal solid waste. The rules will establish exemptions from authorization standards and will establish storage standards which currently do not exist under Chapter 330. The rules will provide significant clarification regarding the procedures and criteria to be used by the TNRCC and the regulated community in the requirements for the review and approval of permit applications for regulated activities under this chapter. The commission has determined that this rule will not create a burden on private real property. The Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.012, states that a landowner may only dispose of litter or other solid waste on his own land if the litter is or waste is generated on land the individual owns, and the disposal is not for or resulting from a commercial purpose. New §330.26 establishes rules regulating the temporary storage for future disposal of litter or other solid waste as required by HB 717. Additionally, these rules follow direction from SB 1782 by adding a permit exemption regarding the disposal of animal carcasses for roadway maintenance. Through the creation of permit exemptions for this kind of disposal, the commission is not creating a regulatory burden, but is simplifying compliance with an statutory requirement.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), 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)(4) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules regarding solid waste management must be consistent with the goals and policies of the CMP to protect the coastal area. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this

rule is consistent with the applicable CMP goals and policies because the proposed permit exemption will have a negligible impact upon the coastal area, In addition, the proposed rule does not violate any applicable provisions of the CMP's state goals and policies. The commission invites public comment on the consistency of the proposed rule. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, in that the permit exemption will have a negligible impact upon the coastal area.

HEARINGS AND COMMENTS A public hearing was held on March 26, 1998 in Austin, Texas. There were no oral or written comments presented at the hearing. Written comments were received from National Solid Waste Management Association (NSWMA), Galveston County Health District (GCHD), and the Lone Star Chapter of the Sierra Club.

GENERAL PUBLIC COMMENTS The NSWMA generally supported adoption of the rules as published with some suggested changes.

Both GCHD and NSWMA suggested that language be added to §330.4(v) to clarify that deed recordation and notification are required by existing §330.7 and §330.8 for the disposal of litter or other solid waste.

Clarification to §330.4(v) regarding the existing requirements for deed recordation is appropriate. The commission agrees with the commenters that all property used for the disposal of solid waste should be identified in the deed records so future property owners can identify areas of the property that have been used for disposal of solid waste. Deed recordation is currently required for municipal solid waste landfills in existing §330.7 titled relating to Deed Recordation. Deed recordation provides an important notice to future landowners about solid waste disposal on the property giving an advanced notice of potential future liability, and may provide notice regarding building over waste filled areas. Thus, the commission agrees to add a new §330.4(v)(9) as follows - "the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title (relating to Notification Requirements)."

NSWMA suggested that clarifying language be added to §330.4(w)(3) regarding odor control measures.

The intent of the commission is to protect against nuisance odors in the disposal of animal carcasses. The normal management practice for odor control for land disposal of dead animals is to cover the carcasses with soil. The standard within the adoption language requiring cover within 24 hours is derived from an Environmental Protection Agency standard that requires solid waste to be covered with earthen material daily to control odors (see *Federal Register, Volume 56, Number 196, October 9, 1991, §258.21, page 51020). The commission agrees to modify the language in §330.4(w)(3) by adding "within 24 hours of collection" to language in §330.4(w)(3) changing the language to the following - "the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes)."*

GCHD states in their written comments that the permit exemptions established in §330.4(v) and (w) will allow individuals to create their own unpermitted landfills and will cause degradation of water resources. GCHD believes that individuals should not be allowed to establish a solid waste disposal site without first providing adequate public health and environmental protective measures.

The commission has made no change in response to this comment. This rulemaking is limited to the specific changes authorized by the 1997 legislative amendments to the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012 and to the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116. The commission is also concerned with providing adequate public health and environmental protective measures and believes that adequate remedies exist in nuisance abatement law, other state rules, and local government rules. The commission has never exerted permit requirements over individual disposal of waste, and the smallest recorded landfill permit ever issued was for a small city in west Texas with a population of 114. The legislature has determined that there should be minimal regulation of individuals disposing of their own non-commercial waste on their own property. The commission agrees, recognizing that there is minimal environmental risk posed by such disposal.

Sierra Club has expressed concern in written comment about an individual's disposal of waste. Sierra Club has stated in their comments that there is no public benefit from the legislatively required action. Sierra Club believes that the cost of remediating water potentially affected by disposal of an individual's waste will have significant implications. Sierra Club suggests that §330.4(v)(3) be modified to exclude disposal on an individuals property if the property is less than 100 acres. Sierra Club suggests that the number of animal carcasses to be disposed of be limited by rule.

The commission has made no change in response to these comments. As acknowledged by the commentor, this rulemaking is limited to the specific changes authorized in the 1997 legislative amendments to the Texas Health and Safety Code, Chapter 365, the Texas Litter Abatement Act, §365.011 and §365.012 and to the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116. The commission is concerned with providing adequate public health and environmental protective measures and believes that adequate remedies exist in nuisance abatement law and other rules. Establishing limits as suggested by Sierra Club would be outside of the scope of the legislation. TNRCC and its predecessor agencies have never exerted permit requirements over individual disposal of waste. As noted above, the smallest recorded landfill permit ever issued was for a small city in west Texas with a population of 114.

Subchapter A. General Information

30 TAC §330.4

STATUTORY AUTHORITY The section is adopted under the authority of the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 717, as passed by the 75th Legislature amending the Texas Litter Abatement Act, §365.012, Texas Health and Safety Code, Chapter 365. They are also adopted under the authority of Senate Bill 1782, as passed by the 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to

regulate the operation, management, and control of solid waste under its jurisdiction.

§330.4. Permit Required.

(a)-(u) (No change.)

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

(7) the waste disposal method complies with §§111.201 - 111.221 of this title (relating to Outdoor Burning);

(8) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance; and

(9) the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title (relating to Notification Requirements).

(w) A permit or registration is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway right-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway right-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes).

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809151
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 28, 1998
Proposal publication date: March 6, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

Subchapter B. Municipal Solid Waste Storage

30 TAC §330.26

STATUTORY AUTHORITY The section is proposed under the authority of the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 717, as passed by the 75th Legislature amending the Texas Litter Abatement Act, §365.012, Texas Health and Safety Code, Chapter 365. They are also adopted under the authority of Senate Bill 1782, as passed by the 75th Legislature, which amended the Texas Health and Safety Code, Chapter 361, the Solid Waste Disposal Act, §361.116; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809152
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 28, 1998
Proposal publication date: March 6, 1998
For further information, please call: (512) 239-6087

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Subchapter A. Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants

31 TAC §§57.111, 57.113, 57.114

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing on April 16, 1998 adopted amendments to §§57.111, 57.113 and 57.114 concerning harmful or potentially harmful exotic fish, shellfish and aquatic plants. Sections 57.111 and 57.114 are adopted with changes to the proposed text as published in the March 13, 1998 issue of the *Texas Register* (23 TexReg 2727). Section 57.113 is adopted without changes and will not be republished.

The purpose of §§57.111 and 57.114 is to protect wild native aquatic species from depletion due to detrimental effects of introduction of diseases from cultured stocks. To further this purpose, §57.111 is amended to add definitions for the terms

"clinical analysis checklist" and "immediately" and to clarify the definitions for "disease-free", "waste" and "water in the state".

The amendments to §57.114 further the department's goal by allowing permit holders who must institute quarantine conditions as a result of observing manifestations of disease to choose between requesting an inspection from a department approved examiner or submitting samples of shellfish to a laboratory for disease analysis. The amended section also allows permit holders who wish to discharge waste into or adjacent to water in the state to make the same choice between inspection by a department approved examiner and laboratory testing prior to commencing any discharge.

TPWD has not prepared a Takings Impact Assessment for these rules because Government Code, §2007.003 provides an exception to the requirement for rules or proclamations adopted for the purpose of regulating or controlling nonindigenous or exotic aquatic species.

A public hearing was held on the rule in Austin, Texas on April 16, 1998. No oral comments were received at that time. The written comment period closed on April 13, 1998. Seven commenters provided both specific and general comments. The following two commenters expressed support for the rules: The Texas Shrimp Association and the Environmental Defense Fund. The following five commenters suggested changes: The Texas A&M University Sea Grant program, the Cameron County Marine Agent, Harlingen Shrimp Farms, Ltd., Dr. Ken Johnson of the Texas Veterinary Medical Diagnostic Laboratory, and Mr. Walt Kittelberger of the Lower Laguna Madre Foundation.

Dr. Johnson commented that the term "certified inspector" did not seem accurate or appropriate. Texas A&M Sea Grant representatives expressed concern over the Sea Grant program being specifically written into the definition of "certified inspector" as the Sea Grant Program does not play a regulatory role in aquaculture and wishes to maintain a neutral position with respect to aquaculture disease issues.

The Commission agrees with these comments and has deleted the definition. The rules now refer to department approved examiners who will perform inspections upon request.

Regarding the definition of "disease-free", Dr. Johnson commented that aquatic organisms are not certified to be totally free of disease but are only determined to be free of some disease agents.

The Commission recognizes that Dr. Johnson's comment is technically correct. However, as stated in the commission's responses to comments when the rules were originally adopted in the December 19, 1997 issue of the Texas Register, the commission does not want to limit its quarantine authority to specific known pathogens since the possibility exists for the occurrence of previously unidentified but extremely deleterious or lethal pathogens.

Mr. Walt Kittelberger of the Lower Laguna Madre Foundation commented that a definition should be added for the term "immediately".

The Commission agrees that the possibility exists for confusion about the meaning of the term "immediately" in the regulatory context. Consequently, "immediately" has been defined to mean "without delay; with no intervening span of time".

Mr. Fritz Jaenike of Harlingen Shrimp Farms, Ltd. commented that the definition of "manifestations of disease" was fairly specific and could be limiting since additions, deletions or modifications to the list would require amendments to the rules. He suggested that providing a checklist of such manifestations to permit holders and inspectors would allow greater flexibility. Mr. Jaenike also commented that the "manifestations of disease" listed in the definition should be quantified somehow and that gill fouling and gill discoloration should be removed from the definition.

The Commission agrees with this comment. The definition of "manifestations of disease" has been replaced with the term "clinical analysis checklist". The checklist will specify sampling protocols and list the characteristics which, in the judgment of the department, constitute manifestations of disease.

In subsection 57.114(d) the commission determined that, for purposes of clarification, it was necessary to insert the word "immediately" before the requirement to notify the department of the presence of disease manifestations, before the requirement to request an inspection, and before the requirement to submit samples for laboratory testing.

Subsection 57.114(e) of the proposed rules required the "certified inspector" to "notify" the department and the permit holder of the results of the inspection. The commission determined that it was necessary to clarify that the intent of the notification requirement was that the "department approved examiner" would submit the results in writing to the department and the permit holder on the "clinical analysis checklist".

Representatives of the Texas A&M Sea Grant Program and the Cameron County Marine Agent expressed concern that the proposed rule had the potential to result in a heavy demand for Sea Grant staff to conduct numerous inspections in a short time frame.

The Commission agrees with this comment. The rule has been modified so that instead of requiring inspection or testing prior to each discharge of waste, the entire aquaculture facility must undergo inspection at least once prior to the initial waste discharge of the season. In addition, the department will insert a condition in each new and existing exotic species permit that will require the permit holder to complete a clinical analysis checklist each week and file it with the department. If the checklist indicates the presence of one or more manifestations of disease, the rules require the permit holder to immediately quarantine the entire facility. In that event, department staff will conduct an on-site inspection. As additional safeguards, department staff will conduct random unannounced inspections of the aquaculture facilities governed by these rules as well as conducting inspections in response to complaints from the public. As a result of this modification, the commission further determined that, for the sake of clarification, the remainder of proposed subsection 57.114(f), dealing with the consequences of finding manifestations of disease or receiving laboratory results positive for disease, should be set forth separately in new subsections 57.114(g) and (h).

Mr. Fritz Jaenike commented that the term "disposal method" was restrictive and suggested substituting a term with more flexibility such as "action" or "management method". Mr. Walt Kittelberger commented that the rule should make it clear that the department will make the determination of an appropriate disposal method.

The commission agrees with these comments. This part of the rule now appears in new §57.114(j) and has been modified to

change "appropriate disposal method" to "other actions deemed appropriate by the department".

These amendments are adopted under Parks and Wildlife Code §66.007 which prohibits possession of exotic harmful or potentially harmful fish, shellfish or aquatic plants except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of the animals and authorizes the department to make rules to carry out these provisions.

§57.111. Definitions.

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

(1) Aquaculture or fish farming–The business of producing and selling cultured species raised in private facilities.

(2) Certified Inspector - An employee of the Texas Parks and Wildlife Department or the Texas A&M Sea Grant College Program who has satisfactorily completed a department approved course in clinical analysis of shellfish.

(3) Cultured species–Aquatic plants or wildlife resources raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

(4) Clinical Analysis Checklist - An inspection form provided by the department specifying sampling protocols and listing certain characteristics which may constitute manifestations of disease.

(5) Department–The Texas Parks and Wildlife Department or a designated employee of the department.

(6) Director–The executive director of the Texas Parks and Wildlife Department.

(7) Disease–Contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

(8) Disease-Free–A status, based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of disease

(9) Exotic species–A nonindigenous plant or wildlife resource not normally found in public water of this state.

(10) Fish farm–The property including all drainage ditches and private facilities from which cultured species are produced, held, propagated, transported, or sold.

(11) Fish farm complex–A group of two or more separately owned fish farms located at a common site and sharing privately owned water diversion or drainage structures.

(12) Fish farmer–Any person engaged in aquaculture or fish farming.

(13) Grass carp–The species Ctenopharyngodon idella.

(14) Harmful or potentially harmful exotic fish–

(A) Lampreys Family: Petromyzontidae–all species except Ichthyomyzon castaneus and I. gagei;

(B) Freshwater Stingrays Family: Potamotrygonidae–all species;

(C) Arapaima Family: Osteoglossidae–Arapaima gigas;

(D) South American Pike Characoids Family: Characidae–all species of genus Acestrorhyncus;

(E) African Tiger Fishes Subfamily: Hydrocyninae–all species;

(F) Piranhas and Priambebus Subfamily: Serrasalminae–all species;

(G) Rhaphiodontid Characoids Subfamily: Rhaphiodontinae–all species of genera Hydrolycus and Rhaphiodon (synonymous with Cynodon);

(H) Dourados Subfamily: Bryconinae–all species of genus Salminus;

(I) South American Tiger Fishes Family: Erythrinidae–all species;

(J) South American Pike Characoids Family: Ctenolucidae–all species of genera Ctenolucius and Luciocharax (synonymous with Boulengerella and Hydrocinus);

(K) African Pike Characoids Families: Hepsetidae Ichthyboridae–all species;

(L) Electric Eels Family: Electrophoridae–Electrophorus electricus;

(M) Carps and Minnows Family: Cyprinidae–all species and hybrids of species of genera: Abramis, Aristichthys, Aspius, Aspiolucius, Blicca, Catla, Cirrhina, Ctenopharyngodon, Elopichthys, Hypophthalmichthys, Leuciscus, Megalobrama, Mylopharyngodon, Parabramis, Pseudaspius, Rutilus, Scardinius, Thynnichthys, Tor, and the species Barbus tor (synonymous with Barbus hexoagoniolepis);

(N) Walking Catfishes Family: Clariidae–all species;

(O) Electric Catfishes Family: Malapteruridae–all species;

(P) South American Parasitic Candiru Catfishes Subfamilies: Stegophilinae Vandelliinae–all species;

(Q) Pike Killifish Family: Poeciliidae–Belonesox belizanus;

(R) Marine Stonefishes Family: Synanceiidae–all species;

(S) Tilapia Family: Cichlidae–all species of genus Tilapia (including Sarotherodon and Oreochromis);

(T) Asian Pikeheads Family: Luciocephalidae–all species;

(U) Snakeheads Family: Channidae–all species;

(V) Walleyes Family: Percidae–all species of the genus Stizostedion except Stizostedion vitreum and S. canadense;

(W) Nile Perch Family: Centropomidae–all species of genera Lates and Luciolates;

(X) Drums Family: Sciaenidae–all species of genus Cynoscion except Cynoscion nebulosus, C. nothus, and C. arenarius;

(Y) Whale Catfishes Family: Cetopsidae–all species;

(Z) Ruff Family: Percidae–all species of genus Gymnocephalus;

(AA) Air sac Catfishes Family.

(BB) Swamp Eels, Rice Eels or One-Gilled Eel Family: Synbranchidae–all species;

(CC) Anguilliidae–all species except Anguilla rostrata.

(DD) Heteropneustidae–All species of genus Heteropneustes.

(15) Harmful or potentially harmful exotic shellfish–

(A) Crayfishes Family: Parastacidae–all species of the genus Astacopsis;

(B) Mittencrabs Family: Grapsidae–all species of genus Eriocheir;

(C) Giant Ram's-horn Snails Family: Piliidae (synonymous with Ampullariidae)–all species of genus Marisa;

(D) Zebra Mussels Family: Dreissenidae–all species of genus Dreissena;

(E) Penaeid Shrimp Family: Penaeidae–all species of genus Penaeus except P. setiferus, P. aztecus, and P. duorarum;

(F) Pacific Oyster Family: Ostreidae—Crassostrea gigas.

(16) Harmful or potentially harmful exotic plants–

(A) Giant Duckweed Family: Lemnaceae–Spirodela oligorhiza;

(B) Salvinia Family: Salviniaceae–all species of genus Salvinia;

(C) Waterhyacinth Family: Pontederiaceae–Eichhornia crassipes;

(D) Waterlettuce Family: Araceae–Pistia stratiotes;

(E) Hydrilla Family: Hydrocharitaceae–Hydrilla verticillata;

(F) Lagarosiphon Family: Hydrocharitaceae–Lagarosiphon major;

(G) Eurasian Watermilfoil Family: Haloragaceae–Myriophyllum spicatum;

(H) Alligatorweed Family: Amaranthaceae–Alternanthera philoxeroides;

(I) Rooted Waterhyacinth Family: Pontederiaceae–Eichhornia azurea;

(J) Paperbark Family: Myrtaceae–Melaleuca quinquenervia;

(K) Torpedograss Family: Gramineae–Panicum repens;

(L) Water spinach Family: Convolvulaceae–Ipomoea aquatic.

(17) Harmful or potentially harmful exotic species exclusion zone–That area south of SH 21, from its intersection with the Texas/Louisiana border, approximately five miles due east of Milam, Texas, not including that area of Brazos County south of SH 21, to San Marcos; thence south of IH 35 to Laredo.

(18) Immediately - Without delay; with no intervening span of time.

(19) Manifestations of disease - manifestations of disease include, but are not limited to, one or more of the following : heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(20) Nauplius or nauplii–A larval crustacean having no trunk segmentation and only three pairs of appendages.

(21) Operator–The person responsible for the overall operation of a wastewater treatment facility.

(22) Place of business–A permanent structure on land where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased.

(23) Postlarva–A juvenile crustacean having acquired a full complement of functional appendages.

(24) Private facility–A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.

(25) Private facility effluent–Any and all water which has been used in aquaculture activities.

(26) Private pond–A pond, tank, lake, or other structure capable of holding cultured species in confinement wholly within or on private land.

(27) Public aquarium–An American Association of Zoological Parks and Aquariums accredited facility for the care and exhibition of aquatic plants and animals.

(28) Public waters–Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(29) Quarantine condition–Confinement of exotic shellfish such that neither the shellfish nor the water in which they are or were maintained comes into contact with other fish or shellfish.

(30) Triploid grass carp–A grass carp (Ctenopharyngodon idella) which has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

(31) Waste - waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(32) Water in the state - water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

(33) Wastewater treatment facility–All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Natural Resource Conservation Commission.

§57.114. Health Certification of Exotic Shellfish.

(a)-(c) (No change.)

(d) Any person in possession of exotic shellfish stocks who observes one or more of the manifestations of disease appearing on the clinical analysis checklist provided by the department shall:

(1) immediately quarantine the entire facility, immediately notify the department and immediately request an inspection from a department approved examiner; or

(2) immediately quarantine the entire facility, immediately notify the department and immediately submit samples of the

affected shellfish to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(e) Upon receiving a request from a permit holder under subsection (d)(1) of this section, the department approved examiner shall inspect the private facility, complete the clinical analysis checklist provided by the department, and submit copies of the checklist to the department and the permit holder.

(f) Before discharging any waste for the first time in any calendar year into or adjacent to water in the state, the permittee shall:

(1) have a department approved examiner inspect the entire facility and examine samples of the shellfish from each pond or other structure containing exotic shellfish no more than 72 hours prior to the first discharge and shall submit the results of the examination to the department on the department approved clinical analysis checklist; or

(2) submit samples of the shellfish from each pond or other structure containing exotic shellfish to a department approved shellfish disease specialist for analysis no more than ten days prior to the first discharge and submit the results of such analyses to the department immediately upon receipt.

(g) If the results of an inspection performed under subsection (f)(1) of this section indicate the presence of one or more manifestations of disease, the permittee shall immediately place the entire facility under quarantine and immediately submit samples of the shellfish from the affected portion(s) of the facility to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(h) If the results of analyses performed under subsection (f)(2) of this section indicate the presence of disease, the permittee shall immediately place the entire facility under quarantine.

(i) A private facility quarantined under subsections (d), (g) or (h) of this section shall remain under quarantine condition until the department removes the quarantine in writing or authorizes in writing other actions deemed appropriate by the department based on the required analyses.

(j) If the results of inspections or testing performed under subsection (f) of this section indicate the absence of any manifestations of disease, the permittee may begin discharging from the facility.

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

Filed with the Office of the Secretary of State on June 1, 1998.

TRD-9808817
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1998
Proposal publication date: March 13, 1998
For further information, please call: (512) 389–4652

♦ ♦ ♦

Chapter 69. Resource Protection

Subchapter F. Health Certification of Native Shellfish

31 TAC §69.75, §69.77

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing on April 16, 1998 adopted new §§69.75 and 69.77 concerning health certification of native panaeid shrimp. Sections 69.75 and 69.77 are adopted with changes to the proposed text as published in the March 13, 1998 of the *Texas Register* (23 TexReg 2744).

The purpose of new §§69.75 and 69.77 is to protect wild native aquatic species from depletion due to detrimental effects of disease introduced from cultured stocks. To further this purpose, new §69.75 adds definitions for the terms "clinical analysis checklist", "disease", "disease-free", "immediately", "private facility", "quarantine condition", "waste" and "water in the state". New §69.77 furthers the department's goal by requiring persons in possession of native panaeid shrimp for aquaculture or scientific research purposes to quarantine their facility if they observe one or more manifestations of disease listed in a department approved clinical analysis checklist. It also allows such persons to choose between requesting an inspection from a department approved examiner or submitting samples of shrimp to a laboratory for disease analysis.

A Takings Impact Assessment was performed for these rules pursuant to the requirements of Government Code, §2007.043. The stated purpose of these rules is to protect wild native populations of shellfish from depletion due to detrimental effects of disease introduced by cultured stocks. Promulgation and enforcement of these rules will not place a burden on private real property because the rules do not restrict or limit a right that would otherwise exist in the absence of the rules.

A public hearing was held on the rule in Austin, Texas on April 16, 1998. No oral comments were received at that time. The written comment period closed on April 13, 1998. Four commenters provided both specific and general comments. The following two commenters expressed support for the rules: The Texas Shrimp Association and the Environmental Defense Fund. The following two commenters suggested changes: Dr. Ken Johnson of the Texas Veterinary Medical Diagnostic Laboratory, and Mr. Walt Kittelberger of the Lower Laguna Madre Foundation.

Dr. Johnson commented that the term "certified inspector" did not seem accurate or appropriate.

The Commission agrees with this comment and has deleted the definition. The rules now refer to department approved examiners who will perform inspections upon request.

Regarding the definition of "disease-free," Dr. Johnson commented that aquatic organisms are not certified to be totally free of disease but are only determined to be free of some disease agents.

The Commission recognizes that Dr. Johnson's comment is technically correct. However, the commission does not want to limit its quarantine authority to specific known pathogens since the possibility exists for the occurrence of previously unidentified but extremely deleterious or lethal pathogens.

Mr. Walt Kittelberger of the Lower Laguna Madre Foundation commented that a definition should be added for the term "immediately".

The Commission agrees that the possibility exists for confusion about the meaning of the term "immediately" in the regulatory

context. Consequently, "immediately" has been defined to mean "without delay; with no intervening span of time".

Mr. Walt Kittelberger commented that the definition of "private facility" should be limited to facilities with a certain percentage of private funding.

The commission responds that the same definition of the term "private facility" appears in §57.111 of the Harmful and Potentially Harmful Exotic Species rules. This definition is intended to encompass all aquaculture facilities fitting the description in the definition regardless of the origin of the funding for the facility.

In subsection 69.77(a) the commission determined that, for purposes of clarification, it was necessary to insert the word "immediately" before the requirement to notify the department of the presence of disease manifestations, before the requirement to request an inspection, and before the requirement to submit samples for laboratory testing.

Subsection 69.77(b) of the proposed rules required the "certified inspector" to "notify" the department and the permit holder of the results of the inspection. The commission determined that it was necessary to clarify that the intent of the notification requirement in the rule was that the "department approved examiner" would submit the results in writing to the department and the permit holder on the "clinical analysis checklist".

These new sections are adopted under Chapters 61 and 77 of the Texas Parks and Wildlife Code. Section §61.052(b) of the Texas Parks and Wildlife Code provides the Commission with the authority to regulate the means, methods and places in which it is lawful to possess aquatic animal life, §61.055 authorizes the Commission to amend its proclamations to prevent depletion of aquatic animal life or at any time it finds the facts warrant a change, and §77.007 authorizes the Commission to regulate the possession of shrimp.

§69.75. Definitions.

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

(1) Certified Inspector - An employee of the Texas Parks and Wildlife Department or the Texas A&M Sea Grant College Program who has satisfactorily completed a department approved course in clinical analysis of shellfish.

(2) Clinical Analysis Checklist - An inspection form provided by the department specifying sampling protocols and listing certain characteristics which may constitute manifestations of disease.

(3) Disease - contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

(4) Disease-Free - a status based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of disease.

(5) Immediately - Without delay; with no intervening span of time.

(6) Manifestations of disease - manifestations of disease include, but are not limited to, one or more of the following : heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(7) Private facility - a pond, tank, cage or other structure capable of holding native shellfish in confinement wholly within or on private land or water or wholly within or on permitted public land or water.

(8) Quarantine condition - confinement of native penaeid shrimp such that neither the shrimp nor the water in which they are or were maintained comes into contact with other fish or shellfish.

(9) Waste - waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(10) Water in the state - water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

§69.77 .Health Certification of Native Penaeid Shrimp.

(a) Any person in possession of native panaeid shrimp stocks held on a private facility for the purpose of aquaculture or scientific research who observes one or more manifestations of disease appearing on the clinical analysis checklist provided by the department shall:

(1) immediately quarantine the entire facility, immediately notify the department and immediately request an inspection from a department approved examiner; or

(2) immediately quarantine the entire facility, immediately notify the department and immediately submit samples of the affected shrimp to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(b) Upon receiving a request from a permit holder under subsection (a) of this section, the department approved examiner shall inspect the private facility, complete the clinical analysis checklist provided by the department and submit the checklist to the department and the permit holder.

(c) A private facility quarantined under subsection (a) of this section shall remain under quarantine condition until the department removes the quarantine in writing or authorizes in writing other actions deemed appropriate by the department based on the results of the required analyses.

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

Filed with the Office of the Secretary of State on June 1, 1998.

TRD-9808816
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1998
Proposal publication date: March 13, 1998
For further information, please call: (512) 389–4642

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Subchapter C. Claims Processing - Travel Vouchers

34 TAC §5.22

The Comptroller of Public Accounts adopts amendments to §5.22, concerning incorporation by reference: "State of Texas Travel Allowance Guide," without changes to the proposed text as published in the April 10, 1998, issue of the *Texas Register* (23 TexReg 3649).

The amendments are necessary to reflect the issuance of a new "State of Texas Travel Allowance Guide" by the comptroller. The new guide reflects changes made by the 75th legislature, regular session, 1997 to the Travel Regulations Act and to the travel provisions of the General Appropriations Act. The new guide also includes revised policies that are intended to promote efficiency and eliminate ambiguities concerning the travel of state officers and employees. Chapter 10 of the new guide lists the major differences between it and the previous guide. A copy of the new guide is available upon request from Claims Division, P.O. Box 13528, Austin, Texas 78711.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the Government Code, §660.021, which requires the comptroller to adopt rules to administer the Travel Regulations Act and the travel provisions of the General Appropriations Act.

The amendment implements the Government Code, §§660.001-660.146 and the General Appropriations Act, Article IX, §§4 and 13-19.

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

Filed with the Office of the Secretary of State on June 4, 1998.

TRD-9809043
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: June 24, 1998
Proposal publication date: April 10, 1998
For further information, please call: (512) 463-4062

♦ ♦ ♦

Subchapter D. Claims Processing - Payroll

34 TAC §5.46

The Comptroller of Public Accounts adopts an amendment to §5.46, concerning deductions for certain membership fees, without changes to the proposed text as published in the April 10, 1998, issue of the *Texas Register* (23 TexReg 3650).

The purposes of the amendments are as follows.

First, the legislature in 1993 deleted the statutory requirement for the comptroller to establish an annual period for employee authorizations of deductions to pay membership fees to state employee organizations. Now, employees may authorize a deduction anytime during the year. The section is being amended to reflect this change.

Second, the section contains provisions that apply only to past years. Those provisions are being deleted because they have been executed and are no longer necessary.

Third, the legislature in 1997 gave the comptroller the discretion to charge administrative fees to cover costs incurred from administering the deduction. Previous law required the comptroller to charge the fees. The comptroller has decided not to charge the fees at this time. Therefore, the section is being amended to delete all references to the fees.

Fourth, the section contains a few minor errors and obsolete statutory references that are being corrected.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the Government Code, §403.0165(h), which authorizes the comptroller to adopt rules for administration of the payroll deduction to pay membership fees to state employee organizations.

The amendment implements the Government Code, §403.0165.

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

Filed with the Office of the Secretary of State on June 4, 1998.

TRD-9809042
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: June 24, 1998
Proposal publication date: April 10, 1998
For further information, please call: (512) 463-4062

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 2. Medically Needy Program

Subchapter A. Program Requirements

40 TAC §2.1004, §2.1006

The Texas Department of Human Services (DHS) adopts amendments to §2.1004 and §2.1006, without changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4238) and will not be republished.

The justification for the amendments is to comply with the Balanced Budget Act of 1997 by allowing medical coverage of children through age 18 whose family income is below 100% of the federal poverty income limits, change references to Aid to Families with Dependent Children (AFDC) to Temporary Assistance for Needy Families (TANF), and delete the domicile requirement.

The amendments will function by ensuring that the state will be in compliance with the Health and Human Services (HHSC) mandate.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on June 2, 1998.

TRD-9808878
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Chapter 4. Medicaid Programs — Children and Pregnant Women

Subchapter A. Eligibility Requirements

40 TAC §4.1004, §4.1010

The Texas Department of Human Services (DHS) adopts an amendment to §4.1004 with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4239). The amendment to §4.1010 is adopted without changes to the proposed text, and will not be republished.

The justification for the amendments is to comply with the Balanced Budget Act of 1997 by allowing medical coverage of children through age 18 whose family income is below 100% of the federal poverty income limits, and change references to Aid to Families with Dependent Children (AFDC) to Temporary Assistance for Needy Families (TANF).

The amendments will function by ensuring that the state will be in compliance with the Health and Human Services (HHSC) mandate.

The department received no comments regarding adoption of the amendments, but has initiated a minor editorial change to the text of §4.1004(5) by adding the word "and" after the semicolon.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§4.1004. Eligible Groups.

The programs serve the following groups of people:

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

(3) children ages six through 18, whose family income is less than 100% of the federal poverty limit and whose total resources are less than the food stamp limit for households with no members age 60 or over;

(4) (No change.)

(5) children born prior to October 1, 1983, who meet all Temporary Assistance for Needy Families (TANF) eligibility requirements, but choose to bypass TANF and receive Medicaid- only benefits; and

(6) children who meet all TANF eligibility requirements except income. These deprived children live with their legal parent and stepparent of their legal minor parent and their minor parent's parents. They are ineligible for TANF because of the applied income of their stepparent or grandparents.

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

Filed with the Office of the Secretary of State on June 2, 1998.

TRD-9808879
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Chapter 5. Medicaid Programs for Aliens

Subchapter B. Medicaid Benefits for Aliens Not Legally Residing in the United States

40 TAC §5.2004

The Texas Department of Human Services (DHS) adopts an amendment to §5.2004, without changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4240). The text will not be republished.

The justification for the amendment is to comply with the Balanced Budget Act of 1997 by allowing medical coverage of children through age 18 whose family income is below 100% of the federal poverty income limits, and to delete the relationship/ domicile requirements.

The amendment will function by ensuring that the state will be in compliance with the Health and Human Services (HHSC) mandate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on June 2, 1998.

TRD-9808880

Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

Chapter 15. Medicaid Eligibility

Subchapter B. Medicare and Third-Party Resources

40 TAC §15.220

The Texas Department of Human Services (DHS) adopts new §15.220, concerning qualifying individuals (QIs), in its Medicaid eligibility chapter.

The justification for the section is to comply with Public Law 105-33. This new section mandates two new Medicare cost-sharing groups, effective January 1, 1998.

The section will function by ensuring that DHS is in compliance with federal law.

The section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The section is adopted in compliance with federal requirements effective January 1, 1998.

The section implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.220. Qualifying Individuals (QIs).

(a) Public Law 105-33, the Balanced Budget Act of 1997, mandates two new Medicare cost-sharing groups, effective January 1, 1998. The new coverage groups, called Qualifying Individuals (QIs), must meet the eligibility criteria in §15.201 of this title (relating to Qualified Medicare Beneficiaries), except the income limits are higher. Eligibility is determined for each calendar year. QI clients cannot be eligible for regular Medicaid and QI benefits at the same time.

(1) QI-1 clients have incomes from at least 120% but less than 135% of the federal poverty level. The only benefit is payment of the Medicare Part B premium.

(2) QI-2 clients have incomes from at least 135% but less than 175% of the federal poverty level. The only benefit is payment of that portion of the Medicare Part B premium that results from the shift of home health benefits from Part A to Part B.

(b) If all eligibility criteria are met, QI clients can be certified for the month of application. QI clients are also eligible for three months prior coverage if they meet all required criteria for the period. The three-months prior period cannot extend back into the previous calendar year.

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809095
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: January 1, 1998
Proposal publication date: N/A
For further information, please call: (512) 438–3765

♦ ♦ ♦

Chapter 18. Nursing Facility Administrators

The Texas Department of Human Services (DHS) adopts the repeal of §§18.17- 18.20 and new §§18.17-18.20 in its Nursing Facility Administrators chapter. The repeal of §§18.17-18.20 is adopted without changes to the proposed text. New §§18.17-18.20 are adopted with changes to the proposed text published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1923).

Justification for the repeals and new sections is the better protection of the health and safety of nursing facility residents by allowing consideration of factors such as the seriousness of the violation and the administrator's history of previous violations when determining the amount of the penalty to assess an administrator for a violation of the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), or rules adopted under that chapter.

The new sections will function by altering the procedures for the assessment of an administrative penalty by allowing consideration of several factors when determining the amount of the penalty to assess an administrator, including but not limited to: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the administrator's history of previous violations; and the efforts to correct the violations. The formal hearing, informal hearing, and standards of conduct procedures are also revised to reflect DHS policy and procedures. The department received written comments from the Texas Association of Licensed Facility Administrators, the Texas Association of Residential Care Communities, and the Texas Health Care Association. A summary of the comments and the department's responses follow.

Comment: Regarding §18.17(a)(6), define what it means to place an administrator's license on probation.

Response: The department is changing the proposed language at §18.17(a)(6) to state "placement of a licensee on probation" which is required by the statute at Section 242.313(a). When a licensee is placed on probation, the department allows the licensee to retain the license and defers the imposition of other sanctions until the specific conditions of the probation are met.

Comment: §18.18, Informal Review, attempts to provide an informal forum for resolving cases before DHS proceeds to a formal hearing to suspend or revoke an administrators license. The proposed rule limits this process to a review of documents provided by staff, on the one hand, and the administrator, on the other. There is no opportunity for a face-to-face meeting between the administrator and those who will recommend his sanction. This scheme does not promote the informal settlement of disputes because it fails to offer the administrator

a meaningful opportunity to participate in a settlement process. No matter how fair in theory a system based on document review is, it will never be as effective as a dispute resolution process that incorporates a face-to-face meeting. Even if we assume for the purpose of argument that the proposed process is fair, it will never be perceived as being fair by administrators because of this lack of opportunity to meet with the decision makers and explain their side of the story. If the administrator does not feel the process is fair, he will not be inclined to agree with the committee's recommendations, regardless of how reasonable the recommendations are in fact. Change this section to include a face-to-face hearing.

Response: The department does not concur with the comments and recommends adoption of the rules as proposed. The informal review is not an informal forum for resolving cases or an informal dispute settlement process. The informal review is an administrator's opportunity to show compliance with law. Any evidence or documentation that was not available to surveyors/ investigators at the time the standard or abbreviated standard survey was conducted may be presented by the administrator at this time. Senate Bill 84, at Section 242.317(b) under informal proceedings, stipulates that the complainant and license holder be provided an opportunity to be heard. The department's current procedure is to provide the administrator and complainant with an opportunity to provide a written response regarding a complaint allegation; however, if requested, the department will provide a face-to-face meeting.

Comment: Regarding §18.18, Informal Review, there should be an avenue for an administrator to appeal before the advisory committee. The way things are structured now, many administrators feel like the committee's process is anything but fair. In fact, it's almost as though the committee considers the administrator's case in secret: no notice is provided to the administrator that his case is going to be considered by the advisory committee beforehand, and so the administrator is not represented in the debate that will decide his fate. The committee reviews the case without the administrator's knowledge or presence and issues its sentence. The first inkling the administrator has of this process is when he receives a letter saying that the committee has considered his case and has recommended sanctions; he can take this punishment or be haled into court. Add an option for administrators to appeal before the advisory committee members. Response: The department does not concur and recommends adoption of the language as proposed. Senate Bill 84, at Section 242.303(d), stipulates that the committee review all complaints against administrators and make recommendations to the department regarding disciplinary actions. The advisory committee meeting is not conducted in secret, nor is it intended to provide the administrator with an opportunity to debate issues relating to a case. As mandated by Senate Bill 84, the administrator is afforded an informal review to show compliance with the law, which is conducted in accordance with the Texas Government Code, Section 2001.054. The administrator is also afforded an opportunity to be heard during the formal hearing process. Comment: Regarding §18.18, Informal Review, it has been advanced that the administrator is given an opportunity to provide a statement in response to survey findings. But that is in connection with the survey process at Long Term Care-Regulatory, which department is separate from the Credentialing Department. When the process at Long Term Care-Regulatory is resolved, the administrator is under the impression that all is well until he is notified by the Credentialing that action is being taken against his license. Response: The department does not concur and recommends adoption of the language as proposed. The Report of Contact that accompanies the Statement of Deficiencies that is submitted by Long Term Care-Regulatory indicates that a referral of the nursing facility administrator is being made to the licensing authority when substandard quality of care has been identified during a standard or abbreviated standard survey. The referral of the administrator for a substandard quality of care finding is required by 42 Code of Federal Regulations (CFR). The department's current procedure is to provide the standard or abbreviated standard survey findings and the administrator's statement regarding the complaint or referral for substandard quality of care to the Nursing Facility Administrator Advisory Committee for consideration. Comment: Regarding §18.18, Informal Reviews, the proposed language should be amended to state: "§18.18 Prehearing Conference

(a) At any time after the filing of a complaint, the Credentialing Department Director, unilaterally or at the request of the staff or respondent/applicant, may request that the parties, their attorneys or representatives appear before the Credentialing Department Director or his designee at a specified time and place for a conference to be conducted prior to the contested case hearing for the purpose of:

(1) simplifying the issues;

(2) considering proposed admissions or stipulations of fact;

(3) reviewing the procedure to govern the contested case hearing;

(4) exchanging witness lists and agreeing to limit the number of witnesses, and/or;

(5) doing any act that may simplify the proceedings and dispose of matters in controversy, including settlement of issues in dispute and preparation of an Agreed Order for presentation to the Advisory Committee and/or the Credentialing Department Director.

(b) A member of the Advisory Committee may be present to participate in the prehearing conference and preparation of any Agreed Order. Any member of the Advisory Committee who so participates in a prehearing conference shall thereafter be excused from proceedings on the complaint whether disposed of by Agreed Order, or in a contested case proceeding.

(c) Participation in a prehearing conference shall not be mandatory for either party, and statements made by a respondent/applicant at any prehearing conference shall not be offered as evidence at any subsequent contested case hearing on the complaint.

(d) Agreed Orders - The Credentialing Department Director may negotiate a proposed Agreed Order with any person. Failing the adoption of the rule proposed above or some- thing similar, TDHS should at least provide the administrator notice of when his case is scheduled to be heard by the Advisory Committee."

Response: The department does not concur with the comments. The department is, however, entitling §18.18 "Informal Reconsideration." This process is not a prehearing conference and does not require participation of a Nursing Facility Administrator Advisory Committee member in reaching an agreed order. Senate Bill 84, at Section 242.303(d), stipulates that the committee review all complaints against administrators and make recommendations to the department regarding disciplinary actions. The department makes the final decision regarding dis-

ciplinary actions initiated against a nursing facility administrator for a violation of Texas Health and Safety Code, Chapter 242, Subchapter I, or the department's rules adopted under this subchapter. An advisory committee member does not participate in the informal proceedings offered to an administrator by the department; nor is the advisory committee member involved in settlement agreements between the department and an administrator and his attorney. The informal reconsideration is an administrator's opportunity to show compliance with law. Any evidence or documentation that was not available to surveyors/investigators at the time the standard or abbreviated standard survey was conducted may be presented by the administrator at this time. Senate Bill 84, at Section 242.312(f), mandates that the department dispose of complaints in a timely manner.

Comment: Regarding §18.18(b), amend the proposed rule to state: "DHS's review, which shall include the Nursing Facility Administrators Advisory Committee, as defined in SB 84, shall be limited to a review of documentation submitted by the licensee and information DHS used as the basis for its proposed action and shall not be conducted as an adversary hearing. DHS shall give the licensee a written affirmation or reversal of the proposed action."

Response: The department does not concur with the comments and recommends adoption of the language as proposed. Senate Bill 84 does not require the Nursing Facility Administrators Advisory Committee to participate in informal proceedings provided to an administrator. Senate Bill 84, at Section 242.303(d), stipulates that the committee review all complaints against administrators and make recommendations to the department regarding disciplinary actions.

Comment: Regarding §18.19, Standard of Conduct, nothing within Texas Health and Safety Code 242.301 et seq. provides the statutory basis for the standards of conduct listed in this section. The statute does, however, allow for the department to develop a Code of Ethics. Delete §18.19 and develop a Code of Ethics.

Response: The department does not concur with the comments and recommends adoption of the language as proposed. Senate Bill 84, at Section 242.303(d), states that the committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration.

Comment: Regarding §18.19, Standards of Conduct, delete the word "shall" and substitute the word "may." The word shall, in this context, implies that the department will automatically take action for any and all violations, regardless of circumstances. The word "may" does not diminish the department's authority, but offers flexibility.

Response: The department does not concur with the comments and recommends adoption of the language as proposed. However, the department will consider all evidence submitted by an administrator regarding a violation of the Texas Health and Safety Code, Chapter 242, Subchapter I or the department's rules adopted under this subchapter.

Comment: Regarding §18.19(1), this requirement is very subjective and will be subject to continuous debate and controversy. The department should clarify what sufficient staffing actually is. Without standardized, statewide guidelines for administrators and surveyors/investigators, we cannot hope that this rule could ever be uniformly or consistently applied. Amend the language to state: "A licensee shall employ sufficient staff to adequately meet the needs of the facility residents as determined by the staffing requirements as outlined in the standard of participation. Care outcomes will also be considered."

Response: The department does not concur with the comments and recommends adoption of the language as proposed. The intent of this rule is that there be systems in place to provide for staffing and subsequent training of staff to meet resident needs. The number of personnel should be adequate to prevent negative outcomes.

Comment: Regarding §18.19(2),(3),(4), and (6), change the wording from "ensure" to a word that focuses on specific actions an administrator must take.

Response: The department does not concur with the comments and recommends adoption of the language as proposed. "Ensure" as used in this context, clearly states the department's expectation of an administrator.

Comment: Regarding §18.19(2),(3), and (6), after the word ensure, add the following language: "to the best of their ability."

Response: The department does not concur with the comments and recommends adoption of the language as proposed. "Ensure" as used in this context, clearly states the department's expectation of an administrator.

Comment: Regarding §18.19(6), this provision assumes that all administrators have powers that they do not. This provision makes individual administrators insurers of the personal safety of residents and public members.

Response: The department does not concur with the comments and recommends adoption of the language as proposed. The proposed language clearly defines the department's expectation of an administrator regarding the physical maintenance of a facility. However, an administrator's obligations shall be interpreted on a case-by-case basis. For example, the department will consider documentation of requests an administrator has made to the owner of a facility for financial support in changing the way the facility is physically maintained.

Comment: Regarding §18.19(9)-(12), (22), and (25), the meaning of the phrase "knowingly or through negligence: is unclear.

Response: The department concurs with the comments and has therefore made a change to §18.19, which now states: "The Texas Department of Human Services (DHS) shall impose sanctions for a violation of the Texas Health and Safety Code, Chapter 242, Subchapter I, or rules adopted under that chapter, including the standards of conduct specified in paragraphs (1) - (26) of this section. Negligence, as used in this section, shall mean failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances."

Comment: Regarding §18.19(9)-(12), (15)-(17), (21), and (25), the word "allow" is used; this is too broad and it is hard to tell exactly what is required of an administrator when this word is used. Substitute "allow" with other words, such as "direct" or "knowingly acquiesce."

Response: The department does not concur and will adopt the language as proposed. The department's intent is clearly stated and the word "allow," as used in §18.19(9)-(12), (15)-(17), (21), and (25), is within the context of the authority of a nursing facility administrator.

Comment: Regarding §18.19(16), amend the rule to state: "A licensee shall not instruct or knowingly allow employees, contractors, or volunteers to make misrepresentations or fraudulent statements about the operation of a nursing facility."

Response: The department does not concur with the comments and will adopt the language as proposed. The department's intent is clearly stated in the proposed language.

Comment: Regarding §18.19(25), the proposed language restricts a licensee from knowingly or through negligence allowing employees or other individuals to mismanage the personal funds of residents deposited with the facility. Is the administrator supposed to monitor the spending habits of each resident to make sure they spend their money wisely? The administrator's duty in this regards is ambiguous.

Response: The department does not concur with the comments and will adopt the language as proposed. The proposed language was intended to prevent theft and conversion of resident funds by employees or other individuals. The department is not concerned about how a resident spends his own money. The department's intent is clearly stated in the proposed language.

Comment: Regarding §18.20(c)(3), the proposed language allows DHS to consider an administrator's "history of previous violations" when deciding the amount of an administrative penalty. What is meant by this phrase? Does this allow DHS to view any previous allegation of wrongdoing or mismanagement as a violation?

Response: Senate Bill 84, at Section 242.315(c)(3), states that the amount of the penalty shall be based on the history of previous violation. Any sanction that the department initiates against an administrator is based on standard or abbreviated standard survey findings that indicate a violation of Texas Health and Safety Code, Chapter 242, Subchapter I, or the department's rules adopted under this subchapter. The department does not initiate sanctions based on allegations.

Comment: Regarding §18.20, create a new section to read as follows: "§18.20. Performance Review

(a) Before the institution of proceedings to revoke or suspend a license or deny an application for the renewal of a license, the Texas Department of Human services (DHS) will examine the performance of a licensee, over a twenty four month period, starting with the first of the month following approval of these rules.

(b) In determining the status of the licensee, DHS will utilize documentation that relates to §18.19 Standards of Conduct, paragraphs (1)-(26) in addition to any other relevant documentation.

(c) At the end of each twenty-four month review cycle, if the licensee has not had his license suspended nor been guilty of a Level I violation, a new review cycle will begin by utilizing the latest twelve-month performance period. (Example: Say the review period is March 1, 1998 through February 28, 1999 and March 1, 1999 through February 28, 2000. The new cycle would begin using only data between March 1, 1999 and February 28, 2000.)

(d) DHS may categorize violations in one of the following severity levels:

(1) Level I - violations that have or had an adverse impact on resident health and/or safety that includes serious harm, permanent injury, or death to a resident.

(2) Level II - violations that have or had a potential or adverse impact on the health and safety of a resident, but less than Level I; or

(3) Level III - violations that have minimal or no significant impact on resident health and/or safety.

(e) The licensee will have access to hearing procedures under §18.17(b) and §18.18.

(f) The licensee shall be able to petition for judicial review as provided for in the Health and Safety Code 242.316 and the Government Code, 2001.176; or any other level of judicial review available under the laws of the State of Texas."

Response: This was not the department's proposed language and the department has no response to this newly created section other than that the scheme, as established in §18.20, is adequate. The department recommends adoption of the language as proposed.

Comment: Regarding §18.20(g), amend the rule to state: "The hearing shall be conducted in accordance with the provisions of the APA, Government Code Section 2001 et seq."

Response: The department acknowledges that your comments are correct; however, the proposed language at §18.20(g) is being changed to state: "If the person requests a hearing or fails to respond timely to the notice, DHS shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Hearings) and in accordance with the Government Code, Chapter 2001."

40 TAC §§18.17–18.20

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01, and the Human Resources Code, §§22.001-22.030.

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809094
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 438–3765

♦ ♦ ♦

40 TAC §§18.17–18.20

The new sections are adopted under the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nurse facility administrators.

The new sections implement the Texas Health and Safety Code, §§242.301- 242.322 , (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), and the Human Resources Code, §§22.001-22.030, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

§18.17. Formal Hearing Procedures.

(a) This section covers the formal hearing procedures and practices that shall be used by the Texas Department of Human Services (DHS) if imposing one or more of the sanctions specified in paragraphs (1)-(6) of this subsection:

(1) revocation of a license;

(2) suspension of a license;

(3) denial of an application to renew a license;

(4) issuance of a written reprimand to a licensee;

(5) requirement of a licensee to participate in additional continuing education programs; or

(6) placement of a licensee on probation.

(b) Formal hearings shall be conducted under the provisions of the APA, Government Code, §2001 and hearing procedures in Chapter 79 of this title (relating to Legal Services).

§18.18. Informal Reconsideration.

(a) Before the institution of proceedings to revoke or suspend a license or deny an application for the renewal of a license, the Texas Department of Human Services (DHS) gives the licensee:

(1) notice of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to demonstrate compliance with all requirements of law for the retention of the license by sending the Credentialing Department Director or designee a written request for an informal review. The request must:

(A) be received within ten calendar days of the date of receipt of DHS's notice; and

(B) contain specific documentation refuting DHS's allegations.

(b) DHS's review shall be limited to a review of documentation submitted by the licensee and information DHS used as the basis for its proposed action and shall not be conducted as an adversary hearing. DHS shall give the licensee a written affirmation or reversal of the proposed action.

§18.19. Standards of Conduct.

The Texas Department of Human Services (DHS) shall impose sanctions for a violation of the Texas Health and Safety Code, Chapter 242, Subchapter I, or rules adopted under that chapter, including the standards of conduct specified in paragraphs (1)-(26) of this section. Negligence, as used in this section, shall mean failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

(1) A licensee shall employ sufficient staff to adequately meet the needs of facility residents as determined by care outcomes.

(2) A licensee shall ensure that sufficient resources are present to provide adequate nutrition, medications and treatments to facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee shall promote and protect the rights of facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee shall ensure that residents remain free of chemical and physical restraints unless required by a physician's order to protect a resident's health and safety.

(5) A licensee shall report and direct facility staff to report any suspected case of abuse, neglect, or misappropriation of resident property as defined in §18.1(b) of this title (relating to Introduction), to the appropriate government agency.

(6) A licensee shall ensure that the nursing facility is physically maintained in a manner that protects the health and safety of residents and the public.

(7) A licensee shall notify and direct employees to notify an appropriate governmental agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee shall post in a conspicuous place and in clearly legible type, in the facility where employed, the notice provided by DHS which gives the Credentialing Department's address and telephone number for reporting complaints against an administrator.

(9) A licensee shall not knowingly or through negligence, commit, direct, or allow actions which result or could result in inadequate care, harm, or injury to a resident.

(10) A licensee shall not knowingly or through negligence allow nursing facility employees to harm facility residents by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee shall not knowingly or through negligence allow or direct employees to contradict or alter in any manner, the orders of a physician regarding a resident's medical or therapeutic care.

(12) A licensee shall not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §18.1(b) of this title (relating to Introduction).

(13) A licensee shall not permit another individual to use his or her license or allow a facility to falsely post his or her license.

(14) A licensee shall not advertise or knowingly participate in the advertisement of nursing facility services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee shall not knowingly allow, aid, abet, sanction, or condone a violation by another licensed nursing facility administrator of the Texas Health and Safety Code, Chapter 242, Subchapter I or the department's rules adopted under that section and shall report such violations to DHS.

(16) A licensee shall not make or allow employees, contractors, or volunteers to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee shall not allow or direct facility employees, contractors, or others in a manner which results in the harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee shall not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been rendered.

(19) A licensee shall not make or file false reports or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee shall not intentionally fail to file a report or record required by state or federal law; impede or obstruct such filings; or induce another person to impede or obstruct such filings.

(21) A licensee shall not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner which interferes with the performance of the administrator's or other person's duties.

(22) A licensee shall not knowingly or through negligence violate any confidentiality provisions as prescribed by state or federal law concerning a resident.

(23) A licensee shall not interfere or impede an investigation by withholding or misrepresenting fact to DHS representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee shall not display a license issued by DHS which has been reproduced, altered, expired, suspended, or revoked.

(25) A licensee shall not knowingly or through negligence allow employees or other individuals to mismanage the personal funds of residents deposited with the facility.

(26) A licensee shall not bribe, attempt to bribe, harass or intimidate employees of DHS or other governmental agencies or its representatives in regard to the administration of the nursing facility.

§18.20. Administrative Penalties.

(a) The Texas Department of Human Services (DHS) may impose an administrative penalty against a person licensed or regulated under the Texas Health and Safety Code, Chapter 242, Subchapter I.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violations; and

(6) any other matter that justice may require.

(d) If DHS determines a violation has occurred, then DHS shall give written notice by certified mail to the person alleged to have committed the violation. The notice shall include a:

(1) brief summary of the alleged violation;

(2) statement of the amount of the recommended penalty; and

(3) statement informing the person of the right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(e) Within 20 calendar days after the date the person receives the notice, the person may accept, in writing, the determination and the penalty recommended by DHS or may make a written request for a hearing.

(f) If the person accepts DHS's determination and the penalty that is recommended, DHS shall impose the recommended penalty.

(g) If the person requests a hearing or fails to respond timely to the notice, DHS shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Hearings) and in accordance with the Government Code, Chapter 2001.

(h) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(i) Within 30 calendar days after the date DHS's decision is final as provided by §2001.144, Government Code, the person shall:

(1) pay the amount of the penalty; or

(2) petition for judicial review as provided for in the Health and Safety Code, §242.316 and the Government Code, §2001.176; or

(3) do both actions stated in paragraphs (1) and (2) of this subsection.

(j) The proceedings under this section are subject to Chapter 2001, Government Code.

(k) DHS shall categorize violations in one of the following severity levels:

(1) Level I - violations that have or had an adverse impact on resident health and/or safety that includes serious harm, permanent injury, or death to a resident.

(2) Level II - violations that have or had a potential or adverse impact on the health and safety of a resident, but less than Level I; or

(3) Level III - violations that have minimal or no significant impact on resident health and/or safety.

(l) DHS shall impose an administrative penalty based on the severity level of the violation as follows:

(1) Level I - $500 - $1,000;

(2) Level II - $250 - $500; and

(3) Level III - $250 or less.

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809093
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1998
Proposal publication date: February 27, 1998

For further information, please call: (512) 438–3765

♦ ♦ ♦

Part II. Texas Rehabilitation Commission

Chapter 101. General Rules

The Texas Rehabilitation Commission adopts amendments to §§101.1, 101.2, 101.8-101.10, 101.13 and the repeal of §101.6 and §101.7, concerning general rules. Section 101.1 is adopted with changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4535). Sections 101.2, 101.8, 101.9, 101.10, 101.13 and the repeal of §101.6 and §101.7 are adopted without changes and will not be republished.

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that §101.6 and §101.7 should be repealed and that §§101.1, 101.2, 101.8, 101.9, 101.10, and 101.13 should be readopted.

The sections are being amended and repealed in order to conform to the language of the Rehabilitation Act Amendments of 1994.

No comments were received regarding adoption of the amendments and repeals.

40 TAC §§101.1, 101.2, 101.8–101.10, 101.13

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

§101.1. Definitions.

Words and terms are used as defined in the Rehabilitation Act of 1973, as amended, and implemented by 34 Code of Federal Regulations and the Human Resources Code, Title 7, unless the context clearly indicates another meaning. Words and terms defined in such federal and state laws and regulations are applicable to this part.

(1) Applicant-An individual who applies to the Texas Rehabilitation Commission for vocational rehabilitation services, extended rehabilitation services, or independent living services.

(2) Board-Board of the Texas Rehabilitation Commission appointed under the provision of the Human Resources Code, Title 7.

(3) Client-An individual with a disability who is determined eligible by the Texas Rehabilitation Commission for vocational rehabilitation services or other commission services.

(4) Commission-The Texas Rehabilitation Commission.

(5) Counselor-An employee of the commission who is trained to provide vocational guidance and counseling and meets the minimum qualifications designated in a functional job description.

(6) Sheltered workshop-An occupation-oriented facility operated by a not-for-profit agency, public or private, which, except for its staff, employs only individuals with mental or physical disabilities.

(7) State plan-The plan for vocational rehabilitation services submitted by this commission in compliance with the Rehabilitation Act of 1973, as amended, Title I.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809134
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

40 TAC §101.6, §101.7

The repeals are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809135
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 103. Vocational Rehabilitation Services Program

Subchapter A. Provision of Vocational Rehabilitation Services

40 TAC §§103.1, 103.4, 103.9, 103.11–103.13, 103.15–103.17, 103.19

The Texas Rehabilitation Commission adopts amendments to §§103.1, 103.4, 103.9, 103.11-103.13, 103.15-103.17, 103.19, 103.21, 103.31, 103.32, 103.41, 103.42, 103.44, and 103.51-103.55, concerning vocational rehabilitation services program. Section 103.4 is adopted with changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4537). Sections 103.1, 103.9, 103.11-103.13, 103.15-103.17, 103.19, 103.21, 103.31, 103.32, 103.41, 103.42, 103.44, and 103.51-103.55 are adopted without changes and will not be republished.

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that they should be readopted.

Sections 103.1, 103.4, 103.9, 103.13, 103.15-103.17, 103.19, 103.21, 103.31, 103.32, 103.41, 103.42, 103.44, and 103.51-103.55 are being amended to make the rules consistent with Federal Regulations.

Section 103.11 and §103.12 are being amended in order to conform to the language of the Rehabilitation Act Amendments of 1994.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

§ 103.4. Preliminary and Comprehensive Assessment.

(a) Preliminary assessment. To determine whether an individual is eligible for vocational rehabilitation services, the commission conducts a preliminary assessment sufficient to determine:

(1) whether the individual has a physical or mental impairment;

(2) whether the physical of mental impairment constitutes or results in a substantial impediment to employment for the individual;

(3) whether the individual can benefit in terms of achieving an employment outcome, after receiving vocational rehabilitation services; and

(4) whether the individual requires VR services to prepare for, enter into, engage in, or retain gainful employment consistent with the individuals strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

(b) Comprehensive assessment. The commission, as appropriate in each case, shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual. The comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs of the individual and develop the IWRP and may, to the extent needed, include:

(1) an analysis of pertinent medical, psychological, vocational, educational, and other related factors which bear on the individual's impediment to employment and rehabilitation needs. Additional examinations are authorized after services are initiated when conditions arise that jeopardize the individual's written rehabilitation program;

(2) an analysis of the individual's personality, career interest, interpersonal skills, intelligence and related functional capacities, educational achievement work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(3) an appraisal of the individual's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavioral patterns suitable for successful job performance; and

(4) an assessment, through provision of rehabilitation technology services, of the individual's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the individual's informed choice.

(c) Existing information. The commission shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and education agencies.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809136
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Subchapter B. Client Participation

40 TAC §103.21

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809137
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Subchapter C. Comparable Benefits

40 TAC §103.31, §103.32

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809138
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Subchapter D. Eligibility, Ineligibility, and Certification

40 TAC §§103.41, 103.42, 103.44

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809139
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Subchapter E. Methods of Administration of Vocational Rehabilitation

40 TAC §§103.51–103.55

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809140
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 105. Extended Rehabilitation Services Program

The Texas Rehabilitation Commission adopts amendments to §§105.1, 105.3-105.5 and the repeal of §105.6, concerning extended rehabilitation services program, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4543).

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that §105.6 should be repealed and that §§105.1, 105.3-105.5 should be readopted.

The sections are being amended and repealed in order to conform to the language of the Rehabilitation Act Amendments of 1994.

No comments were received regarding adoption of the amendments and repeal.

40 TAC §§105.1, 105.3–105.5

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809141
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

40 TAC §105.6

The repeal is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809142
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 107. Independent Living Services Program

40 TAC §§107.1, 107.2, 107.5

The Texas Rehabilitation Commission adopts amendments to §§107.1, 107.2, and 107.5, concerning independent living services program, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4544).

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that they should be readopted.

Section 107.1 and §107.2 are being amended in order to conform to the language of the Rehabilitation Act Amendments of 1994.

Section 107.5 is being amended to give a more detailed explanation of the availability of independent living services.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809143
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 111. Medicaid Waiver Program for People who are Deaf-Blind with Multiple Disabilities

40 TAC §§111.1–111.4

The Texas Rehabilitation Commission adopts amendments to §§111.1-111.4, concerning Medicaid waiver program for people who are deaf-blind with multiple disabilities, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4545).

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that they should be readopted.

The sections are being amended in order to conform to the language of the Rehabilitation Act Amendments of 1994.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809144
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 113. Comprehensive Rehabilitation Services

40 TAC §§113.1, 113.2, 113.4, 113.5

The Texas Rehabilitation Commission adopts amendments to §§113.1, 113.2, 113.4, and 113.5, concerning comprehensive rehabilitation services, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4546).

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that they should be readopted.

The sections are being amended to more closely align the language of these rules with the current Rehabilitation Services Manual.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809145
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 115. Memoranda of Understanding With Other State Agencies

The Texas Rehabilitation Commission adopts the repeal of §115.6 and an amendment to §115.8, concerning memoranda of understanding with other state agencies, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4547).

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that §115.6 should be repealed and that §115.8 should be readopted.

Section 115.8 is being amended to reflect changes in the names of various state agencies.

No comments were received regarding adoption of the repeal and amendment.

40 TAC §115.6

The repeal is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809146
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

40 TAC §115.8

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809147
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Chapter 116. Advisory Committees/Councils

The Texas Rehabilitation Commission adopts an amendment to §116.5 and the repeal of §116.6 and §116.7, concerning advisory committees/councils, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4548).

In accordance with the Appropriations Act, §167, the Commission has reviewed these sections and has determined that §116.6 and §116.7 should be repealed and that §116.5 should be readopted.

The sections are being amended and repealed to reflect the language of TRC's Administrative Policy and Procedures Manual.

No comments were received regarding adoption of the repeals and amendment.

40 TAC §116.5

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, 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.

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809148
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

40 TAC §116.6, §116.7

The repeals are adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code. 116.6. Increased Client Choice Advisory Committee. 116.7. Regional Consumer Advisory Committee.

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

Filed with the Office of the Secretary of State on June 8, 1998.

TRD-9809149
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1998
Proposal publication date: May 8, 1998
For further information, please call: (512) 424–4050

♦ ♦ ♦

Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 181. General Rules of Practice and Procedures

Subchapter A. General Provisions

40 TAC §181.41

The Texas Commission for the Deaf and Hard of Hearing is adopting the repeal of §181.41. Services for Deaf and Hearing-Impaired Individuals, concerning the placement of TDDs in selected state agencies and in emergency dispatch communication centers in selected units of local governments without changes as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3812).

Justification for the repeal will be the elimination of a rule which no longer authorizes placements.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809056
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: June 25, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 407–3250

♦ ♦ ♦

Subchapter F. Fees

40 TAC §181.810

The Texas Commission for the Deaf and Hard of Hearing is adopting the repeal of §181.810, concerning establishing prices for TCDHH publications without changes as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3812).

Justification for the repeal will be the elimination of duplicate rules.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809057
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: June 25, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 407–3250

♦ ♦ ♦

40 TAC §181.840

The Texas Commission for the Deaf and Hard of Hearing is adopting the repeal of §181.840, concerning the establishment of a sliding fee scale used for interpreter services that are provided in non-governmental settings and that are reimbursed by the Commission without changes as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3813).

Justification for the repeal will be the elimination of a rule which no longer has authority.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

Filed with the Office of the Secretary of State on June 5, 1998.

TRD-9809058
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: June 25, 1998
Proposal publication date: April 17, 1998
For further information, please call: (512) 407–3250

♦ ♦ ♦

REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Review

Texas Animal Health Commission

Title 4, Part II

In accordance with Section 167 of the Appropriations Act, the Texas Animal Health Commission proposes to review Chapter 32, Hearing and Appeal Procedures; Chapter 47, Requirements and Standards for Approved Personnel; and Chapter 59, General Practice and Procedure. As part of the review process, the Texas Animal Health Commission is proposing to readopt the following sections without changes.

§32.6

§59.1

§59.4

§59.5

§59.7

The Commission's reason for adopting these sections continues to exist. As part of the review process, the Commission is proposing to amend the following sections.

§32.1

§32.2

§32.5

§47.1

§47.2

§47.3

§47.4

§47.5

§47.6

§59.2

§59.3

§59.6

The Commission's reason for adopting these sections continues to exist. The proposed changes will be published for comment in the *Texas Register* at a later date. As part of the review process, the Commission is proposing to repeal the following sections.

§32.3

§32.4

The proposed repeals will be published for comment in the *Texas Register* at a later date. Comments on the proposals may be submitted to Kathryn A. Reed, General Counsel, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966, kreed@tahc.state.tx.us.

TRD-9809296
Kathy Reed
General Counsel
Texas Animal Health Commission
Filed: June 10, 1998

♦ ♦ ♦

Adopted Rule Reviews

Texas Department on Aging

Title 40 Part IX

The Texas Department on Aging has completed the review of §260.1 relating Area Agency on Aging Administrative Responsibilities pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. As a result of this review the Texas Board on Aging finds the reason for adopting the rule continues to exist, and the Board re-adopts the rule, but will propose an amendment to the rule regarding the use of standardized forms to be used by all area agencies on aging. The Department previously published an amendment regarding the use of standardized forms in the proposed rule section of the March 27, 1998, issue of the *Texas Register* as part of the review process. As a result of the review, the Texas Board on Aging made a substantive change to the rule as previously proposed. The previously proposed amendment will be withdrawn and re-published in the *Texas Register* proposed rules section and will be open for public comment for 30 days after publication.

No comments were received from the public regarding the review of the rule during the review process.

The rule is effective under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

TRD-9809066
Mary Sapp
Executive Director
Texas Department on Aging
Filed: June 5, 1998

♦ ♦ ♦

Texas Department of Economic Development

Title 10, Part V

The Texas Department of Economic Development adopts Chapter 170. Revenue Bonds for Development of Employment–Industrial and Health Resources in its entirety, without changes to the proposed text as published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 3400), and in accordance with the Appropriations Act, Section 167.

No comments were received regarding the adoption of this chapter.

This chapter is adopted under the authority of the Texas Government Code §481.0044(a), which authorizes the Texas Department of Economic Development to promulgate rules necessary for the administration of department programs and may adopt rules for its internal management and control, and the Administrative Procedures Act, Government Code, Chapter 2001, which prescribes the standards for agency rulemakings.

TRD-9809198
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: June 8, 1998

♦ ♦ ♦

Board of Nurse Examiners

Title 22 Part XI

Chapter 213. Practice and Procedure.

The Board of Nurse Examiners (BNE) adopts the review of Chapter 213, Practice and Procedure in accordance with the Appropriations Act, §167, published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 4164). The BNE finds that the reason for adopting Chapter 213 continues to exist.

The BNE received no comments related to the repeal of the existing chapter and one comment related to the adoption of the new chapter. This comment can be found in the preamble of the Adopted Rules section in this issue.

TRD-9809130
Kathy Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Filed: June 8, 1998

♦ ♦ ♦

Texas Rehabilitation Commission

Title 40, Part II

The Texas Rehabilitation Commission adopts for review the following sections from Chapters 101, 102, 103, 105, 106, 107, 111, 113, 115, and 116, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. As part of the review process, the Texas Rehabilitation Commission amended the following sections and published them in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4575). Section 101.1 and §103.4 are being adopted with changes to the proposed text and are being published in the adopted section of this issue of the *Texas Register*.

§101.1
§101.2
§101.8
§101.9
§101.10
§101.13
§103.1
§103.4
§103.9
§103.11
§103.12
§103.13
§103.15
§103.16
§103.17
§103.19
§103.21
§103.31
§103.32
§103.41
§103.42
§103.44
§103.51
§103.52
§103.53
§103.54
§103.55
§105.1
§105.3
§105.4
§105.5
§107.1
§107.2
§107.5
§111.1
§111.2

§111.3

§111.4

§113.1

§113.2

§113.4

§113.5

§115.8

§116.5

The commission is adopting the following sections which were proposed without changes:

§101.12

§102.1

§102.2

§102.3

§102.4

§102.5

§103.2

§103.3

§103.5

§103.6

§103.7

§103.8

§103.10

§103.14

§103.18

§103.22

§103.33

§103.43

§105.2

§106.1

§106.2

§106.4

§106.5

§106.6

§106.7

§106.8

§106.9

§106.10

§106.11

§106.12

§106.13

§106.14

§106.15

§106.16

§106.17

§106.18

§106.19

§106.20

§106.21

§106.22

§106.23

§106.24

§106.25

§106.26

§106.27

§106.28

§106.29

§106.30

§106.31

§106.32

§106.33

§106.34

§107.3

§107.4

§111.5

§111.6

§111.7

§111.8

§111.9

§111.10

§111.11

§111.12

§111.13

§111.14

§113.3

§115.1

§115.3

§115.4

§115.5

§115.7

§115.9

§115.10

§116.1

§116.2

§116.3

§116.8

§116.9

§116.10

Also, during the review process, the Texas Rehabilitation Commission adopted the repeal of the following sections:

§101.6

§101.7

§105.6

§115.6

§116.6

§116.7

No comments were received on these sections during the proposed review.

The Commission's reason for adopting these sections continues to exist.

TRD-9809133
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Filed: June 8, 1998

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.

Texas Workers' Compensation Commission Figure 1: 28 TAC §134.1002 (f)(3)(A)
(3) Hand and Wrist Treatment Tables.

DIAGNOSIS
Tendinitis Stenosing Tenosynovitis Musculotendinitis Musculotendinous Problems
ICD-9 DIAGNOSIS CODES (May include but not limited to)
726.4 Bursitis of hand/wrist, periarthritis of wrist 726.90 Capsulitis, periarthritis, tendinitis 727.03 Trigger finger 727.04 DeQuervain's disease, radial styloid tenosynovitis 727.05 Other tenosynovitis of hand and wrist

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) History: a) repetitive motion; force b) acute injury with early positive response to treatment 2) Physical findings: a) no urgent surgical indicators b) no significant structural pathology suggesting surgical solutions c) swelling, pain, and tenderness 3) Post operative or chronic patient with acute exacerbation.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Manipulation Medications: Analgesics Antibiotics (with secondary infection) Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

Texas Workers' Compensation Commission Figure 2: 28 TAC §134.1002 (f)(3)(B)

(Diagnosis: Tendinitis, Stenosing Tenosynovitis, Musculotendinitis - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms. 2) Limited-to-good response to primary treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 3: 28 TAC §134.1002 (f)(3)(C)

(Diagnosis: Tendinitis, Stenosing Tenosynovitis, Musculotendinitis - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms. 2) Documented history of persistent failure to respond to nonoperative/operative treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Magnetic resonance imaging (MRI) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Analgesics Antidepressants Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

4Texas Workers' Compensation Commission Figure 4: 28 TAC §134.1002 (f)(4)(A)
(4) Elbow Treatment Tables

DIAGNOSIS
Musculotendinitis/Tendinitis: Lateral Epicondylitis Medial Epicondylitis Musculotendinous and Periarticular Problems of the Elbow
ICD-9 DIAGNOSIS CODES (May include but not limited to)
726.31 - Medial epicondylitis 726.32 - Lateral epicondylitis, golfer's elbow, tennis elbow, epicondylitis

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) History: a) insidious onset, but may be provoked by acute trauma b) pain with radiation into forearm with extension, flexion, or supination c) burning that may radiate d) possible loss of grip strength due to pain with grip 2) Physical findings: a) point tenderness over epicondyles and associated tendons b) reproduction of pain c) reduced grip strength due to pain with normal elbow motion d) swelling e) no urgent surgical indicators f) no significant structural pathology suggesting surgical solutions 3) Post acute or chronic patient with acute exacerbation
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Manipulation Medications: Analgesics Antibiotics (with secondary infection) Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

Texas Workers' Compensation Commission Figure 5: 28 TAC §134.1002 (f)(4)(B)

(Diagnosis: Musculotendinitis/Tendinitis: Lateral Epicondylitis, Medial Epicondylitis - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 6: 28 TAC §134.1002 (f)(4)(C)

(Diagnosis: Musculotendinitis/Tendinitis: Lateral Epicondylitis, Medial Epicondylitis - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Mental health evaluation/assessment Magnetic resonance imaging (MRI) (confirmatory test) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Antidepressants Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Olecranon Bursitis Olecranon Impingement
ICD-9 DIAGNOSIS CODES (May include but not limited to)
726.33 Bursitis of elbow

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) History: a) Generally insidious onset but may be due to an episode of acute trauma b) Pain over olecranon process c) Limitation or restriction of flexion/extension due to pain or swelling 2) Physical Findings: a) Distended olecranon bursa b) Mild to severe pain over bursa c) With posttraumatic infection, redness and heat over bursa and a purulent tap 3) No urgent surgical indicators on physical examination 4) No significant structural pathology suggesting surgical solutions
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Aspiration; culture Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Aspiration Durable medical equipment (DME) Medications: Analgesics Antibiotics (with secondary infection) Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Olecranon Bursitis, Olecranon Impingement - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram (confirmatory test) Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Aspiration Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Antidepressants Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

(Diagnosis: Olecranon Bursitis, Olecranon Impingement - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram (confirmatory test) Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Magnetic resonance imaging (MRI) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Aspiration Biofeedback/behavioral pain management/relaxation training Medications: Analgesics Antidepressants Injection/aspiration with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

Texas Workers' Compensation Commission Figure 10: 28 TAC §134.1002 (f)(5)(A)

(5) Shoulder Treatment Tables

DIAGNOSIS
Tendinitis: Bicipital Supraspinatus (rotator cuff) Musculotendinous and Periarticular Problems of the Shoulder
ICD-9 DIAGNOSIS CODES (May include but not limited to)
726.10 - Rotator cuff, supraspinatus syndrome 726.12 - Bicipital tenosynovitis

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Pain with overhead activity 2) Pain with resisted supination 3) Night pain 4) No evidence of cervical spine pathology
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Manipulation Medications: Analgesics Antibiotics (with secondary infection) Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

Texas Workers' Compensation Commission Figure 11: 28 TAC §134.1002 (f)(5)(B)

(Diagnosis: Tendinitis: Bicipital, Supraspinatus (rotator cuff) - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 12: 28 TAC §134.1002 (f)(5)(C)

(Diagnosis: Tendinitis: Bicipital, Supraspinatus (rotator cuff) - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Magnetic resonance imaging (MRI) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Analgesics Antidepressants Limited oral corticosteroids Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS	
Rotator Cuff: Sprain/Strain, Tear Shoulder Impingement Syndrome	
ICD-9 DIAGNOSIS CODES (May include but not limited to)	
840.4 Strain/sprain rotator cuff 726.2 Periarthritis of shoulder, scapulohumeral fibrositis 726.0 Adhesive Capsulitis	
PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) History/Impingement syndrome and similar disorders: a) Symptoms may be gradual in onset or may be more immediate b) May be exacerbated by extremes of shoulder motion and sleeping on the affected extremity c) Pain on abduction of the affected shoulder which may limit active abduction and rotation d) Difficulty abducting the affected shoulder e) Pain in area of acromial process, typically without radiation 2) History/Rotator cuff tear a) May be acute or degenerative; onset commonly insidious b) Severe direct trauma to shoulder (acute) c) Pain on abduction of shoulder, with limited motion d) Inability to abduct the arm e) Pain over the tip of the shoulder f) Abduction and rotation of shoulder may be limited g) Failure of conservative therapy of other shoulder disorders 3) Physical Findings/Impingement syndrome and similar disorders: a) Tenderness over the humeral head or bicipital groove b) Tenderness on palpation of the coracoacromial joint c) Reproduction of symptoms with passive motion of the shoulder d) Decreased range of motion in cross body adduction and internal rotation e) Crepitus or popping with extension and flexion 4) Physical Findings/Rotator cuff tear a) Reproduction of symptoms with passive motion of the shoulder b) Inability to initiate or maintain abduction c) Tenderness of anterior rotator cuff (tip of shoulder) to palpation d) Atrophy of muscles of shoulder girdle if chronic and motion is painful or limited
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Magnetic resonance imaging (MRI) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Immobilizer/sling as indicated Manipulation Medications: Analgesics Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modification 3) Job site analysis

Texas Workers' Compensation Commission Figure 14: 28TAC § 134.1002 (f)(5)(E)

(Diagnosis: Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioralpain management evaluation Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioralpain management/relaxationtraining Immobilizer/sling as indicated Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 15: 28 TAC §134.1002 (f)(5)(F)

(Diagnosis: Rotator Cuff: Sprain/Strain, Tear, Shoulder Impingement Syndrome - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral pain management evaluation Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

Texas Workers' Compensation Commission Figure 16: 28 TAC §134.1002 (f)(6)(A)
(6) Upper Extremities Treatment Tables

DIAGNOSIS	
Neuropathy	
ICD-9 DIAGNOSIS CODES (May include but not limited to)	
353.0	Brachial plexus disorder, cervical rib syndrome, thoracic outlet syndrome, costoclavicular, scalenus anticus syndrome
354.0	Carpal tunnel syndrome, median nerve entrapment, partial thenar atrophy
354.2	Lesions of ulnar nerve, cubital tunnel syndrome, tardy ulnar nerve palsy
354.3	Lesion of radial nerve, acute radial nerve palsy

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) History: a) Repetitive motion/force b) Pain and paresthesias c) Weakness d) Exposure to vibrations e) Exacerbation of symptoms by sleeping on affected extremity f) Relief by splinting in neutral position 2) Physical Findings: a) Reproduction of symptoms with percussion, compression or other provocative maneuver b) Weakness and/or atrophy of affected muscles
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Injection with corticosteroids/steroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Nutritional supplements (Vitamins B1 and B6) in indicated doses Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Neuropathy - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Electromyogram (EMG)/nerve conduction (NC) studies Magnetic resonance imaging (MRI) (if mass lesion is suspected in nerve compression syndrome) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids/steroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Peripheral nerve blocks Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluations (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 18: 28 TAC §134.1002 (f)(6)(C)

(Diagnosis: Neuropathy - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Electromyogram (EMG)/nerve conduction (NC) studies Magnetic resonance imaging (MRI)(if mass lesion is suspected in nerve compression syndrome) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Antidepressants Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluations (FCE) 6) Transitional return to work

DIAGNOSIS
Muscle/Ligament/Capsular Injuries: Acute Chronic

ICD-9 DIAGNOSIS CODES (May include but not limited to)	
840	Strain/sprain shoulder and upper arm
841	Strain/sprain elbow and forearm
842	Strain/sprain wrist and hand

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Brief history of acute injury with early positive response to treatment. 2) No urgent surgical indicators on physical examination. 3) No significant structural pathology, suggesting surgical solutions. 4) Post acute or chronic patient with acute exacerbation. 5) Swelling, pain, and tenderness. 6) Limited range of motion.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Bone scan Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Manipulation Medications: Analgesics Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

Texas Workers' Compensation Commission Figure 20: 28 TAC §134.1002 (f)(6)(E)

(Diagnosis: Muscle/Ligament/Capsular Injuries: Acute, Chronic - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued persistent and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral management evaluation Bone scan Computerized axial tomography (CAT) scan Mental health evaluation/assessment Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Repeat diagnostic studies from previous levels as indicated
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSES			
Fractures			
ICD-9 DIAGNOSIS CODES (May include but not limited to)			
810	Fracture clavicle	815	Fracture metacarpal bones
811	Fracture scapula	816	Fracture one or more phalanges of hand
812	Fracture humerus	817	Multiple fractures of hand bones
813	Fracture radius and ulna	818	Ill defined fracture of upper limb
814	Fracture carpal bones	819	Multiple fractures involving both upper limbs and upper limbs with ribs, and sternum

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Brief history of acute injury with early positive response to treatment. 2) No urgent surgical indicators on physical examination. 3) No significant structural pathology, suggesting surgical solutions. 4) Post acute or chronic patient with acute exacerbation. 5) Swelling, pain, and tenderness. 6) Limited range of motion.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Bone scan Computerized axial tomography (CAT) scan Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Closed reduction Durable medical equipment (DME) Medications: Analgesics Limited oral corticosteroids Non-steroidal anti-inflammatory drugs Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Fractures - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) (confirmatory test to rule out occult fracture) Mental health evaluation/assessment Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Antidepressants Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 24: 28 TAC §134.1002 (f)(6)(I)

(Diagnosis: Fractures - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) (confirmatory test to rule out occult fracture) Mental health evaluation/assessment Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Antidepressants Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Avascular Necrosis
ICD-9 DIAGNOSIS CODES (May include but not limited to)
733.40 Aseptic necrosis of bone

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Pain at rest 2) Recent history of corticosteroid use or of physical stress 3) Limited range of motion 4) Weakness of extremity
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Bone scan Magnetic resonance imaging (MRI) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Medications: Analgesics Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Avascular Necrosis - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral pain management evaluation Bone scan Mental health evaluation/assessment Magnetic resonance imaging (MRI) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Antidepressants Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

(Diagnosis: Avascular Necrosis - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral pain management evaluation Bone scan Mental health evaluation/assessment Magnetic resonance imaging (MRI) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Antidepressants Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Intra-articular Pathology Traumatic Arthritis

ICD-9 DIAGNOSIS CODES (May include but not limited to)			
716.11	Traumatic arthropathy - shoulder	718.11	Loose body articular cartilage - shoulder
716.12	Traumatic arthropathy - upper arm	718.12	Loose body articular cartilage - upper arm
716.13	Traumatic arthropathy - forearm	718.13	Loose body articular cartilage - forearm
716.14	Traumatic arthropathy - hand	718.14	Loose body articular cartilage - hand

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Limited range of motion 2) Pain with use of joint 3) Weakness of extremity 4) Swelling
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Aspiration (with joint fluid analysis and cultures) Bone scan Computerized axial tomography (CAT) scan Laboratory analysis (including arthrodesis) Magnetic resonance imaging (MRI) Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Manipulation Medications: Analgesics Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Intra-articular Pathology, Traumatic Arthritis - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Aspiration (with joint fluid analysis and cultures) Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Laboratory analysis (including arthrodesis) Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays Tomogram
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

(Diagnosis: Intra-articular Pathology, Traumatic Arthritis - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and intermittent symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Single or Interdisciplinary programs Manipulation Medications: Analgesics Antidepressants Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Joint Instability
ICD-9 DIAGNOSIS CODES (May include but not limited to)
718.82 Instability of joint - elbow 718.84 Instability of joint - hand 718.81 Instability of joint - shoulder 718.83 Instability of joint - wrist

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Pain with overhead activity or other provocative maneuver 2) History of subluxation or dislocation 3) Repeated episodes of subluxation or dislocation 4) Pain, tenderness 5) Joint catching or popping
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) Physical examination Plain x-rays Tomograms
TREATMENT INTERVENTIONS: (May include but not limited to)	Medications: Analgesics Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Joint Instability - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays Tomograms
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

(Diagnosis: Joint Instability - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment.
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Arthrogram Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays Tomograms
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Medications: Analgesics Antidepressants Injection with corticosteroids (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Lacerations: Tendons Nerves

ICD-9 DIAGNOSIS CODES
(May include but not limited to)

880.20	Open wound shoulder tendon involvement	881.21	Open wound elbow tendon involvement
880.21	Open wound scapular tendon involvement	881.22	Open wound wrist tendon involvement
880.22	Open wound axillary tendon involvement	882.2	Open wound hand tendon involvement
880.23	Open wound upper arm tendon involvement	883.2	Open wound fingers tendon involvement
881.20	Open wound forearm tendon involvement	884.2	Open wound upper limb tendon involvement

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Open wound 2) Loss of function (e.g., sensibility, motion)
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Electromyogram (EMG)/nerve conduction studies (NC) (for suspected nerve injury) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Medications: Analgesics Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Lacerations: Tendons, Nerves - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Rupture 2) Limited sensation 3) Limited range of motion 4) Adhesions/infection
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Electromyogram (EMG)/nerve conduction studies (NC) (for suspected nerve injury) Mental health evaluation/assessment
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Antidepressants Limited oral corticosteroids Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

(Diagnosis: Lacerations: Tendons, Nerves - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Rupture 2) Limited sensation 3) Limited range of motion 4) Adhesions/secondary infections
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Electromyogram (EMG)/nerve conduction studies (NC) (for suspected nerve injury) Mental health evaluation/assessment
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Medications: Analgesics Antidepressants Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Crush Injuries
ICD-9 DIAGNOSIS CODES (May include but not limited to)
927.0 Crush injury to shoulder and upper arm 927.1 Crush injury to elbow and forearm 927.2 Crush injury to wrist and hand 927.3 Crush injury to fingers

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) History of crushing injury 2) Swelling 3) Pain 4) Inflammation
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Computerized axial tomography (CAT) scan Magnetic resonance imaging (MRI) Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Durable medical equipment (DME) Medications: Analgesics Antibiotics Non-steroidal anti-inflammatory drugs (NSAID) Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

(Diagnosis: Crush Injuries - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Redness and swelling 2) Loss of function 3) Continued pain 4) Limited range of motion 5) Limited sensation
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan (confirmatory test) Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Durable medical equipment (DME) Medications: Analgesics Antibiotics Antidepressants Injection with corticosteroids and/or analgesics (If further injections are required beyond the first three (3) injections, additional diagnostic studies may be warranted.) Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or interdisciplinary program 1) Work conditioning 2) Work hardening
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

(Diagnosis: Crush Injuries - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Electromyogram (EMG)/nerve conduction studies (NC) (confirmatory test) Magnetic resonance imaging (MRI) Mental health evaluation/assessment
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Medications: Antidepressants Antibiotics Mental health treatment Modified activity of the extremity as indicated Orthotics/splints/casts Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Reflex Sympathetic Dystrophy
ICD-9 DIAGNOSIS CODES (May include but not limited to)
337.21 Reflex sympathetic dystrophy of upper limb

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Pain (out of proportion to the degree of injury) 2) Edema/Swelling 3) Stiffness/Loss of function 4) Discoloration (may or may not be accompanied by temperature changes in the affected area) 5) Present only with a documented large nerve injury
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Mental health evaluation/assessment Nerve conduction studies (NC) Physical examination Plain x-rays Plethysmography Sympathetic blocks (maximum of 3) Vascular/arterial doppler
TREATMENT INTERVENTIONS: (May include but not limited to)	Bier blocks Biofeedback/behavioral pain management/relaxation training Detoxification (i.e., smoking cessation, alcohol cessation, decreasing narcotic analgesic intake) Medications: Analgesics Anticonvulsants Antidepressants Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Sympathetic blocks
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

Texas Workers' Compensation Commission Figure 41: 28 TAC §134.1002 (f)(6)(Z)

(Diagnosis: Reflex Sympathetic Dystrophy - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Joint contractures 2) Muscle weakness 3) Persistent pain, blanching, skin coolness 4) Progressive decrease in range of motion and restrictive limb use; muscle loss 5) Bony changes
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Mental health evaluation/assessment Nerve conduction studies (NC) Physical examination Plain x-rays Sympathetic blocks (maximum of 3) Vascular/arterial doppler
TREATMENT INTERVENTIONS: (May include but not limited to)	Bier blocks Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Analgesics Anticonvulsants Antidepressants Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Peripheral nerve blocks Single or interdisciplinary program 1) Work conditioning 2) Work hardening Sympathetic blocks
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

Texas Workers' Compensation Commission Figure 42: 28 TAC §134.1002 (f)(6)(AA)

(Diagnosis: Reflex Sympathetic Dystrophy - continued)

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Severely restricted use 2) Atrophy 3) Chronic pain
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Mental health evaluation/assessment Nerve conduction studies (NC) Physical examination Plain x-rays Sympathetic blocks (maximum of 3) Vascular/arterial doppler
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Medications: Antidepressants Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program Sympathetic blocks
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

DIAGNOSIS
Myofascial Pain Syndrome
ICD-9 DIAGNOSIS CODES (May include but not limited to)
729.1 Myalgia, myositis, fibromyositis

PRIMARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Limited range of motion 2) Muscular spasm 3) Headache
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Electromyogram (EMG)/nerve conduction studies (NC) Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity to the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Job site analysis

Texas Workers' Compensation Commission Figure 44: 28 TAC §134.1002 (f)(6)(CC)
(Diagnosis: Myofascial Pain Syndrome - continued)

SECONDARY LEVEL OF CARE	
DURATION:	0 - 3 months
CLINICAL INDICATORS: (May include but not limited to)	1) Continued, persistent, and intermittent symptoms (i.e., pain and paresthesias) 2) Limited-to-good response to primary treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Electromyogram (EMG)/nerve conduction studies (NC) Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Durable medical equipment (DME) Manipulation Medications: Analgesics Antidepressants Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Orthotics/splints Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Peripheral nerve blocks Single or interdisciplinary program 1) Work conditioning 2) Work hardening Trigger point injections
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment/ergonomic aids 2) Job accommodations/modifications 3) Job site analysis 4) Functional capacity evaluation (FCE) 5) Transitional return to work

TERTIARY LEVEL OF CARE	
DURATION:	0 - 6 months
CLINICAL INDICATORS: (May include but not limited to)	1) Chronic, persistent, and recurring symptoms (i.e., pain and paresthesias) 2) Documented history of persistent failure to respond to nonoperative/operative treatment
DIAGNOSTIC PROCEDURES: (May include but not limited to)	Biofeedback/behavioral pain management evaluation Bone scan Computerized axial tomography (CAT) scan Electromyogram (EMG)/nerve conduction studies (NC) Magnetic resonance imaging (MRI) Mental health evaluation/assessment Physical examination Plain x-rays
TREATMENT INTERVENTIONS: (May include but not limited to)	Biofeedback/behavioral pain management/relaxation training Manipulation Medications: Antidepressants Non-steroidal anti-inflammatory drugs (NSAID) Mental health treatment Modified activity of the extremity as indicated Outpatient evaluation and therapy 1) Attended modalities and procedures 2) Unattended modalities (limited to a maximum of two (2) weeks, if used solely) 3) Concurrent home program Single or Interdisciplinary program Trigger point injections
EXPECTED OUTCOME:	Return to unrestricted work or Maximum Medical Improvement (MMI).
RETURN TO WORK ISSUES:	1) Ergonomic assessment 2) Job accommodations/modifications 3) Return to full duty work may not always be possible and may necessitate the introduction of vocational rehabilitation services by referral to Texas Rehabilitation Commission. 4) Job site analysis 5) Functional capacity evaluation (FCE) 6) Transitional return to work

Figure: 30 TAC §106.262(3)

D, Feet	K
100	326
200	200
300	139
400	104
500	81
600	65
700	54
800	46
900	39
1,000	34
2,000	14
3,000 or more	8

E = maximum allowable hourly emission, and never to exceed 6 pounds per hour.

L = value as listed or referenced in Table 262.

K = value from the table on this page. (interpolate intermediate values)

D = distance to the nearest off-plant receptor.

TABLE 262
LIMIT VALUES (L) FOR USE WITH EXEMPTIONS FROM PERMITTING §106.262

The values are not to be interpreted as acceptable health effects values relative to the issuance of any permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

Compound	Limit (L) Milligrams Per Cubic Meter
Acetone	590.
Acetaldehyde	9.
Acetone Cyanohydrin	4.
Acetonitrile	34.
Acetylene	2662.
[Adiponitrile]	[18.]
[Aldrin]	[0.15]
N-Amyl Acetate	2.7
Sec-Amyl Acetate	1.1
[Arsenic]	[0.01]
Benzene	3.
Beryllium and Compounds	0.0005
Boron Trifluoride, as HF	0.5
Butyl Alcohol, n-	76.
Butyl Acrylate	19.
Butyl Chromate	0.01
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	1.8 [7.3]
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2
Chloroprene	3.6
Chromic Acid	0.01 [0.05]
[Chromium and Compounds]	[0.025]
Chromium Metal, Chromium II and III Compounds	0.1
Chromium VI Compounds	0.01

Table 262. Cont'd.

Compound	Limit (L) Milligrams Per Cubic Meter
Creosote	0.1
Cresol	0.5 [0.12]
Cumene	50. [43.]
Cyanogen Chloride	0.06
[o-Dichlorobenzene]	[180.]
[p-Dichlorobenzene]	[108.]
[1,2-dichlorobenzene]	[79.]
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5
Diisobutyl Ketone	63.9 [140.]
Dimethyl Aniline	6.4
[Dimethylhydrazine]	[0.15]
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	0.38 [1.]
Ethylene Glycol	26.
Ethylene Glycol Dinitrate	0.1
[Ethylene Oxide]	[0.18]
Ethylidene-2-norbornene, 5-	7.
Ethyl Mercaptan	0.08 [0.15]
Ethyl Sulfide	1.6
[Fibrous Glass Dust]	[5.]
Glycolonitrile [Gylcolonitrile]	5.
Halothane	16
Heptane	350.
Hexanediamine, 1,6-	0.32
[Hydrazine]	[0.04]
Hydrogen Chloride	1.
Hydrogen Fluoride	0.5
Hydrogen Sulfide	1.1
Isoamyl Acetate	133. [13.]
Isoamyl Alcohol	15.

Table 262. Cont'd.

Compound	Limit (L) Milligrams Per Cubic Meter
Isobutyronitrile	22.
[Isophorone Diisocyanate]	[0.045]
Isophorone	23.
Kepone	0.001
Kerosene	100.
Malononitrile	8.
[Mercury, Inorganic]	[0.05]
Mesityl Oxide	40.
Methyl Acrylate	5.8 [1.7]
Methyl Amyl Ketone	9.4 [5.8]
Methyl-t-butyl ether	60.
Methyl Butyl Ketone	4.
Methyl Disulfide	2.2
Methylenebis (2-Chloroaniline) (MOCA)	0.003
[Methylenebis (Phenyl isocyanate)]	[0.05]
Methylene Chloride	26.
[Methylhydrazine]	[0.08]
Methyl Isoamyl Ketone	5.6 [5.8]
Methyl Mercaptan	0.2 [0.3]
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	0.3 [0.5]
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015
Nitroglycerine	0.1
Nitropropane	5. [36.]
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
[Phenyl Glycidyl Ether]	[5.]

Table 262. Cont'd.

Compound	Limit (L) Milligrams Per Cubic Meter
[Phenylhydrazine]	[0.6]
Phenyl Mercaptan	0.4 Compound
Propionitrile	14.
Propyl Acetate	62.6 [281.]
Propylene Oxide	20. [5.]
Propyl Mercaptan	0.23 [0.08]
Silica-amorphous- precipitated, silica gel	4.
Silicon Carbide	4.
Stoddard Solvent	350.
Styrene	21.
Succinonitrile	20.
Tolidine	0.02
Trichloroethylene	135.
Trimethylamine	0.1
Valeric Acid	0.34
Vinyl Acetate	15.
Vinyl Chloride	2.

For compounds not included in the table, the time weighted average threshold limit values (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH) (1997 Edition) shall be used. The Short Term Exposure Level or Ceiling Limit may be used for compounds that do not have a published time weighted average. This exemption cannot be used if the compound is not listed in the table or does not have a published TLV in the 1997 ACGIH Guide.

[NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), (1985-1986 Edition) shall be used for compounds not included in the table. This section cannot be used if the compound is not listed in the table or does not have a published TLV in the ACGIH.]

Figure: 30 TAC §335.1(119)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i) (1)	Energy Recovery/Fuel S.W. Def. (D)(ii) (2)	Reclamation S.W. Def. (D)(iii) (3)	Speculative Accumulation S.W. Def. (D)(iv) (4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products", [and] "scrap metal" and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1]These materials are governed by the provisions of §335.24(h) only.

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).

Texas State Board of Public Accountancy

Monday, June 15, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Behavioral Enforcement Committee

AGENDA:

A. INVESTIGATIONS

1. File No. 98-04-01L
2. File No. 98-03-16L
3. File No. 98-04-02L
4. File No. 98-03-23L
5. File No. 98-03-24L
6. File No. 98-03-21L
7. File No. 98-03-27L
8. File No. 97-09-02L
9. File No. 98-03-05L
10. File No. 98-04-10L
11. File No. 98-03-04L
12. File No. 97-12-14L
13. File No. 98-04-09L
14. File No. 98-03-20L
15. File No. 98-03-19L
16. File No. 98-03-26L
17. File No. 98-03-03L
18. File No. 98-04-03L

B. INVESTIGATIONS–RECONSIDERATION

1. File No. 97–11–01L
2. File No. 97–11–04L

C. DISCUSSION ITEMS

1. Horne CPA Group-Board opinion
2. Regsdale and Kollmansberger-Board opinion
3. Revisions to background information

D. INFORMATION CONFERENCES

1. File No. 98–01–12L
2. File No. 97–12–18L
3. File No's 97–10–22L and 97–10–23L

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701–3900, 512/305–7848.
Filed: June 4, 1998, 11:06 p.m.

TRD-9808997

♦ ♦ ♦

Wednesday, June 24, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

AGENDA:

A. INFORMAL CONFERENCES

1. File No. 97-11-08L

2. File No. 98-04-04L

3. File No. 97-05-19L

4. File No. 98-09-29L

B. INVESTIGATIONS

1. File No. 98–03–02L

2. File No. 98–03–06L

3. File No. 98–03–07L

4. File No. 96–09–07L

5. File No. 98–03–32L

6. File No. 98–04–05L

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701–3900, 512/305–7848.
Filed: June 4, 1998, 11:06 p.m.

TRD-9808998

♦ ♦ ♦

State Office of Administrative Hearings

Monday, June 15, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Prehearing conference is scheduled for the adove date and time in:

SOAH DOCKET NUMBER 473–98–0756 — APPLICATION OF SUGAR LAND TELEPHONE COMPANY OF TEXAS, INC. FOR AUTHORITY TO RECOVER LOST REVENUES AND COST OF IMPLEMENTING EXPANDED LOCAL CALLING SERVICE PURSUANT TO P.U.C. SUBST. R. 23.49(C)(12) (PUC DOCKET NUMBER 18978)

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701–1649, 512/936–0728.
Filed: June 4, 1998, 12:20 p.m.

TRD-9809005

♦ ♦ ♦

Texas Aerospace Commission

Thursday, June 18, 1998, 9:00 a.m.

Stephen F. Austin Building Conference Room 300-A, 1700 North Congress Avenue

Austin

Commissioners Bi-Monthly Meeting

REVISED AGENDA:

1. Welcome and Call to Order by the Chairman

2. Approval of the Minutes of the April 28, 1998 Bi-Monthly Meeting

3. Staff Reports and Discussion

4. Old Business

5. New Business

6. Summary of Votes, Orders, Decisions, or Other Actions Taken at this Meeting

7. Adjournment

Contact: Tom Moser, P.O. Box 12088, Austin, Texas 78711–2088, 512/936–4822.
Filed: June 4, 1998, 10:10 a.m.

TRD-9808987

♦ ♦ ♦

Agriculture Resources Protection Authority

Thursday, June 25, 1998, 10:00 a.m.

1700 North Congress, Room 911

Austin

AGENDA:

Review and approval of minutes of previous meeting; discussion and action on proposed rules amendments (4 TAC §101.2 §101.20); discussion of agency quarterly reports on pesticide regulatory enforcement activities; discussion and action on agency strategic plans; discussion and action on resolution concerning the control of sale cedar; update on boll weevil eradication program under SB 1814; report on section 18s issued by Texas Department of Agriculture; discussion and action on possible pesticides-related issued in 1999 Legislature; update on agency pesticide-related activities since last meeting; citizens' communications; public comment on state pesticide regulation efforts; discussion and action on setting next board meeting date; adjourn.

Contact: Donnie Dippel, P.O. Box 12847, Austin, Texas 78711, 512/475–1621.
Filed: June 10, 1998, 11:52 a.m.

TRD-9809323

♦ ♦ ♦

State Bar of Texas

Thursday, June 11, 1998, 8:30 a.m.

Bayfront Plaza Convention Center, 1901 North Shoreline, Ballroom B

Corpus Christi

AGENDA:

Call to order/roll call/invocation/consent agenda/items from the: president, president-elect; executive director and the general counsel/review and take appropriate action on items presented by board committees: appeals, adhoc benchmark, general counsel oversight, legal services, long range planning, and nominating committee to select ABA delegates/consider board policy amendment/review and take appropriate action on items from State Board Committees, sections and divisions: disability issues committee, law student division, and proposed creation of new section (insurance law section)/reports from: supreme court liaison, Court of Criminal Appeals liaison, commission for lawyer, discipline, immediate past president, TYLA president, federal judicial liaison, judicial section liaison, and out-of-state lawyer liaison/public comment/recess/reconvene/roll call/invocation/installation of officers, remarks, and presentations/swearing in of president-elect and remarks/swearing in of new directors/report from: incoming chair of the board, incoming president, and incoming TYLA president/public comment/adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 800–204–2222.
Filed: June 3, 1998, 4:13 p.m.

TRD-9808978

♦ ♦ ♦

Friday, June 12, 1998, 8:30 a.m.

Omni Bayfront Hotel, Laguna Madre Room, 900 North Shoreline Boulevard

Texas Commission for Lawyer Discipline

Corpus Christi

AGENDA:

PUBLIC SESSION: Call to order/introductions/approve minutes/ public comment/adjourn.

CLOSED SESSION: Discuss appropriate action with respect to pending and potential litigation; pending evidentiary cases; special counsel assignments; and the performance of the general counsel/ chief disciplinary counsel and staff.

PUBLIC SESSION: Discuss and authorize general counsel to make, accept or reject offers or take other appropriate action with respect to matters discussed in closed session/review, discuss and take appropriate action on: statistical and status reports of pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement; budge, operations, and duties of the Commission and the General Counsel's Office; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/ discuss future meetings/discuss other matters as appropriately come before the Commission/public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 800–204–2222.
Filed: June 3, 1998, 4:13 p.m.

TRD-9808977

♦ ♦ ♦

Texas Commission for the Blind

Friday, June 19, 1998, 10:00 a.m.

4800 North Lamar, Suite 320 (Administrative Building)

Austin

Governing Board Legislative Committee

AGENDA:

1. Discussion and action: Draft Legislative Appropriations Request

2. Discussion and action: Possible agency legislative issues

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/ 459–2601.
Filed: June 8, 1998, 1:31 p.m.

TRD-9809191

♦ ♦ ♦

Texas Bond Review Board

Thursday, June 18, 1998, 10:00 a.m.

Clements Building, Committee Room #5, 300 West 15th Street

Austin

AGENDA:

I. call to order

II. approval of minutes

III. consideration of proposed issues

A. Texas Department of Housing and Community Affairs- Multifamily Housing Revenue Refunding bonds (Dallas-Oxford) Series 1998

B. Texas State Affordable Housing Corporation (doing business as Texas Star Mortgage)-collateralized mortgage loan (President's Corner Apartments)

C. Texas Water Development Board-lease purchase of water monitoring equipment

IV. other business

A. approval of agency strategic plan

B. meeting schedule for July 1998

V. adjourn

Contact: Jose Hernandez, 300 West 15th Street, Suite, 409, Austin, Texas 78701, 512/463–1741.
Filed: June 10, 1998, 11:45 a.m.

TRD-9809321

♦ ♦ ♦

Texas Board of Chiropratic Examiners

Thursday, June 18, 1998, 10:00 a.m.

8008 Cedar Springs Road, (Love Field) El Paso Room

Dallas

Enforcement Committee

AGENDA:

A) 1. Informal Hearing 98–96 and 98–115

2. Review cases 98–01 – 98–160

3. Accepting unsigned complaints and Workers Comp & Peer Review complaints

4. Discuss administrative fines

Contact: John F. Zavala, 333 Guadalupe, Tower III, suite 825, Austin, Texas 78701, 512/305–6708.
Filed: June 9, 1998, 1:41 p.m.

TRD-9809255

♦ ♦ ♦

Office of Court Administration

Thursday, June 25, 1998, 10:00 a.m.

Texas Supreme Court Chamber, 201 West 14th Floor

Austin

Texas Judicial Council

AGENDA:

I. Commencement of Meeting

II. Attendance of Members

III. Minutes to April 16, 1998 Meeting

IV. Legislative Update

V. Discussion on Court reorganization

VI. Presentation on Court Reporting Forms

VII. Presentation on Court Interpreter Certification

VIII. Reports from the Counsel Committees

Discussion and Action by the Council

A. Committee on Judicial Selection

B. Committee on Juvenile Reform/Impact on the Court

C. Committee on Judicial Redistricting

D. Working Group on Alternative Dispute Resolution

E. Committee on Visiting and Retired Judges

F. Committee on Court Records

IX. Other Business

X. Date of Next Meeting (Calendar)

XI. Adjournment

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711–2066, 512/463–1625.
Filed: June 4, 1998, 2:29 p.m.

TRD-9809014

♦ ♦ ♦

Monday, June 29, 1998, 10:00 a.m.

Lieutenant Governor's Committee Room, Room 2E.20 State Capitol

Austin

Texas Judicial Council Committee on Court Records

AGENDA:

10:00 a.m. Call meeting to order

1. minutes from May 18, 1998 meeting

2. legislative update

3. OCA update

4. Texas State Library: suggested guidelines for electronic mail usage and retention

5. subcommittee reports

6. new business

7. public comment

Contact: Celinda Provost, P.O. Box 12066, Austin, Texas 78711–2066, 512/463–1382.
Filed: June 8, 1998, 4:02 p.m.

TRD-9809201

♦ ♦ ♦

Monday, June 29, 1998, 10:00 a.m.

Lieutenant Governor's Committee Room, Room 2E.20 State Capitol

Austin

Judicial Committee on Information Technology

REVISED AGENDA:

10:00 a.m. Call meeting to order

1. minutes from May 18, 1998 meeting

2. legislative update

3. OCA update

4. Texas State Library: suggested guidelines for electronic mail usage and retention

5. subcommittee reports

6. new business

7. public comment

Contact: Celinda Provost, P.O. Box 12066, Austin, Texas 78711–2066, 512/463–1382.
Filed: June 9, 1998, 10:46 a.m.

TRD-9809249

♦ ♦ ♦

Texas School for the Deaf

Tuesday, June 16, 1998, 6:00 p.m.

1102 South Congress Avenue

Austin

Governing Board Superintendent Search Committee

AGENDA:

1. call to order

2. approval of minutes from May 22, 1998

3. review of applications for the position of superintendent

4. determination of applicants to be interviewed

5. adjournment

Contact: Twyla H. Strickland, P.O. Box 3538, Austin, Texas 78764, 512/463–5303.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809219

♦ ♦ ♦

Thursday-Friday, June 18–19, 1998, 6:00 p.m. and 8:15 a.m. (respectively.)

1102 South Congress Avenue

Austin

Governing Board Superintendent Search Committee

AGENDA:

1. call to order

2. approval of minutes from June 16, 1998

3. fiest interview of superintendent applicants

4. consideration of selection of superintendent applicatns for second interview

5. adjournment

Contact: Twyla H. Strickland, P.O. Box 3538, Austin, Texas 78764, 512/463–5303.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809235

♦ ♦ ♦

Saturday, June 20, 1998, 8:30 a.m.

1102 South Congress Avenue

Austin

Governing Board

AGENDA:

1. call to order

2. approval of minutes from April 3, 1998

3. audience speakers to address the board; introduction of visitors

4. second interview of superintendent applicants

5. consideration of selection of superintendent

6. reports of discussion by individual board members

7. adjournment

Contact: Twyla H. Strickland, P.O. Box 3538, Austin, Texas 78764, 512/463–5303.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809236

♦ ♦ ♦

Texas Planning Council for Developmental Disabilities

Friday, June 26, 1998, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Room 4501

Austin

Traumatic Brain Injury Advisory Board

AGENDA:

9:30 a.m. Call to order

I. welcome, introductions, approval of minutes

II. chair and staff report

III. discussion of needs assessment

IV. discussion of policy analysis activities

V. presentation of TBI Model Systems—TIRR

VI. state action plan activities discussion

4:30 p.m. adjourn

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print are requested to contact Sandra Knutson at 972/726–7790.

Contact: Sandra Knutson, 16209 Dalmalley Lane, Dallas, Texas 75248, 972/726–7790.
Filed: June 9, 1998, 11:24 p.m.

TRD-9809252

♦ ♦ ♦

Texas Council on Purchasing from People with Disabilities

Friday, June 26, 1998, 10:00 a.m.

Capitol Extension, 1400 North Congress Avenue, Hearing Room E2.026

Austin

Quarterly Meeting

AGENDA:

approval of minutes from March 27, 1998 open meeting;

consideration of pricing subcommittee recommendations:

Item 1 discussion and action on service contracts completed under temporary approval authority

Item 2. discussion and action on new services

Item 3. discussion and action on renewal services

Item 4. discussion and action on temporary employment services

Item 5. discussion and action on new products

Item 6. discussion and action on product changes and revisions;

Executive session to consult with legal counsel concerning pending litigation pursuant to the provisions of Texas Government Code, §551.071;

discussion and action on litigation settlement;

discussion and action on CHA invitation for bid;

discussion and action on proposed plan to review council rules;

discussion and action on price revisions for Austin area state use temporary

employment service contract;

presentation of TIBH Industries, Inc. quarterly activity report; and public comment period

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print are requested to contact Erica Goldbloom at 512/463-3244 two working days prior to the meeting so that appropriate arrangements can be made. .

Contact: Chester Beattle Jr., 1711 San Jacinto, Austin, Texas 78701, 512/463–3583.
Filed: June 8, 1998, 10:06 a.m.

TRD-9809150

♦ ♦ ♦

State Board for Educator Certification

Friday-Saturday, June 26–27, 1998, Noon and 8:00 a.m.

Radisson Hotel and conference Center, 5200 east University

Austin

State Board of Educator Certification Workshop

AGENDA:

1. call to order; 2. executive session-discussion position of executive director' 3. discuss mission statement; 4. discuss the legislative appropriations request; 5. discus framework issues; a. certification structure; b. induction years; c. advanced certificate; d. emergency certificate; e. assessments-funding and performance; 6. discuss disciplinary rules.

Contact: Denise Jones, 1701 North Congress, Austin, Texas 78701, 512/475–5715.
Filed: June 8, 1998, 9:37 a.m.

TRD-9809125

♦ ♦ ♦

Advisory Commission on State Emergency Communications

Tuesday, June 16, 1998, 1:30 p.m.

William P. Hobby Building, 333 Guadalupe Street, Room 1–1264

Austin

Poison Center Coordinating Committee

AGENDA:

The Committee will call the meeting to order and recognize guests; hear public comment; hear reports, discuss and take committee action, as necessary; approval of the March 11, 1998, meeting minutes; subcommittee reports; A. report of the subcommittee on education, B. report of the medical directors subcommittee, C. report of the research subcommittee, D. report of the operations subcommittee; legislative appropriations request; SPI ADHOC Committee; federal legislation; discussion of FY 1999 budget/grants; TPCN legal responsibility for child neglect/neglected cases and suicide callers; REQUA mailing; miscellaneous; set next meeting date; adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at 512/305–6933 at least two working days prior to the meeting.

Contact: Velia Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/305–6933.
Filed: June 4, 1998, 3:31 p.m.

TRD-9809019

♦ ♦ ♦

State Employee Charitable Campaign

Wednesday, June 17, 1998, 9:00 a.m.

Center for Energy/Economic Dev. University of Texas/Permian Basin, SH 191 and FM 1788

Midland

Local Employee Committee Midland/Odessa Area

AGENDA:

I. call to order

II. reading and approval of the minutes April 15, 1998 meeting

III. review the results of the June 10 meting with Representative Junell

IV. consider and adopt strategies to enhance the campaign

V. consider new committee members to be added to the LEC

VI. adjourn.

Contact: Percy Symonette, 1209 West Wall, Midland, Texas 79701, 915/685–7700.
Filed: June 4, 1998, 10:57 a.m.

TRD-9808996

♦ ♦ ♦

Wednesday, June 17, 1998, 3:30 p.m.

2207 Line Avenue

Amarillo

Local Employee Committee Amarillo/Canyon Area

AGENDA:

A. Minutes — Dr. Lee Taylor

B. Update from State Campaign Manager — Julie Rios

1. Pledge cards

2. Posters, notecards, etc.

3. Higher Ed. Convocation

C. LCM update — Julie Rios

1. Materials Quotes

2. Publicity-Honary Chair, Millie, Julie

D. Sub-Committee Reports — Sub-committee chairs

1. Kickoff-plans and assignments — Tammie Cervantez

2. Training-next training dates, materials — Tonya Detten

3. Incentives-trip details — Vivian Long/Julie Rios

E. Other — Dr. Lee Taylor

1. June 9th SPC Meeting

Next LEC Meeting-July 15th @ 3:30 p.m.

Contact: Julie Rios, 2207 Line Avenue, Amarillo, Texas 79701, 915/685–7700.
Filed: June 4, 1998, 10:57 a.m.

TRD-9809209

♦ ♦ ♦

Wednesday, June 24, 1998, 1:30 p.m.

701 West 51st Street, Room W-651

Austin

Local Employee Committee

AGENDA:

welcome and introductions

recruitment of coordinators

coordination of materials distribution

speakers and tours

coordinator briefing preparation

coordinator training preparation

adjourn.

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 79702, 512/472-6267 or Fax 512/482–8309.
Filed: June 8, 1998, 4:06 p.m.

TRD-9809203

♦ ♦ ♦

Wednesday, July 15, 1998, 1:30 p.m.

701 West 51st Street, Room W-651

Austin

Local Employee Committee

REVISED AGENDA:

welcome and introductions

coordinator training preparation

public information officer packets

adjourn

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 79702, 512/472-6267 or Fax 512/482–8309.
Filed: June 8, 1998, 4:06 p.m.

TRD-9809204

♦ ♦ ♦

Wednesday, August 5, 1998, 1:30 p.m.

200 East Martin Luther King Jr. Boulevard

Austin

Local Employee Committee

REVISED AGENDA:

welcome and introductions

coordinator training preparation

adjourn

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 79702, 512/472-6267 or Fax 512/482–8309.
Filed: June 8, 1998, 4:06 p.m.

TRD-9809205

♦ ♦ ♦

Wednesday, September 16, 1998, 1:30 p.m.

2000 East Martin Luther King Jr., Boulevard

Austin

Local Employee Committee

REVISED AGENDA:

welcome and introductions

local campaign manager report

meet campaign representatives

adjourn

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 79702, 512/472-6267 or Fax 512/482–8309.
Filed: June 8, 1998, 4:06 p.m.

TRD-9809206

♦ ♦ ♦

Wednesday, October 14, 1998, 1:30 p.m.

2000 East Martin Luther King Jr., Boulevard

Austin

Local Employee Committee

REVISED AGENDA:

welcome and introductions

local campaign manager report

campaign status report

awards ceremony planning

adjourn

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 79702, 512/472-6267 or Fax 512/482–8309.
Filed: June 8, 1998, 4:06 p.m.

TRD-98089207

♦ ♦ ♦

Wednesday, December 2, 1998, 1:30 p.m.

2000 East Martin Luther King Jr., Boulevard

Austin

Local Employee Committee

REVISED AGENDA:

welcome and introductions

campaign status report

awards ceremony planning

adjourn

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 79702, 512/472-6267 or Fax 512/482–8309.
Filed: June 8, 1998, 4:06 p.m.

TRD-9809208

♦ ♦ ♦

Employees Retirement System of Texas

Thursday, June 11–12, 1998, 9:00 a.m.

Vintage Villas, 4209 Eck Lane

Austin

ERS Board of Trustees

AGENDA:

Review of Health Insurance Programs; Discussion of Proposed Retirement Experience Study; Discussion of the Investment Strategy; Consideration of the Investment of the System's Assets (Investment in the Texas Growth Fund); Consideration of Expanding the Membership of the Ivrestment Advisory Committee; Executive Director's Report; Adjournment

* The ERA Board of Trustee will recess at 4:30 p.m. on Thursday, June 11, 1998 and will reconvene at 9:00 a.m. on Friday, June 12, 1998.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, 512/867–3336.
Filed: June 3, 1998, 3:00 p.m.

TRD-9808972

♦ ♦ ♦

Texas Board of Professional Engineers

Wednesday, June 17, 1998, 2:00 p.m.

Radisson Plaza Hotel, 815 Main Street

Fort Worth

General Issues Committee

AGENDA:

1. call to order

A. meeting called to order by committee chair at 2:00 p.m.

B. roll call

C. welcome visitors

2. attend joint meeting with the education and industry advisory committees to discuss:

A. software engineering;

B. residential foundation committee study;

C. architect/engineer liaison committee; and

D. Testing laboratories.

3. adjourn

Contact: John R. Speed, 1917 IH-35 South, Austin, Texas 78741, 512/440–7723.
Filed: June 1, 1998, 2:12 p.m.

TRD-9809013

♦ ♦ ♦

Texas Ethics Commission

Friday, June 12, 1998, 9:30 a.m.

Capitol Extension, Room E1.010

Austin

AGENDA:

The Texas Ethics Commission will also discuss and possibly act in response to Advisory Opinion Request No 439.

Contact: Tom Harrison, Sam Houston Building, 10th Floor, 201 East 14th Street, Austin, Texas 78701, 512/463–5800.
Filed: June 3, 1998, 3:41 p.m.

TRD-9808974

♦ ♦ ♦

General Land Office

Tuesday, June 16, 1998, 3:30 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

Veterans Land Board

AGENDA:

Approval of previous meeting minutes; consideration and approval of negotiated contracts for construction management oversight representative for the State Veterans Homes; consideration and approval of negotiated contracts for design-to-build State Veterans Homes; Consideration and approval of negotiated contracts for operation of State Veterans Homes; staff reports.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, 512/463–5016.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809216

♦ ♦ ♦

Office of the Governor

Friday, June 25, 1998, 9:00 a.m.

2401 E. Lamar Boulevard

Arlington

Texas Governor's Committee on People with Disabilities

AGENDA:

1. call to order/introductions/housekeeping/recognition of local guests/approval of minutes

2. public comments

3. executive director's report

4. concurrent subcommittee meetings

5. subcommittee action items and reports

6. committee members' reports

7. committee ex-officio representatives' reports

8. invited local committee presentations

9. special Olympics Texas

10. focus group - work session

11. focus group reports

12. adjournment

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, 512/463–5742.
Filed: June 10, 1998, 9:12 a.m.

TRD-9809289

♦ ♦ ♦

Friday, June 25, 1998, 10:00 a.m.

2401 E. Lamar Boulevard

Arlington

Texas Governor's Committee on People with Disabilities Programs Subcommittee

AGENDA:

1. call to order/approval of minutes

2. member reports

3. ex officio representative reports

4. discussion/possible action: recommendations on sigh language interpreting

5. discussion/possible action: training program- "The Scoop on Disability Reporting"

6. staff reports

7. adjourn

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, 512/463–5742.
Filed: June 10, 1998, 9:23 a.m.

TRD-9809290

♦ ♦ ♦

Friday, June 25, 1998, 10:00 a.m.

2401 E. Lamar Boulevard

Arlington

Texas 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. ex officio representative reports

4. discussion/possible action: exploring ways to utilize the California youth leadership forum materials

5. discussion/Sunset Commission reports on the Texas Department of Mental Health/Mental Retardation, the Texas Department of Health, and the Department on Aging and their significance for the Committee's Long-Range State Plan

6. staff report: Barbara S. Crosby (update on disabilities laws: implementation, regulations, and new bills

7. adjournment

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, 512/463–5742.
Filed: June 10, 1998, 9:23 a.m.

TRD-9809291

♦ ♦ ♦

Texas Health Insurance Risk Pool (Health Pool)

Tuesday, June 16, 1998, 8:00 a.m.

301 Congress Avenue, Suite 500

Austin

Board of Directors, Combined Strategic Planning Committee and Staffing Committee, Grievance Committee

AGENDA:

Some members will participate via teleconference because it is difficult or impossible for such members to attend the meeting

1. Executive Session: Committees or the Board of Directors may meet in Executive Session in accordance with Texas Open Meetings Act to discuss personnel matters or to seek advice of counsel.

II. Board of Directors: 1. Committee Reports; 2. Treasure's report; 3. Matters concerning third party administrator; 4. Website; 5. Other administrative matters; 6. Public Comment; 7. Setting of next meeting.

III. Committee Meetings:

A. Combined Strategic Planning and Staffing Committees: 1. Approval of the minutes; 2. Interview of candidates for Executive director, hiring of Executive Director, posting and bid review, other staffing matters; 3. Discussion and possible action on extension of current management contract; 4. Mission Statement.

B. Grievance Committee: 1. Grievance procedures; 2: Review of field grievances

Contact: C.S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, 512/499–0775.
Filed: June 8, 1998, 4:16 p.m.

TRD-9809210

♦ ♦ ♦

Texas Healthy Kids Corporation

Monday, June 15, 1998, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Room 1420

Austin

Board of Directors

AGENDA:

Board deliberation and action/approval regarding the following:

Underwriting/evidence of insurability standards;

Processes relating to Premium Stabilization Account;

Enrollment fees;

THKC Budget for Fiscal Year 1999 and related issues;

Selection of financial institution for THKC funds not received thought a state appropriation or in fundraising for premium stabilization account.

Personnel issues relating to certain THKC staff;

Sliding scale premium assistance eligibility;

Other miscellaneous, administrative, corporation matters.

Timelines, future meetings, general updates, other administrative procedural matters, public comment.

The THKC Board may meet in Executive Session in accordance with the Texas Open Meetings Act to Discuss personnel issues or any other matters appropriate for an Executive Session.

Persons with disabilities who require auxiliary aids, services, or materials in alternate formal, please contact THKJC at least three business days before the meeting.

Contact: Tyrette Hamilton, P.O. Box 1506, Austin, Texas 78767–1506, 512/424–6565 (phone) 512/424–6601 fax.
Filed: June 5, 1998, 3:43 p.m.

TRD-9809115

♦ ♦ ♦

Texas Deparment of Housing and Community Affairs

Friday, June 12, 1998, 9:00 a.m.

University of Texas at Tyler, 3900 University Boulevard, Library 401

Tyler

Finance Committee

AGENDA:

The Committee will meet to consider and possibly act on:

Minutes of Meeting of May 18, 1998

Approval of Selection of Underwriting Team for Single Family Board Program No. 54

Approval of Preliminary Guidelines for Single Family Bond Program No. 54

Adjourn.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475–3934.
Filed: June 3, 1998, 4:40 p.m.

TRD-9808980

♦ ♦ ♦

Friday, June 12, 1998, 9:30 a.m.

University of Texas at Tyler, 3900 University Boulevard, Library 401

Tyler

Program Committee

AGENDA:

The Committee will meet to consider and possibly act on:

Minutes of Meeting of May 18, 1998

Approval of Strategic Plan

Approval of Amendment to HOME Program Contract with United Cerebral Palsy

Approval of 1998 Housing Trust Fund Project Awards and Capacity Building Awards

Approval of Funding for Neighborhood Partnership Program for City San Antonio for: Acquisition Development Lending; Construction Lending; and Down Payment Assistance

Approval of Authorization for Increase in Down Payment Assistance for Rural Areas of Texas

Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson at 512/475–3100 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, Waller Creek Office Building, Austin, Texas 78701, 512/475–3934.
Filed: June 3, 1998, 4:40 p.m.

TRD-9808976

♦ ♦ ♦

Friday, June 12, 1998, 9:30 a.m.

University of Texas at Tyler, 3900 University Boulevard, Library 401

Tyler

Program Committee

REVISED AGENDA:

The Committee will meet to consider and possibly act on:

ADD:

Approval of Amendments to HOME Program Contracts for City of Del Rio and Catholic Family Services, Inc.

Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson at 512/475–3100 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, Waller Creek Office Building, Austin, Texas 78701, 512/475–3934.
Filed: June 4, 1998, 3:41 p.m.

TRD-9809022

♦ ♦ ♦

Friday, June 12, 1998, 10:00 a.m.

University of Texas at Tyler, 3900 University Boulevard, Library 401

Tyler

Board

REVISED AGENDA:

The Board will meet to consider and possibly act upon:

ADD: Approval of Manufactured Housing Cases:

In the Matter of United Mobile Homes, Inc., Docket Number 332–98–0575 Complaint No, MHD1997000775C

In the Matter of Alton Diggles doing business as Alton Mobile Home Moving and Services as known as Alton Mobile Home Moving Services and Repair, Docket No. 332–97–1635, Complaint Numbers MHD 1996000147C, MHD1996000148C, MHD1996000242C, MHD19960010661, MHD1997001807C, MHD1996001264C, MHD1997001740C

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson at 512/475–3100 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, Waller Creek Office Building, Austin, Texas 78701, 512/475–3934.
Filed: June 4, 1998, 4:07 p.m.

TRD-9809028

♦ ♦ ♦

Friday, June 12, 1998, 10:00 a.m.

University of Texas at Tyler, 3900 University Boulevard, Library 401

Tyler

Board

AGENDA:

The Board will meet to consider and possibly act on: Minutes of Meeting of May 18, 1998

Approval of Home Program Contract with United Cerebral Palsy

Approval of Strategic Plan

Approval of 1998 Housing Trust Fund Project Award and Capacity Building Awards

Approval of Funding for Neighborhood Partnership Program for City of San Antonio Project for: Acquisition Development Lending; Construction Lending; Down Payment Assistance

Approval of Authorization for Increase in Down Payment Assistance for Rural Areas of Texas

Approval of Selection of Underwriting Team for Single Family Bond Program No. 54

Approval of Preliminary Guidelines for Single Family Bond Program 54

Executive Directors Report- Underwriter Response for Innovative Program

Executive Session on Personnel Matters; Litigation and Anticipated Litigation (Potential or Threatened under §551.071 and §551.103, Texas Government Code Litigation Exception); Litigation Settlement-El Cenizo Settlement; Personnel Matters Regarding Duties and Responsibilities in Relationship to Budget under §551.074, Texas Government Code; Consultation with Attorney under §551.071(2), Texas Government Code; Action in Open Session on Items Discussed in Executive Session; Adjourn.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475–3934.

Filed: June 3, 1998, 4:32 p.m.

TRD-9808979

♦ ♦ ♦

Friday, June 12, 1998, 11:30 a.m.

University of Texas at Tyler, 3900 University Boulevard, Library 401

Tyler

Board

AGENDA:

The Board will meet to consider and possibly act on:

Approval of Minutes of Board Meeting of April 20, 1998 and Board Meeting of May 18, 1998 Approval of Possible User of Excess Funds Borrowed by Pledging Presidents Corner Apartments

Approval of Neighborhood Partnership Program for San Antonio Project for: Acquisition Development Lending; Construction Lending and Down Payment Assistance

Report item: Corporations Financial Position

Executive Session-Personnel Matters; Consultation with attorney under §551.071(2) of Texas Government Code; Anticipated Litigation (potential or threatened); Litigation Settlement-El Cenizo; Action in Open Session on Items Discussed in Executive Session;

Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson at 512/475–3100 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, Waller Creek Office Building, Austin, Texas 78701, 512/475–3934.
Filed: June 3, 1998, 4:52 p.m.

TRD-9808981

♦ ♦ ♦

Texas Department of Human Services

Thursday, June 18, 1998, 10:00 a.m.

701 West 51st, East Tower, Public Hearing Room

Austin

Board

AGENDA:

1. Approval of the minutes of May 15, 1998, 2. simplification of the overissuance and lump sum policies in the temporary assistance for needy families (TANF) program. 3. expungement of temporary assistance for needy families (TANF) benefits from electronic benefit transfer (EBT) accounts. 4. use of program funds to assist family day care homes in becoming licensed or registered. 5. adoption of amendments to contract administration rules to implement charitable choice. 6. proposed fiscal year 1999 operating budget and fiscal years 2000–2001 Legislative Appropriations Request (LAR). 7. commissioner's report; a. historically underutilized business (HUB) program status. b. announcements and comments. c. tracking of the board action items.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714–9030, 512/438–3048.
Filed: June 9, 1998, 2:56 p.m.

TRD-9809263

♦ ♦ ♦

Wednesday, June 24, 1998, 9:00 a.m.

701 West 51st, John H. Winters Complex, Room 360W

Austin

Nursing Facility Administrator Advisory Committee

AGENDA:

1. Review minutes from May 14, 1998, meeting. 2. Texas Association of Licensed Facility Administrators (TALFA) Concerns, 3. Review of Case Action Items. 4. Special Issues.

The NFAAC Subcommittee on Education for NFAs will met immediately following adjournment of the NFAAC meeting

Contact: Jerry Walker, P.O. Box 149030, Austin, Texas 78714–9030, 512/438–3048.
Filed: June 10, 1998, 11:52 a.m.

TRD-9809326

♦ ♦ ♦

Texas Department of Insurance

Tuesday, June 23, 1998, 9:30 a.m.

333 Guadalupe Boulevard, Room 102

Austin

Life and Health Working Group of the Advisory Committee for the Interim Study for Agents and Agents' Licensing Statutes

AGENDA:

Continuation of discussion and possible action concerning the streamlining and consolidation of licensing types including the proposal for a new "limited" license. Discussion and possible action concerning the licensing of agents representing Fraternal Benefit Societies. Continuation of discussions and possible action regarding the 11–00 Life Insurance Counselor license including licensing issues affecting licensees who hold professional designations. Discussion of licensing requirements for corporate entities. Continuation of discussion and possible action concerning continuing education requirements including who should be subject to continuing education and how may hours should be required to keep a particular license type in force. Discussion of the procedural requirements for life/accidents and health licenses including examination, disciplinary action, company appointment, license suspension, fees and other licensing procedural matters. Discussion on the revenue neutrality of the changes proposed to the agents' licensing statutes. Time for public comment. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Bill Elkjer, 333 Guadalupe Boulevard, Austin, Texas 78701, 512/305–8197.
Filed: June 5, 1998, 10:56 a.m.

TRD-9809076

♦ ♦ ♦

Monday, June 29, 1998, 9:00 a.m.

Stephen F. Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–2153.C. To consider the application of Stephen Tillery, Dallas, Texas and Carrollton, Texas for a Solicitor's License to be issued by the Texas Department of Insurance (reset from May 22, 1998).

Contact: Bernice Ross, 333 Guadalupe Boulevard, Austin, Texas 78701, 512/305–8197.
Filed: June 9, 1998, 10:37 a.m.

TRD-9809241

♦ ♦ ♦

Monday, June 29, 1998, 9:30 a.m.

333 Guadalupe, Room 102

Austin

Life and Health Working Group of the Advisory Committee for the Interim Study for Agents and Agents' Licensing Statutes

AGENDA:

Preparation of a report to the Licensing Advisory Committee concerning the Working Group recommendations on the consolidation of license types. Continuation of discussion and possible action regarding the adoption of recommendations to streamline and consolidate insurance license types. Continuation of discussion and possible action regarding the adoption of recommendations concerning continuing education requirements for life and health licenses. Continuation of discussion and possible action concerning the procedural requirements for life/accident and health licenses including examination, disciplinary action, company appointment, license suspension, fees and other licensing procedural matters. Continuation of discussions and possible action concerning the revenue neutrality of the changes proposed to the agents' licensing statutes. Time for public comment. Deliberation and possible action regarding timelines, future meetings other administrative or procedural matters.

Contact: Bill Elkjer, 333 Guadalupe Boulevard, Austin, Texas 78701, 512/305–8197.
Filed: June 9, 1998, 5:33 p.m.

TRD-9809281

♦ ♦ ♦

Monday, June 29, 1998, 1:00 p.m.

Stephen F. Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–98–0931.C. To consider whether disciplinary action should be taken against Vincent Tolbert, Killeen, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Local Recording Agent's License and Variable Contract 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: June 9, 1998, 10:37 a.m.

TRD-9809242

♦ ♦ ♦

Tuesday, June 30, 1998, 9:00 a.m.

Stephen F. Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–98–0424.C. To consider the application of Loyd Earl Byrd, Irving, Texas, for a Temporary Local Recording Agent's License to issued by the Texas Department of Insurance (reset from May 6, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113–2A, Austin, Texas 78701, 512/463–6328.
Filed: June 9, 1998, 10:37 a.m.

TRD-9809243

♦ ♦ ♦

Tuesday, June 30, 1998, 9:30 a.m.

333 Guadalupe, Room 102

Austin

Property and Casualty Working Advisory of the Advisory Committee for the Interim Study for Agents and Agents' Licensing Statutes

AGENDA:

Continued preparation of the report to the Licensing Advisory Committee concerning the Working Group's recommendations on the consolidation of licensed types. Continuation of discussion and possible action regarding the adoption of recommendations to streamline and consolidate insurance license types. Continuation of discussion and possible action regarding the adoption of recommendations concerning continuing education requirements for property and casualty licenses. Discussion and possible action concerning the procedural requirements for property and casualty licenses including examination, disciplinary action, company appointment, license suspension, fees and other procedural matters. Discussions and possible action concerning the revenue neutrality of the changes proposed to the agents' licensing statutes. Time for public comment. Deliberation and possible action regarding timelines, future meetings other administrative or procedural matters.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113–2A, Austin, Texas 78701, 512/463–6328.
Filed: June 9, 1998, 5:33 p.m.

TRD-9809280

♦ ♦ ♦

Wednesday, July 1, 1998, 9:00 a.m.

Stephen F. Building, 1700 North Congress, Suite 1100

Austin

REVISED AGENDA:

Docket Number 454–98–0940.C. To consider whether disciplinary action should be taken against Gary Johnson, Dalhart, Texas, who holds a Group I, Life, Health, Accident, and HMO 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: June 9, 1998, 10:37 a.m.

TRD-9809244

♦ ♦ ♦

Monday, July 6, 1998, 9:00 a.m.

Stephen F. Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–98–0399.H. In the Matter of Aztec Fire Extinguisher Service and Sales Company (reset from May 5, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113–2A, Austin, Texas 78701, 512/463-6328.
Filed: June 9, 1998, 10:37 a.m.

TRD-9809245

♦ ♦ ♦

Tuesday, July 7, 1998, 9:00 a.m.

Stephen F. Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–98–0287.C. To consider the application of Donald W. Parkinson, Tyler, Texas for a Life, Health, Accident and HMO License (Formerly known as a Group I Legal Reserve Life Insurance Agent's License) to be issued by the Texas Department of Insurance (reset from May 1, 1998).

Contact: Bernice Ross, 333 Guadalupe Boulevard, Austin, Texas 78701, 512/305–8197.
Filed: June 9, 1998, 10:37 a.m.

TRD-9809246

♦ ♦ ♦

Texas Juvenile Probation Commission

Thursday, June 18, 1998, 10:00 a.m.

4900 North Lamar Boulevard

Austin

Budget Committee

AGENDA:

Call to order; Excuse absences; Discussion and possible action regarding upspent JJAEP funding for possible summer school funding and/or discretionary grants to non-mandatory JJAEP's; Discussion and possible action on the FY 1999 Administrative budget; Discussion and possible action regarding the Legislative Budget request for FY 2000–2001; Discussion and possible action regarding FY 1998 administrative budget revision; Presentation, discussion and possible action on funding Juvenile Court Conference Committee in Hidalgo County; public comment; adjourn.

Contact: Glenn Neil, P.O. Box 13547, Austin, Texas 787–3547, 512/424–6682.
Filed: June 9, 1998, 7:29 a.m.

TRD-9809230

♦ ♦ ♦

Thursday, June 18, 1998, 10:30 a.m.

4900 North Lamar Boulevard

Austin

Program and Planning Committee

AGENDA:

Call to order; Excuse absences; Approval of TJPC Juvenile Justice Alternative Education Program (JJAEP) Rules for publication in the Texas Register; Approval of TJPC Probation, Detention and Corrections Officer Certification rules for publication in the Texas Register; Review of modified Case Management standards and approval for publication in Texas Register as proposed rules; Approval of Pre-and Post-Adjudication standards for publication in the Texas Register; Discussion and possible action of formal adoption TJPC child abuse and neglect investigations standards; Adoption of TJPC's Administrative Rule Review Plan; Approval of FY 1998–2005 Agency Strategic Plan; public comment; adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Glenn Neal at (512) 424–6682 two days prior to the meeting so that the appropriate arrangements may be made.

Contact: Glenn Neil, P.O. Box 13547, Austin, Texas 787–3547, 512/424–6682.
Filed: June 9, 1998, 7:29 a.m.

TRD-9809231

♦ ♦ ♦

Thursday, June 18, 1998, 11:00 a.m.

4900 North Lamar Boulevard

Austin

Board

AGENDA:

Call to order; Excuse absences; Approval of minutes from March 20, 1998; Hearing Budget Committee report; Discussion and possible action regarding unspend JJAEP funding for possible summer school funding and/or discretionary grants to non-mandatory JJAEP's; Discussion and possible action on the FY 1999 Administrative budget; Discussion and possible action regarding the Legislative Budget request for FY 2000–2001; Discussion and possible action regarding FY 1998 administrative budget revision; Presentation, discussion and possible action on funding Juvenile Court Conference Committee in Hidalgo County; Hear Program Committee report; Approval of TJPC Juvenile Justice Alternative Education Program (FFAEP) Rules for publication in the Texas Register; Approval of TJPC Probation, Detention and Corrections Officer Certification rules for publication in the Texas Register; Review of modified Case Management standards and approval for publication in Texas Register as proposed rules; Approval of Pre-and Post- Adjudication standards for publication in the Texas Register; Discussion and possible action of formal adoption of TJPC child abuse and neglect investigations standards; Adoption of TJPC's Administrative Rule Review Plan; Approval of FY 1998–2005 Agency Strategic Plan; Assignment of new board members to TJPC committees; Legal Legislative update; Director's Report; schedule next meeting; public comment; adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Glenn Neal at (512) 424–6682 two days prior to the meeting so that the appropriate arrangements may be made.

Contact: Glenn Neil, P.O. Box 13547, Austin, Texas 787–3547, 512/424–6682.
Filed: June 9, 1998, 7:26 a.m.

TRD-9809229

♦ ♦ ♦

Board of Law Examiners

Friday-Saturday, June 12–13, 1998, 8:00 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

AGENDA:

The Board will consider: requests for excused absences; bar examination questions (in executive session); approval of minutes, certified agendas, financial reports, and investment reports; reports from members, staff and Supreme Court Liaison; consultations with legal counsel concerning pending litigation (in executive session) compensation of graders; BY99 budge proposal; review of and changes in certain policies, procedures, and forms; recommendation regarding certain rule changes; recommendation to Supreme Court regarding reinstatement procedures; report from Supreme Court Liaison; articles of interest; and hear communications from the public.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711–3486, 512/463–8926.
Filed: June 3, 1998, 4:53 p.m.

TRD-9808982

♦ ♦ ♦

Board for Lease of University Lands

Tuesday, June 16, 1998, 1:30 p.m.

The University of Texas System, O'Henry Hall 4th Conference Room 601 Colorado Street, 601 Colorado Street

Austin

AGENDA:

1. Approval of the minutes of the May 19, 1998, meeting of the Board for Lease of University Lands.

2. Lease terms for Regular Oil and Gas Lease Sale No. 94 scheduled for November 17, 1998 (bid opening) and November 18, 1998 (lease awards).

3. Lease terms and procedures for Frontier Oil and Gas Lease Sale No. 93A1.

4. Lease terms and procedures for Frontier Oil Gas Lease Sale No. 94–A schedule for November 17, 1998 (bid opening) and November 18, 1998 (lease awards).

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services may contact Loretta Loyd at 512/499–4462 at least two work days prior to the meeting date so that appropriate arrangements can be made.

Contact: Pamela S. Bacon, 201 West 7th Street Austin, Texas 78701, 512/499–4462.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809217

♦ ♦ ♦

Texas State of Licensing and Regulation

Tuesday, June 16, 1998, 9:30 a.m. (Reschedule from May 27, 1998.)

920 Colorado, E.O. Thompson Building, 1st Floor, Room 108

Austin

Consumer Protection Section, Auctioneering

AGENDA:

The Department will hold an administrative hearing to consider claims against the Auctioneer Education and Recovery Fund by United Commercial Carriers, based upon the actions of the Auctioneer, George W. Burchfield, and determine the amounts due the aggrieved party pursuant to Texas Revised Civil Statutes Annotated Articles 8700 and 9100; Texas Government Code, Chapter 2001; and 16 TAC §60.

Contact: Richard Wootton, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, 512/463–3192.
Filed: June 4, 1998, 4:07 p.m.

TRD-9809025

♦ ♦ ♦

Wednesday, June 17, 1998, 9:30 a.m. (Rescheduled from May 13, 1998.)

920 Colorado, E.O. Thompson Building, 1st Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

The Department will hold an administrative hearing to consider possible assessment of administrative penalties against the Respondent, Gary R. Schmitt, for performing air conditioning and/or refrigeration contracting without obtaining the required license in violation Texas Revised Civil Statutes Annotated Article 8861; §3B, pursuant to Texas Revised Civil Statutes, Annotated Articles 8861 and 9100, the Texas Government Code, Chapter 2001; and 16 TAC §60.

Contact: Richard Wootton, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, 512/463–3192.
Filed: June 4, 1998, 4:07 p.m.

TRD-9809023

♦ ♦ ♦

Monday, June 22, 1998, 1:30 p.m.

920 Colorado, E.O. Thompson Building, 4th Floor Conference Room

Austin

Architectural Barriers Advisory Committee

AGENDA:

I. call to order

II. records and attendance

III. approval of minutes of meeting held February 23, 1998

IV. staff reports

A. administration

1. revised TDLR Architectural Barriers organizational chart

2. discussion of development of agenda

3. alternate methods of compliance

4. current interpretation authority

B. reviews

C. inspections

D. complaints

E. variances

F. legislative issues

V. subcommittee reports

A. rules

B. program review

C. standards

D. enforcement

VII. new business

A. Jim Boyce recommendation

B. agreement between TDLR and entities contrary to TAS requirements

C. Curb ramp proposal, City of Lubbock

D. Curb ramp proposal, Texas Tech University

E. ICP involvement with variances

F. emergency state lease policy

G. state lease specifications

H. tolerances

VII. public comment

VIII. schedule next meeting

IX. adjournment

Persons who plan to attend this meting and require ADA assistance are requested to contact Caroline Jackson at 512/463–7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Ferrie, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, 512/463–2907.
Filed: June 9, 1998, 2:30 p.m.

TRD-9809261

♦ ♦ ♦

Tuesday, June 30, 1998, 9:30 a.m. (Reschedule from June 2, 1998.)

920 Colorado, E.O. Thompson Building, 1st Floor, Room 108

Austin

Consumer Protection Section, Auctioneering

AGENDA:

The Department will hold an administrative hearing to consider claims against the Auctioneer Education and Recovery Fund by Pete Heffner, based upon the actions of the Auctioneer, Tina Barton, and determine the amounts due the aggrieved party pursuant to Texas Revised Civil Statutes Annotated Articles 8700 and 9100; Texas Government Code, Chapter 2001; and 16 TAC §60.

Contact: Richard Wootton, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, 512/463–3192.
Filed: June 4, 1998, 4:07 p.m.

TRD-9809024

♦ ♦ ♦

Texas Mental Health and Mental Retardation Board

Friday, June 12, 1998, at 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

AGENDA:

I. Call to order-Roll Call

II. Citizens Comments

III. Approval of the minutes of the May 13, 1998, meeting

IV. Issues to be considered

1. Consideration of approval of a selection process for the position of the Commissioner

2. Discussion regarding the development of the FY 99 Operating Budget

3. Discussion regarding the development of the FY 2000–2001 Legislative Appropriations Request

4. discussion regarding the NorthStar Behavioral Health Pilot in the Dallas Medicaid Service Area

5. Discussion regarding the Sunset Staff report on TDMHMR

In ADA assistance or deaf interpreters are required, notify TDMHMR 512/206–4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206–4506.
Filed: June 4, 1998, 10:52 a.m.

TRD-9808995

♦ ♦ ♦

Midwestern State University

Wednesday, June 10, 1998, 9:30 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

AGENDA:

Board of Rents

The Board will consider recommendations concerning the Midwestern State University Strategic Plan for the period 1999–2003; the Information Resources Strategic Plan for the 1999–2003 period; and the university Organizational Structure as it relates to Information Systems

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, 940/397–4212.
Filed: June 5, 1998, 8:47 a.m.

TRD-9809109

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Monday, June 15, 1998, 8:30 a.m.

12100 Park 35 Circle

Austin

AGENDA:

This is a meeting with Commissioners and agency management teams to introduce the newly appointed Executive director and Deputy

Executive Director, discuss agency initiatives that will result from the recent business process review study and discuss other general matters related to the overall management and direction of the agency.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239–3317.
Filed: June 5, 1998, 1:43 p.m.

TRD-9809090

♦ ♦ ♦

Monday, June 15, 1998, 8:30 a.m.

12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: hearing request; air enforcement agreed orders; air enforcement default order; industrial hazardous waste enforcement agreed orders; petroleum storage tank default order; petroleum storage tank agreed order; public water supply enforcement agreed order; industrial waste discharge enforcement agreed order; municipal waste discharge enforcement agreed order; multi media enforcement order; authorization to construct; temporary authorization; rules; modify, affirm, or set aside emergency order; 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 or for particular action at a future date or time. (Registration for 9:30 agenda starts 8:45 until 9:25) The commission will consider approving the following matters at it's 1:00 p.m. agenda: Motion for reconsideration ; certified question; and proposal for decision and order. (Registration for 1:00 agenda starts at 12:30 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239–3317.
Filed: June 8, 1998, 4:30 p.m.

TRD-9809211

♦ ♦ ♦

Wednesday, June 17, 1998, 9:30 a.m. and 1:00 p.m. (respectively.)

12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider a approving the following items on the attached addendums to the agenda for 9:30 and 1:00 p.m. On the 9:30 a.m. agenda the commission will consider a resolution concerning implementation of the Commission's Combustion Strategy. At the 1:00 p.m. agenda the commission will consider a Motion for Rehearing.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239–3317.
Filed: June 9, 1998, 3:45 p.m.

TRD-9809267

♦ ♦ ♦

Tuesday, June 23, 1998, at 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by Everett Square, Inc. to the Texas Natural Resource Conservation Commission to amend its Certificate of Convenience and Necessity (CCN) No. 12831 which authorizes the provision of water utility service in Harris County, Texas. The proposed utility service area is located approximately 24 miles north of Houston Texas and 2.1 miles east of Old Town Spring and is generally bounded on the north by Spring Creek Driving Drive, on the east by a line commencing near the intersection of Firewood Lane and Spring Creek Driving running south 32 degrees 6 minutes east 851.84 feet, thence south 57 degrees 51 minutes west 687.24 feet, thence north 32 degrees 17 minutes west 854.20 feet to the ROW of Spring Creek Drive, thence north 57 degrees 51 minutes east 689.98 feet to the place of beginning. The total area being requested consists of 13.49 acres with no current customers. SOAH Docket No. 582–98–0993.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, 512/475–3289.
Filed: June 9, 1998, 10:29 a.m.

TRD-9809238

♦ ♦ ♦

Tuesday, June 23, 1998, at 10:00 a.m.

1700 North Congress Avenue, 11th Floor Street, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office Administrative Hearings on an appeal filed protesting Noack Water Supply Corporation's fee for new connections. Noack Water Supply Corporation provides water utility service in Williamson County, Texas SOAH Docket Number 582–98–0992.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, 512/475–3289.
Filed: June 9, 1998, 10:36 a.m.

TRD-9809239

♦ ♦ ♦

Thursday, June 25, 1998, at 10:00 a.m.

1700 North Congress Avenue, 11th Floor Street, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office Administrative Hearings on an application by the City of Pearland to amend its Certificate of Convenience and Necessity (CCN) Nos. 11008 and 20403 which authorize the provision of water and sewer utility service in Brazoria and Harris Counties, Texas. The proposed utility service areas are located approximately 16 miles south of downtown Houston, Texas in and around the City of Pearland and are generally bounded on the north by Clear Creek, on the east by the Cities of Houston and Friendswood, on the south by the cities of Alvin and Manvel, and on the west by the county line. The total area being requested includes approximately 41,667 acres and 10,910 current customers. SOAH Docket Number 582–98–0994.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, 512/475–3289.

Filed: June 9, 1998, 10:36 a.m.

TRD-9809240

♦ ♦ ♦

Texas Board of Occupational Therapy Examiners

Friday, June 12, 1998, 9:30 a.m.

333 Guadalupe, Suite 2–510

Austin

Board

AGENDA:

1. call to order

2. approval of minutes of March 27, 1998 board meeting

3. report from Texas Occupational Therapy Association (TOTA)

4. public comment

5. discussion and possible action on proposed rule changes, as follows:

§362.1, concerning definitions

§364.1, concerning requirements for licensure

§366.1, concerning application for license

§370.1, concerning license renewal

§371.1, concerning inactive status

§372.1, concerning provision of services

§373.1, concerning supervision

6. discussion and possible action on a jurisprudence examination for applicants and licensees

7. discussion and possible action on a plan for review of agency rules, as required by HB1, Article 9, §167

8. Investigation committee report

A. discussion and possible action on agreed orders

#97–13; 97–16; 97–22; 98–25; and 98–31

B. discussion of committee meting on May 5th, 1998

C. discussion of investigative activities to date

9. discussion and possible action on chair's report

10. discussion and possible action on executive director's report

11. discussion and possible action on coordinator's report

12. discussion and possible action on the next meting dates and locations

13. adjournment

Contact: Alicia Dimmick Essary, 333 Guadalupe, Suite 2–510, Austin, Texas 78701–3942, 512/305–6900.
Filed: June 4, 1998, 4:09 p.m.

TRD-9809031

♦ ♦ ♦

Friday, June 12, 1998, 2:00 p.m.

333 Guadalupe, Suite 2–510

Austin

Application Review Committee

AGENDA:

1. call to order

2. review and possible action on the following cases:

Rhonda K. Bush

Steven W. Carter

Daniel Armando Garcia

Duyen Thi Nguyen

Tracy Lynn Murphy

3. adjournment

Contact: Alicia Dimmick Essary, 333 Guadalupe, Suite 2–510, Austin, Texas 78701–3942, 512/305–6900.
Filed: June 4, 1998, 4:36 p.m.

TRD-9809032

♦ ♦ ♦

Texas State Board of Plumbing Examiners

Friday, June 19, 1998, 8:30 a.m.

929 East 41st Street

Austin

Rules Committee

AGENDA:

1. roll call-8:30 a.m.; 2. recognize staff and visitors; 3. review and approve the minutes of the December 8, 1997 rules review committee meeting; 4. presentation by Forma-Doc, Inc. regarding the TSBPE rule review and discussion and possible action for time line to review TSBPE rules by requirement of Section 167, Article IX; 5. discussion and possible action on plumbing license law, Section 12(b). Continuing Professional Education and board rule, §365.5 renewals, 6. discussion and possible action regarding rule for disciplinary procedures for continuing professional education instructors and providers.

Contact: Stephenie A. Spiars, 929 East 41st Street, Austin, Texas 78751, 512/458–2145, Ext. 222.
Filed: June 3, 1998, 2:56 p.m.

TRD-9808969

♦ ♦ ♦

Friday, June 19, 1998, 10:30 a.m.

929 East 41st Street

Austin

Continuing Education Committee

AGENDA:

1. roll call-10:30 a.m.; 2. recognize staff and visitors; 3. review and approve the minutes of the February 3, 1998 Continuing Education Committee meeting; 4. discussion and possible action on setting up disciplinary procedure for continuing professional education instructors and providers; 5. discussion and possible action on plumbing inspectors continuing professional education; 6. discussion and possible action on a time line for continuing

professional education providers to publish textbook for the years 2000–2001, 2001–2002 and 2002–2003; 7. discussion and possible action on changing the reporting on continuing professional education providers based on the Scantron system. 8. discussion and possible action on continuing professional education textbook provider bids for the years 2000–2001, 2001–2002 and 2002–2003; 9. discussion and possible action of subject, topic-content for continuing professional education textbook for the year 2000–2001.

Contact: Stephenie A. Spiars, 929 East 41st Street, Austin, Texas 78751, 512/458–2145, Ext. 222.
Filed: June 3, 1998, 2:56 p.m.

TRD-9808970

♦ ♦ ♦

Texas Public Finance Authority

Wednesday, June 17, 1998, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee, Room 5

Austin

Board

AGENDA:

1. call to order

2. approval of minutes of the May 20, 1998 board meeting.

3. report on results of Texas Department of Criminal Justice (TDCJ) refunding.

4. consider request for financing from Texas Department of Criminal Justice (TDCJ) in the amount of approximately $255 million General Obligation Bonds, and select a methods of sale.

5. consider request for financing from Stephen F. Austin State University in the amount of approximately $6 million of tuition revenue bonds and select a method of sale.

7. consider adoption of a rules review plan and proposed amendments concerning administrative rules 34 TAC Chapter 221–225.

8. other business

9. adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Marce Watkins at 512/463–5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463–5544.
Filed: June 17, 1998, 10:30 a.m.

TRD-9809232

♦ ♦ ♦

Texas Department of Public Safety

Wednesday, June 10, 1998, 3:00 p.m.

5805 North Lamar Boulevard

Austin

Governor's Division of Emergency Management, Drought Response and Monitoring Committee

AGENDA:

Welcome and introductions

Technical assistance and planning subcommittee report

Drougt and water supply monitoring subcommittee report

Action items: review of last meting minutes and on-going strategies

Other issues and concerns

Adjournment

Contact: Person with disability who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Juan Perales at 512/424–2452 three days prior to the meeting so that appropriate arrangements can be made.
Filed: June 5, 1998, 10:56 a.m.

TRD-9809077

♦ ♦ ♦

Public Utility Commission of Texas

Thursday, June 11, 1998, 11:00 a.m.

City of Hedwig Village, City, Hall, 955 Piney Point Road

Houston

AGENDA:

there will be an open meeting for discussion, consideration, and possible action regarding: Docket Numbers 18746, 16196, 17143, 17238, 18143, 18795, 18775, 18129, 19131, 19142, 19157, 19007, 19008, 19064, 19065, 19076, 19082, and 19090; federal Telecommunications act on 1996 and other taken by the Federal Communications Commission; Activities in local telephone markets, including but not limited to public comment, correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Project No. 18000; Docket Numbers 16738 and 18443; Electric industry restructuring, electric utility reliability, and customer service, including public comment; Customer services issues, including but not limited to public comment, correspondence and complaint issues; 1998 Operating Budget, Agency Business Plan, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Agency Strategic Plan; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Dianne Prior, 1701 North Congress Avenue, Texas 78701, 512/936–7007.
Filed: June 3, 1998, 2:57 p.m.

TRD-9808971

♦ ♦ ♦

Recycling Market Development Board

Thursday, June 25, 1998, 10:00 a.m.

John H. Reagan Building, Room 109, 105 West 15th Street

Austin

Board

AGENDA:

I. call to order; II. announcments; III. reading of minutes of April 3, 1998, board meeting; IV. old business: (1) final report on state agency recycled product purchase reports. V. new business: (1) presentation of the recycling market development board internet home

page; (2) consideration of recycling policy recommendations for 76th Legislature; (3) update on Safety-Kleen and Laidlow merger; (4) presentation on environmental recycling hotline. VI. public comment ; VII. adjourn.

Contact: Robert Cox, 1700 North Congress Avenue, Room 620, Austin, Texas 78701, 512/463–5381.
Filed: June 9, 1998, 4:20 p.m.

TRD-9809271

♦ ♦ ♦

Rural Community Health System

Friday, June 19, 1998, 9:00 a.m.

1400 North Congress, Room E.1.024

Austin

Operations Committee

AGENDA:

1. call to order

2. approve minutes.

3. review grant proposal to Rural Center for Health Initiatives, Progress Report.

4. discussion/consideration of any proposals or applications to RCHS.

5. discussion proposals made at May meeting

6. discus process for consideration of any new proposals.

7. discuss/planning for July Strategy meeting.

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463–0119.
Filed: June 5, 1998, 10:41 a.m.

TRD-9809074

♦ ♦ ♦

Friday, June 19, 1998, 9:00 a.m.

1400 North Congress, Room E.1.020

Austin

Finance Committee

AGENDA:

1. call to order

2. report on tax exempt status.

3. discuss grant proposal to Rural Center for Health Initiatives, Progress Report.

4. discuss request for funding.

a. rural Hospitals: update.

b. other organizations.

5. appoint Grant Locator Sub-Committee

6. Report on request for support from Governor Bush.

7. Discuss Dues:

a. membership types:

b. benefits

8. Report on loan offers.

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463–0119.
Filed: June 5, 1998, 10:41 a.m.

TRD-9809075

♦ ♦ ♦

Friday, June 19, 1998, 9:00 a.m.

1400 North Congress, Room E.1.020

Austin

Finance Committee

AGENDA:

1. call to order

2. report on tax exempt status

3. discuss grant proposal to Rural Center for Health Initiatives, Progress Report.

4. Discuss request for funding.

a. Rural Hospitals: update.

b. Other organizations.

5. Appoint Grant Locator Sub-Committee

6. Report on request for support from Governor Bush.

7. Discuss Dues:

a. membership types:

b. benefits

8. Report on loan offers.

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463–0119.
Filed: June 5, 1998, 10:59 a.m.

TRD-9809080

♦ ♦ ♦

Friday, June 19, 1998, 9:00 a.m.

1400 North Congress, Room E.1.024

Austin

Operations Committee

AGENDA:

1. call to order

2. approve minutes.

3. review grant proposal to Rural Center for Health Initiatives, Progress Report.

4. discussion/consideration of any proposals or applications to RCHS.

5. discussion proposals made at May meeting

6. discus process for consideration of any new proposals.

7. discuss/planning for July Strategy meting.

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463–0119.
Filed: June 5, 1998, 10:57 a.m.

TRD-9809079

♦ ♦ ♦

Friday, June 19, 1998, 11:00 a.m.

1400 North Congress, Room E.1.036

Austin

Full Board

AGENDA:

1. call to order

2. approve minutes.

3. committee reports

4. old business

discuss TDI and Medcaid rules

discuss marketing plan

5. new business

Legislative Committee

6. Board member comment

7. public comment

8. schedule July Strategy meeting

9. adjourn

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463–0119.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809218

♦ ♦ ♦

School Land Board

Tuesday, June 16, 1999, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

AGENDA:

Approval of previous board meeting minutes; closed session and open session opening and considerations of bids received for the June 16, 1998, sealed bid land sale; consideration and approval of additional tracts, terms and conditions for a special oil and gas lease sale; pooling applications, Wildcat Field, Val Verde Co. Wildcat Field, Calhoun and Matagorda Cos.; Wildcat field, Calhoun Co.; applications to lease highway rights of way for oil and gas, St. Hwy 21, Bastrop Co.; Industrial Blvd. and Pickle Circle, Washington Co., FM 332, Washington Co.; FM 389, Washington Co; FM 109, Washington, Co.; St. Hwy 124, Chambers Co.; FM 500, Robertson Co.; St. Hwy 55, Edwards Co.; FM 630, San Patricio Co.; St. Hwy 71, Wharton Co.; Salem Rd. and Hall Rd., Washington Co.; SH 4 Cameron Co.; Hwy 77S, Lavaca Co.; T&P RR Sur., Taylor Co.; FM 178, Dawson Co.; direct land sale, Taylor Co.; Coastal public lands, easement applications and renewals, Galveston Bay, Chambers Co., Taylor Lake, Harris Co.; Galveston Bay, Galveston Co.; Nueces Bay, Nueces Co.; Coastal public lands structure (cabin) permit renewals, Laguna Madre, Kenedy Co.; Nueces Bay, Nueces Co.; closed and open session-consideration and approval of terms and conditions for execution of option contract on sale of Paseo del Este. 4292 + acres, El Paso Co.; closed session and open sessions — status report on State of Texas et al v. Amoco Production Co., et at. cause #95–08680, 345th Judicial District Court, Travis Co., Texas; closed and open session-pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, 512/463–5016.
Filed: June 8, 1998, 4:28 p.m.

TRD-9809213

♦ ♦ ♦

Council on Sex Offender Treatment

Friday, June 19, 1998, 9:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

The council will introduce members, guests and staff and will discuss and possibly act on: review of public comments received on proposed rules (22 TAC §§810.1–810.9, 810.31–810.34; 810.61–810.64; and 810.91–810.92) as published in the May 8, 1998, issue of the Texas Register (23 TexReg 4506); final rules relating to the registration of sex offender treatment provides (22 TAC §§810.1–810.9, 810.31–810.34; 810.61–810.64; and 810.91–810.92); other matters not requiring council action; public comment; agenda items for future council meetings; and setting future meeting dates for the council.

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: Donna Flippin, 1100 West 49th Street, Austin, Texas 78756, 512/834–4520.
Filed: June 10, 1998, 9:14 a.m.

TRD-9809284

♦ ♦ ♦

Sheep and Goat Raisers Commodity

Tuesday, June 16, 1998, 10:30 a.m.

Texas Sheep and Goat Raisers Assn. Bldg., 233 West Twohig

San Angelo

Predator Management Board

AGENDA:

opening remarks and welcome

review and approval on minutes of last meeting – April 8, 1998; review and approval of fiscal affairs

reports of officers and directors

discussion and action: new business: review of telephone message; development of policy statement on collections of the assessment and payment of refunds; annual reports/hot-spot renewal requests; addition to hot-spots requests; special requests. Teacher workshop proposal of Dale Rollins; scheduling next meeting. Unfinished business: Coping with Bobcats video and predators in the classroom reports; Texas Animal Health Audit for 1997; Letter prepared for feedlots and/or refunds with multiple contributors to sale; biennial election progress; report from Gary Nunley-Animal Damage Control

Discussion: Other Business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76903–3543, 915/659–8777.
Filed: June 8, 1998, 3:00 p.m.

TRD-9809193

♦ ♦ ♦

Texas Southern University

Thursday, July 9, 1998, 10:00 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Academic Affairs Committee

AGENDA:

Meeting to consider: progress reports of academic activities and programs. Executive Session

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, 713/529–8911.
Filed: June 5, 1998, 10:37 a.m.

TRD-9809073

♦ ♦ ♦

Thursday, July 9, 1998, 11:15 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Finance and Buildings and Grounds Committee

AGENDA:

Meeting to consider: matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, contract awards; and informational items, Executive Session.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, 713/529–8911.
Filed: June 5, 1998, 10:37 a.m.

TRD-9809071

♦ ♦ ♦

Thursday, July 9, 1998, 12:30 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Development Committee

AGENDA:

Meeting to consider: Reports from the Administration on University Fund-Raising efforts.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, 713/529–8911.
Filed: June 5, 1998, 10:37 a.m.

TRD-9809072

♦ ♦ ♦

Thursday, July 9, 1998, 1:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Academic Affairs Committee

AGENDA:

Meeting to consider: progress reports to receive informational items. Executive Session

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, 713/529–8911.
Filed: June 5, 1998, 10:37 a.m.

TRD-9809070

♦ ♦ ♦

Thursday, July 9, 1998, 2:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Personnel Committee

AGENDA:

Meeting to consider: Ratification of appointment of instructional personnel, academic personnel changes. Executive Session

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, 713/529–8911.
Filed: June 5, 1998, 10:36 a.m.

TRD-9809069

♦ ♦ ♦

Friday, July 10, 1998, 8:30 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Board of Regents

AGENDA:

Meeting to consider: minutes; report of the president; report from standing committees; Executive Session.

Contact: Dr. Bobby E. Mills, 3100 Cleburne, Houston, Texas 77004, 713/529–8911.
Filed: June 5, 1998, 10:36 a.m.

TRD-9809068

♦ ♦ ♦

Special Board of Review

Monday, June 15, 1998, 5:30 p.m.

Stephen F. Austin Building, 1700 North Congress, Room 118

Austin

Board

AGENDA:

I. call to order

II. chairman's remarks

III. discussion of, and action, proposed "Triangle Square Development Plan," including zoning and subdivision issues

IV. adjournment

Contact: Ken Mills, 1700 North Congress Avenue, Room 626, Austin, Texas 78701, 512/305–9108.
Filed: June 5, 1998, 10:36 a.m.

TRD-9809067

♦ ♦ ♦

Texas State University System

Friday, June 12, 1998, 9:30 a.m.

Speaker Phone available in Conference Room, Texas State University System, 200 East 10th Street, Rusk Building, Suite 600

Austin

Board of Regents

AGENDA:

Review of matters of the Board, the System Administrative Office and the Universities in the system including consideration of: proposed strategic plans, System debt consideration, additional Broker/Dealers, exceeding FTE limitations and submission of Legislative Appropriation Requests; and, authorization for: Angelo State University to relocate softball field, bid and purchase fire alarms and upgrade their energy management system; Lamar University-Beaumont to provide an automobile allowance for the interim president and grant tenure to the new chair of the Department of Mechanical Engineering; Sam Houston State University to purchase two tracts of real estate, select an architect for the General Classroom Building and demolish the interior of the Administration Building; Southwest Texas State University to sell certain stocks and to employ a consultant of the proposed athletic complex addition; Sul Ross State University to amend their food service contract and conduct asbestos abatement of the Graves/Pierce Complex and Ferguson Hall. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 200 East 10th Street, Suite 600, Austin, Texas 78701, 512/463–1808.
Filed: June 5, 1998, 5:29 p.m.

TRD-9809105

♦ ♦ ♦

University of Houston

Tuesday, June 16, 1998, 9:00 a.m.

S&RII, Room 75, University of Houston, 4800 Calhoun Boulevard

Houston

Institutional Animal Care and Use Committee

AGENDA:

To discuss and/or act upon the following:

Approval of May 18, 1998 minutes

New Protocols

Other Business

Contact: Charles Raflo, 4800 Calhoun Boulevard, Houston, Texas 77204–5510, 713/743–9191.
Filed: June 4, 1998, 8:25 a.m.

TRD-9809049

♦ ♦ ♦

Texas Board of Veterinary Medical Examiners

Thursday-Friday, June 11–12, 1998, 8:30 a.m.

Tower #2, Room 225, William P. Hobby Building, 333 Guadalupe Street

Austin

Board

EMERGENCY REVISED AGENDA:

The Board will be taking action on Agreed Order in disciplinary cases listed on the attached agenda. The board will take action on those rules listed on the agenda. The board will also consider the April Exam Results, consider and approve and the Legislative Appropriations Request and the Strategic Plan, and other items reflected on the attached agenda. The Board may go into executive session to discuss contemplated and pending litigation, and the responsibilities of the Executive Director.

Two items have been added to the agenda filed May 29, 1998. To additions are appointment of a new member to the Rules committee and discussion and possible action on the 1999–2003 Strategic Plan for Informational Resources.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2–330, Austin, Texas 78701–3998, 512/305–7555 or TDD 1/800/735/2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Judy Smith, 333 Guadalupe, #2–330, Austin, Texas 78701–3998, 512/305–7555.
Filed: June 8, 1998, 10:42 a.m.

TRD-9809165

♦ ♦ ♦

Texas Water Development Board

Wednesday, June 17, 1998, 3:00 p.m.

Stephen F. Austin Building, Room 513–F, 1700 North Congress

Austin

Finance Committee

AGENDA:

1. Consider approval of the minutes of the meeting of May 20, 1998.

2. Consider approving a 100% grant in the amount of $1,435,323 to St. Paul Water Supply Corporation (San Patricio County) for the construction of a wastewater collection system and wastewater treatment plant to provide services to a colonia (Economically Distressed Areas Program).

3. Briefing and discussion on the results of the $209,015,000 State of Texas General Obligation Bonds, Series 1998A, 1998B, and 1998C bond transaction, senior managed by Bear Steams and Co., Inc.

4. Consider report on the Board's investment portfolio for the quarter ending May 31, 1998, as required by the Public Funds Investment Act.

5. Briefing and discussion on activities of the Border Project Management Division including present and future EDAP projects.

6. May consider items on the agenda of the June 18, 1998 Board or TWRFA meeting.

Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463–7847.
Filed: June 9, 1998, 2:16 p.m.

TRD-9809258

♦ ♦ ♦

Wednesday, June 17, 1998, 4:00 p.m.

Stephen F. Austin Building, Room 513–F, 1700 North Congress

Austin

Audit Committee

AGENDA:

1. Consider approval of the minutes of the meeting of April 15, 1998.

2. Consider adoption of the FY'98 Audit Plan.

3. Briefing and discussion on the status of Ward County Water Improvement District No. 3 water conservation loans.

4. Briefing and discussion on the status of the City of Smyer bond compliance.

5. Briefing on the status of approved contracts.

6. May discuss items on the agenda of the June 18, 1998 Board or TWRFA meeting.

Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463–7847.
Filed: June 9, 1998, 2:16 p.m.

TRD-9809259

♦ ♦ ♦

Thursday, June 18, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

Board

AGENDA:

The Board will consider; minutes; committee, executive and financial reports; Nueces River Authority presentation; financial assistance to County of web and transfer of funds; change in original commitment to City of La Marque and City of Marque and City of Galveston; time extension to close the Terrell County Water control and Improvement District loan; authorizing joint funding agreement with USGS for graphs for Texas Strategic Mapping Program; amendment to water research contract with Lower Colorado River Authority for water quality sampling analysis; contract with UT, LBJ School of Public Affairs related to Texas/Mexico border data and information; adoption of amendments to 30 TAC Chapter 357 related to notice requirements for regional water planning groups; transfer of $2,931,621 from Texas Water Resources Finance Authority to Texas Water Development Fund II for debt service on Economically Distressed areas Program bonds; contracts for grant proposals for the initial scope of work development for regional water planning in regions C, E, G, I, O and P, and transfer of funds; action relating to funding EDAP project based upon Hidalgo County's enforcement of model political subdivision rules; financial assistance to Flo Community Water Supply Corporation, Weslaco and Military Highway Water Supply Corporation-South Tower estates; a revision to the condition of time in which to close North Alamo Water Supply Corporation loans; request from City of Donna to allow use of the pre-design funding option; policy issues and authorizing staff to proceed with preparing the Legislative appropriations Request; status of negotiations with the Environmental Protection Agency related to administrative cost cover fees of the State Water Pollution Control Revolving Fund, change in EPA policy regarding administration of the Colonia Wastewater Treatment Assistance Program and proposed related federal legislation; publication of proposed amendments to 31 TAC Chapter 357, Regional Water Planning Guidelines, concerning regional water planning for various flow conditions and providing clean-up; amendments to 31 TAC Chapter 363, Financial Assistance Programs, related to a funding system based on project priority ratings, amendment to the Intended Use Plan and establishment of the Rural Hardship Grant Program.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463–7847.
Filed: June 10, 1998, 11:56 p.m.

TRD-9809329

♦ ♦ ♦

Texas Water Resources Finance Authority

Thursday, June 18, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

AGENDA:

1. Consider approval of the minutes of the meeting of May 21, 1998.

2. Consider authorizing the Development Fund Manager to transfer $2,931,621 from the Texas Water Resources Finance Authority, (TWRFA) to the Restricted Account (#356) of the Texas Water Development Fund II Economically Distressed Areas Account Program (EDAP) to pay debt service required on Economically Distressed Areas bonds in compliance with provisions of the Appropriations Act.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463–7847.
Filed: June 10, 1998, 11:56 a.m.

TRD-9809330

♦ ♦ ♦

Texas Workforce Commission

Monday, June 15, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Discussion, consideration and possible action: (1) on the revisions to the Texas Workforce Commission strategic Plan for submission to the Office of the Governor and the Legislative Budget Board; (2) regarding the Strategic and Operational Plans submitted by Local Workforce Development Boards; (3) on the combined JTPA/Wagner Peyser State Plan, which includes the PY98 JTPA 8% Education Coordination Funding Policy; (4) on the JTPA Incentive Policy, which includes the use of UI wage records as the data base for JTPA follow-up; (5) regarding approval of JTPA/ES PY98–99 Categorical Plans; and (6) regarding recommendations to TCWEC.

Contact: J. Ferris Duhon, 101 East 15th Street, Austin, Texas 78778, 512/463–8812.
Filed: June 5, 1998, 1:42 p.m.

TRD-9809089

♦ ♦ ♦

Tuesday, June 16, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Approval of prior meeting notes: vote on minutes dated March 10, 1998, March 24, 1998, April 7, 1998, April 14, 1998; public comment; consideration and action on tax liability cases listed on Texas Workforce Commission Docket 24; General discussion and staff report concerning the Employment Service and related functions at the Texas Workforce Commission; discussion, consideration and possible action: (1) on acceptance of donations of child care matching funds; (2) on an amendments to the child care and development fund plan for Texas for the period October 1, 1997 to September 30, 1999; (3) on the adoption of the communities in schools rules (Chapter 827); and (4) relating to House Bill 2777 and the development and implementation of a plan for the intergration of services and functions relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; General discussion and staff report concerning an update on activities related to the Food Stamp Employment and Training Program; discussion, consideration and possible action: (1) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Board for Certification; (2) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; and (3) regarding approval of Local Workforce Board or Private Industry Council Nominees; Staff report and discussion-update on activities relating to Administration Division, Finance Division, Information Systems Division, Unemployment Issuance Division, Welfare Reform Division and Workforce Division; Executive Session pursuant to: Government Code, §551.074 to discuss the duties and responsibilities of the executive staff and other personnel; Government Code, §551.071(1) concerning the pending or contemplated litigation of the Texas AFL-CIO v. TWC; TSEU/CWA Local 6184, AFL-CIO v. TWC; TSEU/CWA Local 6186, AFL-CLO, Lucinda Robles and Maria Roussett v. TWC et al; Barbara Woodard v. TEC; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); and Gene E. Merchant et al v. TWC; Government Code, §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act; Actions, if any, resulting from executive session; Consideration, discussion, questions, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 22, 23 and 24.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463–8812.
Filed: June 8, 1998, 3:29 p.m.

TRD-9809196

♦ ♦ ♦

Texas Council on Workforce and Economic Competitiveness

Monday, June 15, 1998, 10:00 a.m.

Texas Workforce Commission, Trinity Building, Room 304, 12th and Trinity Streets

Austin

AGENDA:

June 15, 1998 Convene Council in Open Session 10:00 a.m.-Call to order, welcome and introductions; public comment; action item: approval of minutes of April 27–28, 1998 meeting; report on executive committee meeting with local workforce boards; action items: PY98 JTPA Incentives Policy, PY98–PY99 JTPA/ES categorical plans, combined JTPA and Wagner-Peyser Act State Plan, Local Workforce Development Board Operational Plans, Recess open session. convene council in executive session (closed meeting), —deliberations on personnel matters under section 551.074(a) of the open meetings act including (1) resignation of the council's director, and (2) replacement of the council's director and related matters; adjourn executive session. reconvene council in open session- briefing items: report on May 18, 1998, meeting of the Texas Skill Standards Board, status report on school-to-careers implementation grant, progress in development status report on strategic plan implementation, status report on council 1998–99 workplan. expenditures; informational item: status report on local workforce board plans, status report on state welfare-to-work plan, and council committee assignments; other business; adjournment at 3:00 p.m.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or service 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, P.O. Box 2241, Austin, Texas 78768, 512/936–8103.
Filed: June 5, 1998, 1:52 p.m.

TRD-9809098

♦ ♦ ♦

Tuesday, June 16, 1998, 10:00 a.m.

Sam Houston State Office building, 201 East 14th Street, Room 210

Austin

Apprenticeship and Training Advisory Committee

AGENDA:

June 16, 1998 Convene Committee in Open Session 10:00 a.m.-Call to order, welcome announcements-public comment; action item: approval of minutes of February 19, 1998; information item: update on Chapter 837.1 Apprenticeship Training–TWC proposed rules and other issues; briefing item: report from the funding subcommittee; presentation; Smart Jobs fund, Texas Department of Economic Development; presentation; skills development fund, Texas Workforce Commission; other business; closing comments; discussion of future meeting dates; adjourn at 12:30 p.m.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or service 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, P.O. Box 2241, Austin, Texas 78768, 512/936–8103.
Filed: June 5, 1998, 1:52 p.m.

TRD-9809099

♦ ♦ ♦

Regional Meetings

Meetings filed June 3, 1998

Austin Transportation Study, Policy Advisory Committee met at Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Austin, June 8, 1998, at 6:00 p.m. Information may be obtained Michael R. Aulick, 301 West 2nd Street, Austin, Texas 78701, 512/499–2275. TRD-9808968.

Bi-County Water Supply Corporation met at Arch Davis Road, FM 2254, Pittsburg, June 9, 1998, at 7:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 75686. 903/856–5840. TRD-9808985.

Brazos Valley Council of Governments, Board of Directors met at 1706 East 29th Street, Bryan, June 10, 1998, at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805–4128. TRD-9808983.

Central Texas Economic Development District, Executive Committee met at Ryan's Steakhouse, 301 South Valley Mills Drive, Waco, June 11, 1998, at 11:00 a.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, 254/799–0258. TRD-9808964.

Dallas Central Appraisal District Appraisal Review Board met at 2949 Floor Community Room, Dallas, June 12, 1998, at 11:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, 214/631–0520. TRD-9808984

High Plains Underground Water Conservation District Number One, Board Meeting met at 2930 Avenue Q, Board Room, Lubbock, June 9, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762–0181. TRD-9808962.

Kendall Appraisal District, Board of Directors met at 121 South Main Street, Boerne, June 9, 1998, at 6:00 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, 830/249–8012 or fax 830/249–3975. TRD-9808966.

Kendall Appraisal District, Board of Directors met at 121 South Main Street, Boerne, June 9, 1998, at 6:15 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, 830/249–8012 or fax 830/249–3975. TRD-9808967.

Martin County Appraisal District, MCAD Appraisal Review Board Hearing met at 308 North St. Peter Street, Stanton, June 16, 1998, at 9:00 a.m. Information may be obtained from Doris Holland, P.O. Box 1349, Stanton, Texas 79782, 915/756–2823 or Fax 915/756–2825. TRD-9808963.

Texas Municipal Power Agency, Audit and Budget Committee met at the Holiday Inn Select LBJ Northeast, Board Room, 11350 LBJ Freeway at South Jupiter, Dallas, June 9, 1998, at 10:30 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, 409/873–1131. TRD-9808973.

Trinity River Authority of Texas, Utility Services Committee, met at 5300 South Collins Street, Arlington, June 10, 1998, at 1:30 p.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467–4343. TRD-9808960.

Meetings filed on June 4, 1998

Barton Springs/Edwards Aquifer Conservation District, Board of Directors- Work Session met at 1124 A Regal Row, Austin, June 10, 1998, 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, 512/282–8441 or Fax 512/282–7016. TRD-9809034.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Austin, June 11, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/305–3536. TRD-9808989.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Austin, June 16, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/305–3536. TRD-9808990.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Austin, June 18, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 76702, 512/305–3536. TRD-9808991.

Bastrop Central Appraisal District, Appraisal Review Board will meet at 1200 Cedar Street, Austin, June 23, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 76702, 512/305–3536. TRD-9808992.

Bastrop Central Appraisal District, Appraisal Review Board will meet at 1200 Cedar Street, Austin, June 25, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 76702, 512/305–3536. TRD-9809011.

Bastrop Central Appraisal District, Appraisal Review Board will meet at 1200 Cedar Street, Austin, June 30, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 76702, 512/305–3536. TRD-9809010.

Burnet Central Appraisal District, Appraisal Review Board met at 223 South Pierce, Burnet, June 9, 1998, at 8:30 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, 512/756–8291. TRD-9809041.

Colorado River Municipal Water District, Board of Directors met at 400 East 24th Street, Big Spring, June 10, 1998, at 10:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Springs, Texas 79721, 915/267–6341. TRD-9809020.

Concho Valley Council of Governments, Executive Committee met at 5002 Knickerbocker Road, San Angelo, June 10, 198, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, 915/944–9666. TRD-9809007.

Dallas Housing Authority, Dallas, Housing Authority Board of Commissioners, met at the Melrose Hotel, 3015 Oaklawn Avenue, Dallas, June 11, 1998, at 8:00 a.m. Information may be obtained from Mattye Jones, 3939 North Hampton Road, Dallas, Texas 75212, 214/951–8302. TRD-9808988.

Edwards Aquifer Authority, Legal Committee met at 1615 North St. Mary's, San Antonio, June 9, 1998, at 2:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222–2204. TRD-9809040.

Edwards Aquifer Authority, Board met at 1615 North St. Mary's, San Antonio, June 9, 1998, at 2:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222–2204. TRD-9809039.

Elm Creek, Board met at 508 Avenue E, Moody, June 8, 1998, at 7:00 p.m. Information may be obtained from Melloney Neil, P. O. Box 538, Moody, Texas 76557, 254/853–3838. TRD-9809004.

El Oso Water Supply Corporation, Board of Directors met at Highway 99, Karnes City, June 9, 1998, at 7:30 p.m. Information may be

obtained from Carolyn Wiatrek, P.O. Box 309, Karnes City, Texas 78118, 830/780–3539. TRD-9809012.

Harris County Appraisal, Appraisal Review Board met at 2800 North Loop West, Houston, June 12, 1998, at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, 713/957–5222. TRD-9809048.

Henderson County Appraisal District, Board of Directors met at 1751 Enterprise Street, Athens, June 11, 1998, at 5:30 p.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675–9296. TRD-9809009.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, June 4, 1998, at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336–1090, 806/894–9654. TRD-9809044.

Kempner Water Supply Corporation, Board of Directors met at the Highway 190, Kempner Water Supply Corporation, Kempner, June 11, 1998, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, 915/932–3701. TRD-9809046.

Leon County Central Appraisal District, Appraisal Review Board met at 114 North Commerce, Corner Highway 7 and 75, Leon County Central Appraisal District Office, Centerville, Texas 75833–0536, Leon, June 9, 1998, at 9:00 a.m. Information may be obtained from Jeff Beshears, P. O. Box 536, Centerville, Texas 75833–0536, 903/536–2252. TRD-9809015.

Mason County Appraisal District, Appraisal Review Board met at 210 Westmoreland, Mason, June 9, 1998, at 10:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, 915/347–5989. TRD-9809035.

Mason County Appraisal District, Board of Directors met at 210 Westmoreland, Mason, June 9, 1998, at Noon. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, 915/347–5989. TRD-9809036.

Middle Rio Grande Development Workforce Board, Planning, Monitoring and Oversight and Executive Committee Meeting met at the Holiday Inn, 920 North Getty Street, Uvalde, June 11, 1998, at 1:00 p.m. Information may be obtained from Ricky McNiel, 100 West South Street, Uvalde, Texas 78801, 830/591–0141. TRD-9809006.

Nortex Regional Planning Commission, Executive Committee met at the Galaxy Center, #2 North, Suite 200, 4309 Jacksboro Highway, Wichita Falls, June 18, 1998, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307–5144, 940/322–5281 or Fax 940/322–6743. TRD-9809029.

Nueces River Authority, Coastal Bend Regional Water Planning Group met at TAMU Research and Extension Center, 10345 Agnes Street, Corpus Christi, June 11, 1998, at 1:30 p.m. Information may be obtained from James A. Dodson, 6300 Ocean Drive, NRC 3100, Corpus Christi, Texas 78412, 512/980–3193. TRD-9809018.

Palo Pinto Appraisal District, Appraisal Review Board met at 200 Church Avenue, Palo Pinto, June 10, 1998, at 1:30 p.m. Information may be obtained from Carol Homes or Donna Rhoades, P.O. Box 250, Palo Pinto, Texas 76484, 940/659–1239. TRD-9808999.

Sabine Valley Center, Board of Trustees Retreat met at 20nk Lake Cherokee (Chelsea Landing), Longview, June 12, 1998, at 1:30 p.m. Information may be obtained from Inman White, or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237–2362. TRD-9809003.

South Plains Association of Governments, Executive Committee met at 1323 58th Street, Lubbock, June 9, 1998, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452–3730, 806/762–8721. TRD-9808993.

South Plains Association of Governments, Board of Directors met at 1323 58th Street, Lubbock, June 9, 1998, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452–3730, 806/762–8721. TRD-9808994.

Sulphur-Cypress SWCD, #419 met at 1809 West Ferguson, Mt. Pleasant, June 11, 1998, at 9:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D, Mt. Pleasant, Texas 75455, 903/572–5411. TRD-9809017.

Meetings filed on June 5, 1998

Archer County Appraisal District, Board of Directors met at 101 South Center, Archer City, Texas June 10, 1998, at 5:00 p.m. Information may be obtained from Edward H. Trigg, P.O. Box 1141, Archer City, Texas 76351, 940/574–2172. TRD-9809096.

Austin Travis County MHMR Center, Human Resources Board Committee met at 1700 South Lamar Boulevard, Building One, Suite 102A, June 10, 1998, at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440–4030. TRD-9809097.

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Highway 6, Meridian, June 15, 1998, at 9:00 a.m. Information may be obtained from Janice Henry. P.O. Box 393, Meridian, Texas 76665–0393, 817/435–2304. TRD-9809087.

Coleman County Water Supply Corporation, Board of Directors met at 214 Santa Anna Avenue, Coleman, June 10, 1998, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, 915/625–2133. TRD-9809052.

Creedmoor Maha, WSC, Monthly Board Meeting met at 1699 Laws Road, Mustang Ridge, June 10, 1998, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 512/243–2113. TRD-9809107.

East Texas Council of Governments, Executive Committee met at 1306 Houston Street, Kilgore, June 11, 1998, at 12:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984–8641. TRD-9809082.

East Texas Council of Governments, Executive Committee met in a revised agenda at 1306 Houston Street, Kilgore, June 11, 1998, at 12:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984–8641. TRD-9809111.

Education Service Center Region VI, Board met at 1301 Sam Houston Avenue, Huntsville, June 11, 1998, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, 409/295–9161. TRD-9808108.

Education Service Center Region X, Board of Directors met at 400 East Spring Valley Road, Richardson, June 10, 1998, at 12:45 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, 972/349–1000. TRD-9809100.

Garza Central Appraisal District, Board of Directors met at 124 East Main, Post, June 11, 1998, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, 806/495–3518. TRD-9809081.

Gillespie Central Appraisal District, Board of Review, met at Gillespie Courthouse, County Courtroom, 101 West Main, Fredericksburg, June 10, 1998, at 10:00 a.m. Information may be obtained from

Wendy J. Garza, P.O. Box 429, Fredericksburg, Texas 78624, 830/997–9807. TRD-9809091.

Grayson Appraisal District, Board of Directors met at 205 North Travis, Sherman, June 17, 1998, at 4:00 p.m. Information may be . obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, 930/893–9673. TRD-9809113.

Hays County Appraisal District, Board of Directors met at 21001 North IH-35, Kyle, June 11, 1998, at 3:30 p.m. Information may be obtained from Pete T. Islas, 21001 North IH 35, Kyle, Texas 78640, 512/268–2522. TRD-9809088.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, June 8, 1998, at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336–1090, 806/894–9654. TRD-9809050.

Hunt County Appraisal District, Board of Directors Regular Meeting met at 4801 King Street, Greenville, June 11, 1998, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, 903/454–3510. TRD-9809106.

Jasper County Appraisal District, Board of Directors met at 137 North Main, Jasper, June 9, 1998, at 6:00 p.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, 409/384–2544. TRD-9809114.

Jim Wells County soil and Water Conservation District met at 2287, North Texas Boulevard, Suite 5, Alice, June 10, 1998, at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 2287 North Texas Boulevard, Suite 5, Alice, Texas 78332. 512/668–8363. TRD-9809103.

Appraisal District of Jones County, Board of Director met at 1137 East Court Plaza, Anson, June 18, 1998, 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915/823–2422. TRD-9809104.

Lower Colorado River Authority, LCRA Water Company, 3701 Lake Austin Boulevard, Hancock Building, Conference Room H-419, Austin, June 10, 1998, at 8:30 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473–3371. TRD-9809112.

Manville Water Supply Corporation, Regular Board Meeting met at 108 North Commerce Street, Coupland, June 11, 1998, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, 512/272–4044. TRD-9809092.

Middle Rio Grande Development Council, Executive Committee Meeting met at the Holiday Inn, Room 174/176, 209 North Getty Street, Uvalde, June 9, 1998, at 11:00 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, 830/876–3533. TRD-9809101.

Riceland Regional Mental Health Authority, Executive Committee met at 3007 North Richmond Road, Wharton, June 11, 1998, at 1:30 p.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532–3098. TRD-9809110.

Meetings filed June 8, 1998

Concho Valley Workforce Development Board met at 1621 University, San Angelo, June 11, 1998, at 2:00 p.m. Information may be obtained from Hayden Woodard, P.O. Box 87, Junction, Texas 76849, 915/446–2526 or Fax 915/446–3964. TRD-9809121.

Deep East Texas Council of Governments, Board of directors and Grants Application Review Committee will meet at 200 North Fredonia Street, The Fredonia Hotel, Nacogdoches, June 25, 1998, at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, 409/384–5704. TRD-9809171.

Dewitt County Appraisal District, Board of Directors met at 103 Bailey Street, Cuero, June 16, 1998, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, 512/275–5753. TRD-9809200.

Hall County Appraisal District, Appraisal District Directors met at 721 Robertson Street, Memphis, June 11, 1998, at 7:00 p.m. Information may be obtained from Anita Phillips, 721 Robertson Street, Memphis, Texas 79245, 806/259–2393. TRD-9809214.

Hall County Appraisal District, Appraisal District Directors met at 721 Robertson Street, Memphis, June 11, 1998, at 8:00 p.m. Information may be obtained from Anita Phillips, 721 Robertson Street, Memphis, Texas 79245, 806/259–2393. TRD-9809215.

Houston-Galveston Area Council, Projects Review Committee met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, June 16, 1998, at 9:15 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627–3200. TRD-9809188.

Jack County Appraisal District, Appraisal Review Board met at 200 North Church Street, Jacksboro, Jack County, June 12, 1998, at 8:00 a.m. Information may be obtained from Gary L. Zeitler or Tammie Morgan, P.O. Box 958, Jacksboro, Texas 76458, 940/567–6301. TRD-9809197.

Johnson County Central Appraisal District, Board of Directors met at 109 North Main, Suite 201, Room 202, Cleburne, June 18, 1998, at 4:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, 817/558–8100. TRD-9809202.

Middle Rio Grande Workforce Board, Planning, Monitoring and Oversight and Executive Committee , Ad-Hoc School-to-Work Committee met in a revised agenda at 920 East Main Street, Holiday Inn, Uvalde, June 11, 1998 at 1:00 p.m. Information may be obtained from Ricky McNiel, 100 West South Street, Uvalde, Texas 78801, 830/591–0141. TRD-9809190.

Mills County Appraisal District, Board of Directors met at Mills County Courthouse, Jury Room-Fisher Street, Goldthwaite, June 16, 1998, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, 915/648–2353. TRD-9809166

Texas Political Subdivisions Joint Self-Insurance Funds, Board of Trustees met at the Radison Resort South Padre Island, 500 Padre Boulevard, South Padre Island, June 15–17, 1998, at 8:30 a.m. Information may be obtained from David J. LaBrec, 901 Main Street, Suite 4300, Dallas, Texas 75202, 214/651–4752. TRD-9809228.

Region G Regional Water Planning Group will meet at the Waco Convention and Civic Center, 100 Washington, Waco, June 22, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714–7555, 254/776–1441. TRD-9809120.

Rockwall County Central Appraisal District, Appraisal Review Board met in a revised agenda at 106 North San Jacinto, Rockwall, June 11, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771–2034. TRD-9809124.

San Antonio River Authority, Real Estate Policy Guidelines Committee met at 100 East Guenther Street, Boardroom, San Antonio, June 17, 1998, at 1:00 p.m. Information may be obtained from Fred N.

Pfeiffer, P.O. Box 830027, San Antonio, Texas 787283–0027, 210/227-1373. TRD-9809128.

San Antonio River Authority, Board of Directors met at 100 East Guenther Street, Boardroom, San Antonio, June 17, 1998, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 787283–0027, 210/227-1373. TRD-9809129.

Surplus Lines Stamping Office of Texas, Board of Directors met at the Hughes and Luce, L.L.P., 111 Congress Avenue, Suite 900, Austin, June 16, 1998, at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, 512/346–3274. TRD-9809194.

Trinity River Authority of Texas, Resources Development Committee met at 5300 South Collins Street, Arlington, June 15, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467–4343. TRD-9809189.

Meetings filed on June 9, 1998

Ark-Texas council of Governments, Board of Directors will meet at Houston and Church Streets, Linden, June 25, 1998, at 2:15 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, 903/832–8636. TRD-9809273.

Austin-Travis County MHMR Center, Public Relations Committee met in an emergency meeting at 1430 Collier Street, Board Room, Austin, June 10, 1998, at Noon. Reason for emergency: Items needing to be considered prior to the next Board meeting. Only time a quorum could meet. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440–4031. TRD-9809274.

Deep East Texas Local Workforce Development Board, Executive Committee will meet at 300 East Shepherd, Lufkin City Hall, Room 202, Lufkin, June 19, 1998, at 10:00 a.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75902, 409/634–2247. TRD-9809275.

Education Service Center, Region V, Board met at 1750 Highway 96 Bypass, Silsbee, June 17, 1998, 1:00 p.m. Information may be obtained from Robert e. Nicks, 2295, Delaware Street, Beaumont, Texas 77703–4299, 409/838–5555. TRD-9809257.

Gray County Appraisal District, Board of Directors met at 815 North Sumner, Pampa, June 16, 1998, at 7:30 a.m. Information may be obtained from Kim Hinds, P.O. Box 836, Pampa, Texas 79065, 806/665–0791. TRD-9809272.

Houston-Galveston Area Council, Board of Directors met at 3555 Timmons Lane, Conference Room A, 2nd Floor, Houston, June 16, 1998, at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, 713/627–3200. TRD-9809256.

Middle Rio Grande Development Workforce Board, Planning, Monitoring and Oversight and Executive Committee Meeting, Ad-Hoc School-to-Work Committee met in an emergency revised agenda at the Holiday Inn, 920 Eat Main Street, Uvalde, June 11, 1998, at 1:00 p.m. Reason for emergency: Ratification is needed on the release of RFP for the school-to-careers curriculum before awarding the contact. Information may be obtained from Ricky McNiel, 100 West South Street, Uvalde, Texas 78801, 830/591–0141. TRD-9809234.

Region C, Regional Water Planning Group will meet at the Central Wastewater Plant, Trinity River Authority, 6500 West Singleton Boulevard, Grand Prairie, June 30, 1998, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, 972/442–5405. TRD-9809262.

Trinity River Authority of Texas, Resources Development Committee met at 5300 South Collins Street, Arlington, June 15, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467–4343. TRD-9809237.

Trinity River Authority of Texas, Legal Committee met at 5300 South Collins Street, Arlington, June 16, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467–4343. TRD-9809266.

Meetings filed on June 10, 1998

Bell County Tax Appraisal District, Appraisal Review Board will meet at 411 East Central Avenue, Belton, June 22–7, 1998, at 8:30 a.m and 1:00 p.m. (respectively.) Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, 254/939–5841. TRD-9809288.

Far West Texas Water Planning Group, Public Meeting will meet at Van Horn Convention Center, 801 West Broadway, Van Horn, July 15, 1998, at 7:00 p.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 915/533–0998. TRD-9809287.

Guadalupe-Blanco River Authority, Board of Directors met at the Seguin Independent School District Board Room, 1221 East Kingsbury, Seguin, June 17, 1998, at 10:00 a.m. Information may be obtained from W.E. West Jr., 933 East Court Street, Seguin, Texas 78155, 830/379–5822. TRD-9809292.

Harris County Appraisal District, Board of Directors met at 2800 North Loop West, 8th Floor, Houston, June 17, 1998, at 9:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 920975, Houston, Texas 77292–0975, 713/957–5291. TRD-9809331.

Kendall Appraisal District, Board of Directors met at 121 South Main Street, Boerne, June 15, 1998, at 9:00 a.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, 830/249–8012 or fax 830/249–3975. TRD-9809285.

Liberty County Central Appraisal District, Appraisal Review Board met in a revised agenda at 315 Main Street, Liberty, June 81, 1998, at 9:00 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, 409/336–5722. TRD-9809334.

Middle Rio Grande Development Workforce Board, Planning, Monitoring and Oversight and Executive Committee Meeting, Ad-Hoc School-to-Work Committee met in an emergency revised agenda at the Holiday Inn, 920 Eat Main Street, Uvalde, June 11, 1998, at 1:00 p.m. Reason for emergency: Information was received from the state June 9, 1998, Board doe not meet against until August, plan needs to be at the state by the end of June. Information may be obtained from Ricky McNiel, 100 West South Street, Uvalde, Texas 78801, 830/591–0141. TRD-9809332.

Montague County Tax Appraisal District, Board of Directors met at 312 Rusk Street, Montague, June 16, 1998, at 5:30 p.m. Information may be obtained from June Deaton, 312 Rusk Street, Montague, Texas 76251, 940/894–6011. TRD-9809298.

North Texas Municipal Water District, Board of Directors will meet at the Administration Office, 505 East Brown Street, Wylie, June 25, 1998, at 4:00 p.m. Information may be obtained from James M. Parks, P.O. Box 2408, Wyle, Texas 75098, 972/442–5405. TRD-9809306.

Plateau Water Planning Group (formerly Regional Water Planning Area: Region J) Board will meet at the American Legion Park Building, Edwards County, U.S. Highway 377, Rocksprings, June 25, 1998, at 2:00 p.m. Information may be obtained from Cameron E. Cornett, Edwards County, U.S. Highway 377, Rocksprings, Texas 78880, 830/796–7260. TRD-9809327.

Rio Grande Council of Governments, Board of Director's will meet at 1100 North Stanton, 6th Floor Conference Center, El Paso, June 19, 1998, at 1:00 p.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 915/533–0998. TRD-9809286.

Trinity River Authority of Texas, Administration Committee met at 5300 South Collins Street, Arlington, June 17, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467–4343. TRD-9809301.

West Central Texas Workforce Development Board, Monitoring and Evaluation Committee met at 2550 North Judge Ely Boulevard, Abilene, June 17, 1998, at 9:30 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672–8544. TRD-9809300.

West Central Texas Workforce Development Board, Board met at 2550 North Judge Ely Boulevard, Abilene, June 17, 1998, at 10:00 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672–8544. TRD-9809299.

West Central Texas Council of Governments, Regional Solid Waste Task Force Mtg. will meet at 1025 EN 10th Street July 2, 1998, at 1:30 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, 915/672–8544. TRD-9809320.

Wise County Appraisal District, Board will meet at 206 South State, Decatur, June 30, 1998, at 8:30 a.m. Information may be obtained from Freddie, Triplett, 206 South State, Decatur, texas 76234, 940/627–3081. TRD-9809316.

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.

Texas State Board of Public Accountancy

Request for Proposal

The Texas State Board of Public Accountancy requests proposals from lawyers and or law firms interested in representing the Board in connection with in certain matters under of the Public Accountancy Act of 1991, Art. 41a-1, TEXAS REVISED CIVIL STATUTE ANNOTATED (Vernon's 1998) as amended ("the Act"). This RFP is issued for the purpose of establishing a panel from which the Board will select appropriate counsel for representation and advice on legal issues in connection with complex questions of the interpretation of the Act and the unlicensed practice of public accountancy. The Board may call upon this panel during the time frames first, beginning September 1, 1997 to August 31 1998 and second, beginning September 1, 1998 to August 31 1999.

Description: The Board is given the authority under the Act to request that the District Court enjoin certain conduct constituting the unlicensed practice of public accountancy. The Board instituted such a suit in 1995 against American Express, Texas State Board of Public Accountancy v. American Express Tax & Business Service, Number 95-07496 (District Court, Travis County, Texas) The Board is seeking legal advice in connection with this case and potentially related matters. Respondents should have experience in complex commercial trials, especially in Travis County District Court, experience working with expert witnesses and a sophisticated understanding of the regulation of the professions in Texas. Expertise in accounting will be considered an additional benefit.

Respondents: Responses to the RFP should include at least the following information: (1) a description of the firm's and/or each attorney's qualifications for performing the legal services, including any prior experience in complex commercial cases and appropriate information about efforts made by the firm to encourage and develop the participation of minorities and women; (2) fee information and billable expenses, either in the form of hourly rates for each attorney, comprehensive flat fees or other fee arrangements directly related to the achievement of specific goals and cost controls; (3) disclosures of conflict of interest, identifying each and every matter the firm has within the past calendar year represented any entity or individual with an interest adverse to the State of Texas, its agencies, boards and universities; (4) confirmation of willingness to comply with the policies of the Board and the Attorney General of the State of Texas. The Attorney General has stated that it must approve the agreement between the Board and its counsel. The Attorney General has prescribed a form contract for such agreements and has indicated that he will not approve any variant of this form contract absent exceptional circumstances.

Please submit two copies of any responses to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701. Copies of additional materials concerning this RFP may be obtained by qualified bidders upon request at (512) 305-7848. The deadline for submission of responses is July 12.

TRD-9809212
William Treacy
Executive Director
Texas State Board of Public Accountancy
Filed: June 8, 1998

♦ ♦ ♦

Agriculture Resources Protection Authority

Notice of Taking Public Comments on State Pesticide Regulation

In accordance with the Texas Agriculture Code, §76.009(i) and policies adopted by the Agriculture Resources Protection Authority (the Authority), notice is hereby provided that the Authority will take public comment on the status of the state's pesticide regulation efforts at it's next regularly scheduled meeting. The meeting will be held on Thursday, June 25, beginning at 10:00 a.m., at the offices of the Texas Department of Agriculture located at 1700 N. Congress, Room 911, Austin, Texas. For more information, please contact Donnie Dippel at (512) 463-1093.

TRD-9809324
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 10, 1998

♦ ♦ ♦

Texas Commission for the Blind

Requests for Proposals-Rehabilitation Project Grants

The Texas Commission for the Blind is announcing the availability of funds for making grants to external nonprofit or public entities for the purpose of expanding or improving services to individuals who are blind or severely visually impaired. Excluded from this notice are funds for the purpose of providing welfare services and services for children provided by regularly established educational agencies and state authorities.

Purpose of Funds: Grants are available for projects that fall in one or more of the following funding categories: Category 1 – Projects that focus on assisting individuals who are blind or severely visually impaired to enter into competitive, integrated employment. Category 2 – Projects that focus on assisting individuals over the age of 55 who are blind or severely visually impaired. Category 3 – Projects that focus on assisting children who are blind or severely visually impaired. Category 4 – Other projects that support or provide services to individuals who are blind or severely visually impaired.

Estimated Range of Awards: $50,000-$300,000 per grant awarded. (The Commission is not bound by any estimates in this notice.)

Approximate matching requirements: Generally, 25% or more of the project budget is expected to come from the applicant in the form of nonfederal match. In-kind contributions cannot be considered as part of the matching requirements of any grant.

Maximum Award: In no case will the Commission make an award greater than $300,000 (including match) for the life of the grant.

Project Period: Project proposals must be for a period no longer than two years. A continuation request shall be required after the first year. Preference will be given to projects of less than two years duration.

Deadline for Transmittal of Applications: July 24, 1998.

To Obtain Applications or Information : All inquiries should be directed to Bill Agnell, Program Specialist, Texas Commission for the Blind, 4800 N. Lamar, Suite 220, Austin, Texas 78756, (512) 459-2586, e-mail: billa@tcb.state.tx.us. The preferred method for requesting applications is to FAX your request to Bill Agnell at (512) 459-2592.

TRD-9809247

Ernest Pereyra

Deputy Director, Administration and Finance

Texas Commission for the Blind

Filed: June 9, 1998

♦ ♦ ♦

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 June 2, 1998, through June 9, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Marathon Ashland Petroleum, LLC; Location: On the north side of Loop 197 between 6th street and 14th Street in the City of Texas City, Galveston County, Texas, into the Texas City Ship Channel in Waterbody Segment Code Number 2437 and the Lower Galveston Bay in Waterbody Segment Code Number 2439 of the Bay and Estuaries; Project Number: 98-0241-F1; Description of Proposed Action: The applicant requests modifications to and renewal of a National Pollutant Discharge Elimination System permit to expire October 31, 2003; Type of Application: Environmental Protection Agency NPDES permit #TX0003697 under the Clean Water Act (33 U.S.C.A. §1251).

Applicant: Texas Oil & Gathering, Inc.; Location: On FM 2917 at the intersection of the Missouri Pacific Railroad and northeast of the City of Liverpool, Brazoria County, Texas, to Chocolate Bayou Tidal in Waterbody Segment Code Number 1107 of the San Jacinto Brazos Coastal Basin; Project Number: 98-0246-F1; Description of Proposed Action: The applicant requests a National Pollutant Discharge Elimination System permit to expire September 1, 2003; Type of Application: Environmental Protection Agency NPDES permit application #TX0114995 under the Clean Water Act (33 U.S.C.A. §1251).

Applicant: Freeport Marina and Supply, Inc.; Location: On the Gulf Intracoastal Waterway, 300 Casco Road, in Freeport, Brazoria County, Texas; Project Number: 98-0244-F1; Description of Proposed Action: The applicant proposes to construct a recreational marina with associated support facilities. The project will impact 3.5 acres of wetlands, 1.9 acres of shallow water habitat, and approximately half of an existing 2.0-acre boat slip. The marina basin will occupy approximately 9.2 acres and will be excavated to a depth of –10 feet Mean Low Tide. Approximately 70,000 cubic yards of material will be mechanically excavated; Type of Application: U.S.C.O.E. permit application #21296 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Terramar Bay Corporation; Location: On West Bay, Lots 1 through 19, Chiquita Street, Terramar Beach Subdivision, West Galveston Island, Galveston County, Texas; Project Number: 98-0247-F1; Description of Proposed Action: The applicant proposes to dredge a canal and basin adjacent to an existing concrete bulkhead. The canal will be approximately 50 feet wide by 1,050 feet in length and the basin will be approximately 300 feet by 150 feet. Approximately 23,600 cubic yards of material will be mechanically dredged; Type of Application: U.S.C.O.E. permit application #17875(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Shell Offshore, Inc.; Location: In the Galveston Anchorage Area, Galveston Block 182, offshore Texas, Gulf of Mexico; Project Number: 98-0248-F1; Description of Proposed Action: The applicant proposes to install and maintain structures, to drill a well and produce the well for oil/gas. The structures will be further than two nautical miles from any other permitted structure in the anchorage area; Type of Application: U.S.C.O.E. permit application #21256 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: CNG Producing Company; Location: In State Tract 298, approximately 2.19 miles north from Clifton Beach, Galveston County, Texas; Project Number: 98-0249-F1; Description of Proposed Action: The applicant proposes to install, operate and maintain a structure for the production of oil and gas. The proposal includes two 3-inch flowlines to be placed between this well location and the existing Wood Energy platform in State Tract 259; Type of Application: U.S.C.O.E. permit application #21247 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

FEDERAL AGENCY ACTIVITIES:

Applicant: Gulf of Mexico Fishery Management Council; Project Number: 98-0245-F2; Description of Proposed Activity: Pursuant to Section 305(b)(1)(A and B) of the Magnuson Stevens Fishery Conservation and Management Act, the applicant proposes a "Generic Amendment Addressing Essential Fish Habitat Requirements in Fishery Management Plans of the Gulf of Mexico." The amendment identifies and describes essential fish habitat (EFH) for species managed by the Council. It also identifies threats to EFH and discusses conservation and enhancement measures for EFH. No management measures are proposed at this time.

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 Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

TRD-9809315
Garry Mauro
Chairman
Coastal Coordination Council
Filed: June 10, 1998

♦ ♦ ♦

Notice of Availability and Request for Public Comment

The Coastal Coordination Council (Council) announces the availability of a draft document describing the Texas Coastal Nonpoint Source Program for public review and comment. The program is being developed under §6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (Public Law 101-508, Title VI, §6217, November 5, 1990, 104 Statutes 1308-314, codified at 16 U.S.C. §1455b). This section requires Texas and all other states administering federally approved coastal management programs to develop a program for implementing certain measures to manage nonpoint sources of pollution to coastal waters. The proposed Texas Coastal Nonpoint Source Program would, as required by §6217, be closely coordinated with other state water quality programs, including those under the Clean Water Act. Accordingly, lead agencies for preparation of the draft document have been the Texas Natural Resource Conservation Commission and the State Soil and Water Conservation Board. The Texas Department of Transportation and the General Land Office also contributed to the draft document.

Written comments will be accepted for a period of 30 days from the date this notice is published. A revised draft of the document will then be produced taking these comments into consideration. The Council anticipates making the revised draft available for public review and comment later this year. When the final document describing the Texas Coastal Nonpoint Source Program is approved by the Council, it will be submitted to the National Oceanographic and Atmospheric Administration and the U.S. Environmental Protection Agency for approval.

The draft document is available either via the internet at www.glo.state.tx.us/coastal/nps.html or in hard copy by contacting Janet Fatheree, Council Secretary, at (512) 463-5385. Comments on the document should be submitted to Ms. Fatheree, General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495; by Fax: (512) 475-0680. The deadline for comments is 5:00 p.m., Monday, July 20, 1998.

TRD-9809270
Garry Mauro
Chairman
Coastal Coordination Council
Filed: June 9, 1998

♦ ♦ ♦

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 1998

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development will become effective July 1, 1998 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Brookshire (Waller Co.)	2237014	.015000	.077500
Itasca (Hill Co.)	2109046	.015000	.082500
Oak Ridge (Cooke Co.)	2049067	.015000	.082500

An additional 1% city sales and use tax for improving and promoting economic and industrial development will become effective July 1, 1998 in the city listed below.

City Name	Local Code	New Rate	Total Rate
The Colony (Denton Co.)	2061195	.020000	.082500

A 1/2% special purpose district sales and use tax will become effective July 1, 1998 in the special purpose district listed below.

SPD Name	Local Code	New Rate	Total Rate
Baytown Crime Control District	5101507	.005000	See Note

NOTE: The boundaries of the Baytown Crime Control District are the same boundaries as the City of Baytown. The total rate in the City of Baytown will be .077500.

TRD-9809047
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Filed: June 4, 1998

♦ ♦ ♦

Texas Commission for the Deaf and Hard of Hearing

Requests for Proposals

Direct Services, Health and Human Services, Region II

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) is requesting contract proposals for projects to provide services to eligible individuals who are deaf or hard of hearing within the Health and Human Service Region 2. A total of $6240.00 is available for the following service categories: communication access services (CAS); information and referral services (I/R); and/or senior citizens program (SCP). The intent is to award a minimum of one contract for the region. Funding for these services are for the 1999 Fiscal Year which begins on September 1, 1998.

[Communication Access Services: interpreting services (sign language and oral) and Computer Assisted Realtime Transcription (CART). This will include any Inter-agency Communication Access Contracts that may be entered into by TCDHH, however, only the ability to access these funds will be included in any awards. Information & Referral: may include basic cost to access E-mail services.]

Region 2 covers 30 counties. They are as follows: Cottle, Hardenen, Foard, Wilbarger, Wichita, Clay, Montagure, Knox, Baylor, Archer, Kent, Stonewall, Haske, Thockmorton, Young, Jack, Scurry, Fisher, Jones, Schakelford, Stephens, Mitchell, Nolan, Taylor, Callahan, Eastland, Ruanelo, Coleman, Brown, and Comanche.

Eligible Applicants. Any agency, organization, or individual who can demonstrate the capability to provide the services identified to individuals who are deaf or hard of hearing.

Proposal Requirements. Each applicant must, at a minimum, provide the following by narrative or documentation: A. description of their operation setup; B. description of the need for funds for each service category for which funding is requested; C. state goals and outcomes for proposed services; D. demonstrate having the necessary skills, knowledge, and expertise for the planning, development, and implementation of needed services; E. describe the location and the facilities for the coordination and delivery of services; F. state the number of units of service that funds will provide; G. Provide a cost per unit of service within the guidelines as outlined in TCDHH rules, §183.830; H. provide the projected number of persons that will utilize the services; I. submit a fiscally conservation budget for the provision of these services to the Commission for review; J. specify the person(s) coordinating each activity for which funds are being requested, and include resume(s); K. provide assurances of

willingness to cooperate with the Commission regarding its goals, standards, requirements, and recommendations, and interagency communication access contracts; L. State that they will maintain records of services provided and furnish the Commission with reports, as required, in the format prescribed by the Commission; M. describe how they will maintain the confidentiality of records and services relating to clients in accordance with any and all applicable state and federal rules, laws, and regulations; N. Assure that they will acknowledge TCDHH funding on publications, letterhead, materials, etc. (TCDHH artwork will be supplied); O. provide assurance of involvement of deaf or hard of hearing individuals in the provision and oversight of services; P. assure that they will utilize, to the highest degree possible, local community and other resources; and Q. Provide letters of endorsement and/or cooperation especially from individuals and organizations in their service area.

Proposal Evaluation Criteria. Proposals will be evaluated by the Commission on the following basis: Points I. Relevance and Importance of Programs (15) - The proposed plan is responsive to the program and addresses a significant need of the target population. II. Documented and demonstrated ability of applicant to serve the target population through the programs (30) - The key personnel has appropriate training and experience in serving the target population and to carry out the services; - The commitment of staff time is adequate to conduct all proposed activities; - Past performance and accomplishments of the applicant indicate an ability to serve individuals eligible for the program. III. Documented details of the plan of operation (30) - The proposed plan is well documented and provides sufficient details regarding how, when and where the project will be implemented and anticipated timeline. - The proposed plan is adequate to accomplish the purpose of the program and to ensure proper and efficient management of the project; - There is a clear description of how the applicant will identify and serve target populations. IV. Budget and cost effectiveness (25) - The budget for the project is adequate to support the proposal activities - The costs are reasonable in relation to the objectives of the programs - The budget for subcontract (if appropriate) is detailed and - The budget narrative is detailed as to how the budget will be spent.

Contract Award and Allocation Procedures. Final selection will be made by the Commission, based on a review committee's evaluation of each proposal using the proposal evaluation criteria. Awards will not necessarily be made to the applicants offering the lowest cost.

The Commission reserves the right to accept or reject any or all proposals submitted, as well as to refuse any or all renewals with previous contractors.

The Commission is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided to serve only as a means of identifying the various elements which the Commission considers essential to the delivery of direct services. This request does not commit the Commission to pay any costs incurred prior to a execution of a contract.

The Commission will announce the contracts awards for FY 1999 by the Commission's last open meeting before the new fiscal year. The contracted services shall begin on September 1, 1998 unless otherwise stated.

Contracts will include the possibility for amendments to permit additional funds, if such funds become available, or re-allocation of funds during the contract period if determined necessary by the Commission.

Funding will be determined by using a Commission-approved formula in the distribution of funds among selected and approved contractors by region. Multiple contracts may be awarded for the region.

Additional Information. A. Preference for funding will be given to: I. providers of multiple services; II. providers who serve individuals who are deaf and individuals who are hard of hearing III. providers who can serve the largest state areas within a region; and IV. providers who are certified as Historically Underutilized Businesses (HUBs). B. Funded services are intended to serve the maximum number of people in the maximum number of situations possible; C. Funds from TCDHH should not be viewed as taking the place of funds from federally or otherwise mandated funding sources but should be used as a supplement; and D. Funded communication access services are limited to legal, government, economic, medical and special situations, and when no other funding source is available. E. Contractors are required to attend the annual service provider training sessions.

Conditions for Termination of Contract. Failure to comply with contract requirements may result in the termination of the contract.

Guidelines for Submitting Proposals. Each applicant will provide a minimum of 4 copies of the proposal. Proposals are to be addresses to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, 4800 N. Lamar Blvd., Suite 310, Austin, Texas 78756. Deadline for the receipt of proposals in the offices of the Texas Commission for the Deaf and Hard of Hearing is 5:00 p.m. July 2, 1998. Proposals received after the established deadline cannot be considered for selection. Faxed submissions will not be accepted.

Contract Persons. Further information regarding the provision of the above-stated services and requests for application packets may be directed to Billy Collins, Director of Programs, or Margaret Susman, Texas Commission for the Deaf and Hard of hearing, 4800 North Lamar, Suite 310, Austin, Texas 78756, (512) 407-3250 (voice), E-mail: billyc@tcdhh.state.tx.us

TRD-9809085
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: June 5, 1998

♦ ♦ ♦

Early Intervention and Prevention

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) announces the availability of up to $20,000 to develop and implement a minimum of two projects to promote early identification, intervention and prevention of hearing loss. Grants will range in size from $5,000 to $10,000. TCDHH is requesting proposals for the provision of services including, but not limited to, the production and dissemination of information that raises awareness of deafness/hearing loss and informs the public of the existence of available services; the dissemination of information regarding the causes and prevention of hearing loss; and the early detection of hearing loss. Methods that may be employed include, but are not limited to, the creation of brochures, public service announcements, or other means of dispersing the desired information, and the provision of hearing screening, or referral to state agencies that conduct hearing screening. Proposed projects should be designed to serve as models for other service providers throughout the State and may serve people of all ages. Proposals that demonstrate the respondents' ability and willingness to work with associations or organizations representing persons who are deaf or hard of hearing will be viewed favorably. Proposed projects should increase awareness of available state and local supports and

services for persons who are deaf and hard of hearing. The projects should ideally target traditionally undeserved populations. Applicants that have access to non-State matching funds are encouraged to apply. These services are for the Fiscal Year 1999 which begins September 1, 1998. The Commission reserves the right to accept or reject any or all proposals submitted.

Eligible Applicants. Any agency, organization, or individual who can demonstrate in a written proposal the capability to provide the services identified to individuals who are deaf or hard of hearing.

Proposal Requirement. Each applicant must submit an abstract of no more than one page outlining the proposal project. Each applicant must submit a typed project narrative of not more than 10 double-spaced pages detailing: I. The applicant's operations setup. II. A plan for developing and implement a pilot project to provide services related to early identification, intervention and prevention of hearing loss. II A fiscally conservation budget showing the anticipated costs of the project and the amount of funds requested, using the budget form contained in the application package. IV. Plans for evaluating the proposed project. This project evaluation plan should describe measurable objectives, methods that will be used to measure the objectives, a process through which the program can be reviewed and strengthened, and a method through which the applicant will inform other service providers of the results of the program.

Proposals Evaluation Criteria. Proposals will be reviewed and recommendations by the Commission on the following basis: I. Relevance and Importance of Project (15) The proposed plan is responsive to the program and addresses a significant need of the target population. II. Documented and demonstrated ability of applicant to serve the target population through the project (30) - The key personnel has appropriate training and experience in serving the target population and to carry out the services; - The commitment of staff time is adequate to conduct all proposed activities; - past performance and accomplishments of the applicant indicate an ability to serve individuals eligible for the program. III. Documented details of the plan of operation (30) -The proposed plan is well documented and provides sufficient details regarding how, when and where the project will be implemented and anticipated timeline. -The proposed plan is adequate to accomplish the purpose of the program and to ensure proper and efficient management of the project; - There is a clear description of how the applicant will identify, select and serve project participants who are traditionally under served individuals, and - Project can be duplicated in other areas of that state. IV. Budget and cost effectiveness (25) - The budget for the project is adequate to support the proposal activities - The costs are reasonable in relation to the objectives of the project - The budget for subcontract (if appropriate) is detailed and - The budget narrative is detailed as to how the budget will be spent.

Additional Information. I. Preference will be given to projects than can be replicated in other areas of the state. II. Awards are intended to serve the maximum number of people in the maximum number of situations possible. III. Recognition must be given to TCDHH on all materials and documentation developed or associated with this program. IV. Awards will be paid on a quarterly basis upon receipt of invoice and a quarterly progress report.

Grant Award and Allocation Procedures. The Commission has authority to accept or reject any or all proposals based on the established proposal evaluation criteria. Final selection of awards will be made by the Commission, based on a review committee's evaluation of each proposal using the published proposal evaluation criteria. Awards will not necessarily be made to the applicant offering the lowest cost.

The Commission is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided only as a means of identifying the various elements which the Commission considers basic to the delivery of the requested services. The Commission will base its choice on demonstrated competence, qualifications, and evidence of superior conformance to established criteria. This request does not commit the Commission to pay any costs incurred prior to execution of a contract.

The Commission will announce the contract awards for the EIP program during the Commission's last scheduled meeting of Fiscal Year 1998. The contracted services shall begin September 1, 1998 and end on August 31, 1999.

Contracts include the possibility for amendments to permit additional funds, if such funds become available, or re-allocation of funds during the contract period if determined necessary by the Commission.

Contact Person. Requests for required application packets and for further information regarding the provision of the above-stated services may be directed to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, 4800 N. Lamar Blvd., Suite 310, Austin, Texas 78756. Telephone: (512) 407-3250 voice and (512) 407-3251 tty.

Deadline for Submission of Proposals. Deadline for the receipt of proposals in the offices of the Texas Commission for the Deaf and Hard of Hearing is July 2, 1998 5 p.m. Proposals received after 5:00 p.m. will not be considered. Proposals will not be accepted via facsimile. Proposals are to be addressed to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, 4800 North Lamar, Suite 310, Austin, Texas 78756.

Conditions for Termination of Contract. Failure to comply with contract requirements may result in the termination of the contract.

TRD-9809086
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: June 5, 1998

♦ ♦ ♦

Mentoring Projects

A Request for Proposals is issued for bids for possible Mentor (Interpreter Intern) Projects to be conducted during Fiscal Year 1999. An anticipated $50,000 is available to fund a minimum of five grant awards throughout the state. The funds for any awards will be available September 1, 1998 through August 31, 1999.

Contact Persons:Contacts may be directed to Billy Collins, Director of Programs, or Margaret Susman, Office Administrator at TCDHH, (512) 407-3250 Voice and (512) 407-3251 TTY.

Deadline for Proposals: Proposals must be submitted to TCDHH and received in the office by 5:00 p.m., July 2, 1998. Proposals are to be addressed to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, 4800 North Lamar Blvd., Suite 310, Austin, Texas 78756.

Purpose of Program:The funds of this program are for projects that successfully bid to provide a method of mentoring and/or training for persons who have at least a Level I BEI certification. The purpose of the project is to provide learning experiences and skill building for interpreter interns thus enabling them to upgrade their skill level and possibly obtain higher levels of certification. The intern will accompany a more skilled interpreter, Level III or higher, in all phases

of the proposed program for the purpose of obtaining appropriate guidance, feedback, and enhancement.

Other Information: * Training should provide mentor experiences that would not otherwise be available to the individual without a higher level of certification. * Training should provide a primary focus on community based experiences. Highly technical, medical and legal situations should be included. * Projects providing mentor training to rural areas are preferred. * Projects for remote sites and projects providing a series of advanced skill building workshops are encouraged. * A maximum of $10,000 is available for any project.

Requirements of the project will include in detail: * Types of training experiences to be offered. * Proposed project goals and outcomes. * Documentation of entry and exit assessments of each person being mentored * Method of selection and qualification of persons to be involved with the project. * Anticipated number of participants in the project. * Proof of certification of all persons involved in the project. * Proposed evaluation of project. * Anticipated costs of the project. * Assurances of adhering to the BEI Code of Ethics and to the rules and guidelines as set forth by the Commission. * Provision of at least one workshop on skill enhancement open to interpreters statewide to be co-sponsored with TCDHH. * Planned match of funds if available.

Method of Selection: Points I. Relevance and Importance of Project (15) The proposed plan is responsive to the program and addresses a significant need of the target population. II. Documented and demonstrated ability of applicant to serve the target population through the project (30) - The key personnel has appropriate training and experience in serving the target population and to carry out the services; - The commitment of staff time is adequate to conduct all proposed activities; - past performance and accomplishments of the applicant indicate an ability to serve individuals eligible for the program. III. Documented details of the plan of operation (30) - The proposed plan is well documented and provides sufficient details regarding how, when and where the project will be implemented and anticipated timeline. -The proposed plan is adequate to accomplish the purpose of the program and to ensure proper and efficient management of the project; - There is a clear description of how the applicant will identify, select and serve project participants who are traditionally underserved individuals, and - Project can be duplicated in other areas of that state. IV. Budget and cost effectiveness (25) - The budget for the project is adequate to support the proposal activities - The costs are reasonable in relation to the objectives of the project - The budget for subcontract (if appropriate) is detailed and - The budget narrative is detailed as to how the budget will be spent.

Grant Award Procedures:Final selection will be made by the Commission, based on a review committee's evaluation of each proposal using the proposal evaluation criteria.

The Commission reserves the right to accept or reject any or all proposals submitted, as well as to refuse any or all renewals with previous award recipients.

The Commission is under no legal requirement to execute a resulting award on the basis of this advertisement and intends the materials provided to serve only as a means of identifying the various elements which the Commission considers essential to the delivery of services. This request does not commit the Commission to pay any costs incurred prior to execution of an award.

Winning bids will be announced by the last Commission meeting of the Fiscal Year.

TRD-9809084

David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: June 5, 1998

Direct Services Providers

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) is requesting new contract proposals for projects to provide services to eligible individuals who are deaf or hard of hearing within the state. The intent is to award limited contracts to additional qualified service providers within each region. Funding available is through the provision of services funded by Inter-Agency Contracts with other state agencies for Communication Access services for the 1999 Fiscal Year which begins on September 1, 1998.

TCDHH has inter-agency contracts with other state agencies for the provision of communication access services. Service providers that contract with TCDHH become eligible to provide and be reimbursed for communication access services to these agencies upon request. All billings and administrative work for these contracts are handled through TCDHH. The state agencies will receive a list of service providers that contract with TCDHH and may use this list to obtain services as they are needed. The amount of money available through the IAC's can vary from agency to agency depending upon the need of the agency and the area of the state that the service is provided.

Bids may also include a proposal for the following service categories if additional funds should become available: communication access services (CAS)*; information and referral services (I/R)**; and/or senior citizens program (SCP). *[Communication Access Services: interpreting services (sign language and oral) and Computer Assisted Realtime Transcription (CART).] **[Info and Referral: may include basic cost to access E-mail services.]

Eligible Applicants. Any agency, organization, or individual who can demonstrate the capability to provide the identified services to individuals who are deaf or hard of hearing.

Proposal Narrative. Each applicant must, at a minimum, provide a one page abstract of the proposed project in addition to detailed narration and documentation as per the following outline:

A. description of the operation setup;

B. description of the need for funds for each service category for which funding is requested;

C. describe a plan of operation with goals and outcomes for proposed services;

D. demonstrate having the necessary skills, knowledge, and expertise for the planning, development, and implementation of needed services;

E. describe the location and the facilities for the delivery of services;

F. state the number of units of service that funds will provide;

G. Provide a cost per unit of service within the guidelines as outlined in TCDHH rules, §183.830;

H. provide the projected number of persons that will utilize the services;

I. submit a fiscally conservation budget for the provision of these services to the Commission for review;

J. specify the person(s) coordinating each activity for which funds are being requested, and include resume(s);

K. provide assurances of willingness to cooperate with the Commission regarding its goals, standards, requirements, and recommendations, and interagency communication access contracts;

L. state that records of services provided will be maintained and furnish the Commission with reports, as required, in the format prescribed by the Commission;

M. describe how the confidentiality of records and services relating to clients in accordance with any and all applicable state and federal rules, laws, and regulations will be maintained;

N. assure that they will acknowledge TCDHH funding on publications, letterhead, materials, etc. (TCDHH artwork will be supplied);

O. provide assurance of involvement of deaf or hard of hearing individuals in the provision and oversight of services;

P. assure that, to the highest degree possible, local community and other resources will be utilized ; and

Q. provide letters of endorsement and/or cooperation especially from individuals and organizations in their service area.

Proposal Evaluation Criteria. Proposals will be evaluated by the Commission on the following basis:

I. Relevance and Importance of Programs - 15 points - The proposed plan is responsive to the program and addresses a significant need of the target population.

II. Documented and demonstrated ability of applicant to serve the target population through the programs – 30 points – The key personnel has appropriate training and experience in serving the target population and to carry out the services; The commitment of staff time is adequate to conduct all proposed activities; Past performance and accomplishments of the applicant indicate an ability to serve individuals eligible for the program

III. Documented details of the plan of operation - 30 points –The proposed plan is well documented and provides sufficient details regarding how, when and where the project will be implemented and anticipated timelines. The proposed plan is adequate to accomplish the purpose of the program and to ensure proper and efficient management of the project; There is a clear description of how the applicant will identify and serve target populations.

IV. Budget and cost effectiveness – 25 points - The budget for the project is adequate to support the proposal activities. The costs are reasonable in relation to the objectives of the programs. The budget for subcontract (if appropriate) is detailed and The budget narrative is detailed as to how the budget will be spent.

Contract Award and Allocation Procedures. Final selection will be made by the Commission, based on a review committee's evaluation of each proposal using the proposal evaluation criteria. Awards will not necessarily be made to the applicants offering the lowest cost.

The Commission reserves the right to accept or reject any or all proposals submitted, as well as to refuse any or all renewals with previous contractors.

The Commission is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided to serve only as a means of identifying the various elements which the Commission considers essential to the delivery of direct services. This request does not commit the Commission to pay any costs incurred prior to a execution of a contract.

The Commission will announce the contracts awards for FY 1999 by the Commission's last open meeting before the new fiscal year. The contracted services shall begin on September 1, 1998 unless otherwise stated.

Contracts will include the possibility for amendments to permit additional funds, if such funds become available, or re-allocation of funds during the contract period if determined necessary by the Commission.

Multiple contracts may be awarded for the region.

Additional Information.

A. Preference for funding will be given to:

I. providers of multiple services;

II. providers who serve individuals who are deaf and individuals who are hard of hearing

III. providers who can serve the largest state areas within a region; and

IV. providers who are certified as Historically Underutilized Businesses (HUBs).

B. Funded services are intended to serve the maximum number of people in the maximum number of situations possible;

C. Funds from TCDHH should not be viewed as taking the place of funds from federally or otherwise mandated funding sources but should be used as a supplement; and

D. Funded communication access services are limited to legal, government, economic, medical and special situations, and when no other funding source is available.

E. Contractors are required to attend the annual service provider training session.

Conditions for Termination of Contract. Failure to comply with contract requirements may result in the termination of the contract.

Guidelines for Submitting Proposals. Each applicant will provide a minimum of four copies of the proposal. Proposals are to be addresses to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756. Deadline for the receipt of proposals in the offices of the Texas Commission for the Deaf and Hard of Hearing is 5:00 p.m. July 2, 1998. Proposals received after the established deadline cannot be considered for selection. Faxed submissions will not be accepted.

Contract Persons. Further information regarding the provision of the above-stated services and requests for application packets may be directed to Billy Collins, Director of Programs, or Margaret Susman, Texas Commission for the Deaf and Hard of hearing, 4800 North Lamar, Suite 310, Austin, Texas 78756, (512) 407-3250 (voice), 512-407-3251 (tty) E-mail: billyc@tcdhh.state.tx.us

TRD-9809254
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: June 9, 1998

♦ ♦ ♦

Deep East Texas Local Workforce Development Board, Inc.

Request for Proposals for Deep East Texas Workforce Centers

The Deep East Texas Workforce Development Board (DETWDB) is seeking qualified proposers to compete for a contract for the staffing and management of its workforce centers under an RFP process, incorporating, at a minimum, JTPA, JOBS/TANF, and FSE&T. Archetype, Incorporated has been selected as an independent consulting firm to manage the procurement processes for the Board using an RFP process. Copies of the RFP and RFQ may be obtained by faxing a request to Don Shepard, President of Archetype, Incorporated, at (512) 343-7392, or at the backup fax number of (512) 450-0931. Proposals will be accepted until 5:00 P.M. on July 22, 1998 at the offices of Mark Schiffgens, CPA at 940 E. 51st Street in Austin, Texas, 78751. A bidders' conference will be held on June 22, 1998, at 11:00 A.M. at the Lufkin City Hall, Room 202, located at 300 E. Shepherd Avenue in Lufkin, Texas, to release the RFP and answer any questions regarding the procurement process. This bidders' conference is not mandatory and interested parties that are unable to travel to the conference may pose questions via fax at the number provided above until one week before the proposals are due. Answers to questions submitted by individual agencies will be shared, via fax, to all prospective bidders, usually within one week of receipt by Archetype, Inc. DETWDB reserves the right to accept or reject any proposals.

TRD-9809319
Floyd A. Watson
Chief Elected Official, Shelby County Judge
Deep East Texas Local Workforce Development Board, Inc.
Filed: June 10, 1998

♦ ♦ ♦

East Texas Council of Governments

Request for Proposals for Operation of One Stop Career Centers

The East Texas Workforce Development Area is requesting proposals for the operation of One Stop Career Development centers for a period beginning September 1, 1998, and ending June 30, 1999, with the possibility for extending the subcontracts for a period of up to two additional years. Provision of these services will involve a cost reimbursement subcontract with the East Texas Council of Governments, which serves as the Grant Recipient and Administrative Unit for the East Texas Workforce Development Board.

The purpose of this Request for Proposals is to identify operators of One Stop Career Development Centers as outlined in Texas House Bill 1863, in the cities of Longview, Marshall, Palestine and Tyler. Career center operators will also be responsible for establishing a network of satellite offices in the counties adjoining these cities. The proposer(s) awarded subcontracts will be responsible for operating the career centers and satellites, and for providing the services prescribed for Job Training Partnership Act (JTPA) programs, Food Stamp Employment and Training (FSE&T) programs, Temporary Assistance to Needy Families (TANF) programs and Welfare-to-Work Programs. The proposer(s) will be responsible, in 1999, for the operation of the JTPA Title II-B Summer Youth Employment and Training Program. It is anticipated that for JTPA, $2,249,778 will be available for II-A, $488,063 for Title II-C, $1,475,185 for Title III and $172,992 will be available for the Older Individual Program. It is anticipated that $1,203,382 shall be available for TANF, $408,713 shall be available for FSE&T, and $1,547,327 shall be available for Welfare-to-Work.

The Person to be Contacted Regarding Submission of a Proposal

Persons or Organizations wanting to receive a Request for Proposal should request by letter or by fax. Requests should be addressed to Gary Allen, Section Chief - Planning, Occupational Training Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662. RFP's will not be released prior to June 9, 1998. Questions concerning the Request for Proposal process should be addressed to Wendell Holcombe, East Texas Council of Governments at (903) 984-8641.

Closing Date for Receipt of Proposals

The anticipated deadline for receipt of proposals shall be July 7, 1998.

The Procedure by Which Subcontracts will be Awarded

Proposals will be numerically rated by a team of independent reviewers and will be considered by the East Texas Workforce Development Board. The decision of the Workforce Development Board will be considered by the East Texas Chief Elected Officials Board of Directors. The East Texas Council of Governments Executive Committee will consider the final selection of successful proposer(s) and will authorize subcontract(s) for services.

TRD-9809192
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: June 8, 1998

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Adult Education Special Projects and Gateway Grants

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Application (RFA) #701-98-023 from eligible grant recipients (local educational agencies, correctional education agencies, community-based organizations, public or private nonprofit agencies, postsecondary educational institutions, an institution that serves educationally disadvantaged adults, and any other institution that has the ability to provide literacy services to adults and families) to conduct special adult education and literacy experimental demonstration projects and gateway grants.

Description. The following projects will be funded.

Statewide capacity building projects. These projects will be two-year projects. The projects will collaborate as the Adult Education Professional Development Consortium, a leadership infrastructure composed of professional development projects working together to implement a comprehensive coordinated system of professional development to meet the diverse professional development needs of adult education practitioners in Texas. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, and appropriations by the .S. Congress.

1. Adult education professional development centers (two adult basic education/adult secondary education projects and two English for speakers of other languages projects). Four projects will be funded in an amount not to exceed $215,000 each.

2. Adult literacy clearinghouse. One project will be funded in an amount not to exceed $400,000.

3. Institutes for the development of educators of adults (Project IDEA) – A teacher action research project. One project will be funded in an amount not to exceed $215,000.

4. Adult literacy volunteers training and technical assistance. One project will be funded in an amount not to exceed $140,000.

5. Integrating technology into adult education. One project will be funded in an amount not to exceed $140,000.

6. Professional development for teachers new to adult education. One project will be funded in an amount not to exceed $115,000.

7. Family literacy technical assistance center. One project will be funded in an amount not to exceed $150,000.

8. Adult learning disabilities initiative. One project will be funded in an amount not to exceed $115,000.

9. Workforce literacy training and technical assistance. One project will be funded in an amount not to exceed $115,000.

10. Adult education credential project. One project will be funded in an amount not to exceed $120,000.

Special demonstration projects. Local demonstration projects in each category will be funded in the order of the average total scores of the applications, from the highest to the lowest, until funds for each category of projects are exhausted.

1. Local adult education capacity building technology challenge grants. Applicants must use local in-kind contributions to provide at least a 25% match for the grant funds. Funding for each project will not exceed $75,000. A total of $500,000 is available for these projects.

2. Family literacy demonstration grants. A total of $435,000 is available for these projects.

3. BIG IDEAS: Teacher innovation mini-grants. Funding for each project will not exceed $10,000. A total of $100,000 is available for these projects.

4. Gateway grants. Only public housing agencies, which are required to coordinate with adult education in the development of projects, are eligible applicants for gateway grants. A total of $200,000 is available for these projects.

Dates of Projects. Adult education special projects will be implemented during Fiscal Year 1998-1999. Applicants should plan for a starting date of no earlier than September 1, 1998, and an ending date of no later than August 31, 1999.

Project Amounts. A total of $3,605,000 will be available for adult education statewide capacity building projects, special demonstration projects, and gateway grants. These projects are 100% federally funded.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-98-023 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Deborah Stedman, Division of Adult and Community Education, Texas Education Agency, (512) 463-9294.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Friday, July 31, 1998, to be considered.

TRD-9809282
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 10, 1998

♦ ♦ ♦

State Finance Commission

Notice of Award of Contract

Pursuant to Texas Government Code, §2254.001, et seq, the Texas Finance Commission files this notice of a contract award to Empirical Management Services, Inc. (contractor), 8323 Southwest Freeway, Suite 510, Houston, Texas 77074. A Request for Proposals to assist the finance commission in conducting the first phase of research on (1) the availability, quality and prices of financial services, including lending and depository services, offered to agricultural businesses, small businesses, and individual consumers in this state; and (2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state, was published in the March 13, 1998 edition of the *Texas Register* (23 TexReg 2876). This study is authorized and mandated by the Finance Code, §11.305.

This award has been denominated as FC-98-001-RFP and compensation shall not exceed the amount of $98,730.00. Contract period begins on May 26, 1998, and terminates December 31, 1998, if not terminated or completed sooner.

Contractor will provide required work product in accordance with a schedule determined by mutual agreement under Project Timeline set out in contractor's proposal.

A written assessment of the results of the research analyses should answer such questions as whether there is a correlation between the availability, quality, and pricing of depository and cash services and geographic and demographic factors, such as socioeconomic class or race.

TRD-9809078
Everette D. Jobe
Certifying Official
State Finance Commission
Filed: June 5, 1998

♦ ♦ ♦

General Services Commission

Notice of Contract Award under the Government Energy Management Program

In accordance with the Texas Government Code, Chapter 2254, Subchapter B, Section 2254.030, the General Services Commission, State Energy Conservation Office (SECO) publishes this notice of contract award under the Local Government Energy Management Program.

Description of Service. The contractors will provide energy engineering services for the Local Government Energy Management

Program. Contractors will provide on-site energy evaluations to public school districts participating in the Energy Efficient School Partnership Program; conduct workshops and training sessions for school district, hospital, and local government operations personnel; and provide additional engineering analysis related to the Local Government Energy Management Program.

Name of Contractors and Contract Periods. Contractors are Estes, McClure and Associates, 3608 West Way, Tyler, Texas 75703 (contract amount: $300,000); Energy Systems Associates, Inc., 11901 Hamrich Court, Austin, Texas 78759 (contract amount: $300,000); Ventana Energy Services, 815 Brazos, Suite 1000, Austin Texas 78701 (contract amount: $300,000). Effective term of all contracts is June 1, 1998 through August 31, 1999.

Reports and Deliverables. All reports and any deliverables associated with these contracts shall be filed with the General Services Commission, State Energy Conservation Office prior to August 31, 1999.

TRD-9809264
Judy Ponder
General Counsel
General Services Commission
Filed: June 9, 1998

♦ ♦ ♦

Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled “Location” indicates the city in which the radioactive material may be possessed and/or used. The location listing “Throughout Texas” indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ALVIN	AMOCO CHEMICAL COMPANY	L01422	ALVIN	49	05/20/98
AMARILLO	BAPTIST ST ANTHONYS HEALTH SYSTEM	L01259	AMARILLO	52	05/22/98
ARLINGTON	PHYSICIAN RELIANCE NETWORK INC	L05116	ARLINGTON	1	05/26/98
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	76	05/20/98
AUSTIN	AUSTIN CARDIOVASCULAR ASSOCIATES	L05172	AUSTIN	0	05/19/98
BAYTOWN	SAN JACINTO METHODIST HOSPITAL	L02388	BAYTOWN	28	05/27/98
BAYTOWN	BAYTOWN MEDICAL CENTER INC	L02462	BAYTOWN	26	05/22/98
BORGER	GOLDEN PLAINS COMMUNITY HOSPITAL	L04369	BORGER	6	05/20/98
CLEVELAND	CLEVELDAND REGIONAL MEDICAL CENTER	L02055	CLEVELAND	22	05/22/98
COLLEGE STATION	BCS HEART	L04890	COLLEGE STATION	5	05/15/98
CORPUS CHRISTI	KOCH REFINING COMPANY LP	L00322	CORPUS CHRISTI	26	05/29/98
DALLAS	GENESCREEN INC	L04183	DALLAS	2	05/19/98
DALLAS	COOPER CLINIC PA	L05138	DALLAS	1	05/26/98
DUMAS	MEMORIAL HOSPITAL	L03540	DUMAS	13	05/15/98
EDINBURG	THE UNIVERSITY OF TEXAS PAN AMERICAN	L00656	EDINBURG	17	05/27/98
EL PASO	COLUMBIA MEDICAL CENTER WEST	L02715	EL PASO	34	05/28/98
EL PASO	COLUMBIA DIAGNOSTIC CENTER	03395	EL PASO	29	05/28/98
EL PASO	EL PASO CARDIOLOGY ASSOCIATES PA	L05162	EL PASO	0	05/19/98
FORT WORTH	CONSULTANTS IN CARDIOLOGY	L04445	FORT WORTH	3	05/22/98
FORT WORTH	COLLINSWORTH#1 LLC DBA TRINITY IMAGING OF FT WORTH	L05119	FORT WORTH	1	05/19/98
GEORGE WEST	USX CORPORATION	L02449	GEORGE WEST	1	05/07/98
HARLINGEN	VALLEY BAPTIST MEDICAL CENTER	L01909	HARLINGEN	41	05/15/98
HOUSTON	MEMORIAL HERMANN HOSPITAL SYSTEM DBA MEMORIAL HOSPITA	L01168	HOUSTON	47	05/15/98
HOUSTON	EXXON CORPORATION	L01431	HOUSTON	2	05/07/98
HOUSTON	STH CORPORATION	L01737	HOUSTON	29	05/19/98
HOUSTON	PARKWAY HOSPITAL INC	L01776	HOUSTON	24	05/28/98
HOUSTON	PARKWAY HOSPITAL INC	L01964	HOUSTON	36	05/29/98
HOUSTON	WHMC INC	02224	HOUSTON	40	05/22/98
HOUSTON	COLUMBIA EAST HOUSTON MEDICAL CENTER	L03306	HOUSTON	18	05/15/98
HOUSTON	CYPRESS FAIRBANKS MEDICAL CENTER INC	L03424	HOUSTON	24	05/22/98
HOUSTON	DIAGNOSTIC CLINIC OF HOUSTON	L03452	HOUSTON	19	05/15/98
HOUSTON	DIAGNOSTIC CARDIOLOGY OF HOUSTON	L04888	HOUSTON	2	05/20/98
HOUSTON	TEXAS NUCLEAR IMAGING INC	L05009	HOUSTON	6	05/15/98
IRVING	BAYLOR MEDICAL CENTER AT IRVING	L02444	IRVING	29	05/26/98
KATY	KATY MEDICAL CENTER INC	L06052	KATY	24	05/22/98
LAKE JACKSON	BRAZOSPORT MEMORIAL HOSPITAL	L03027	LAKE JACKSON	14	05/27/98
LAREDO	NOTAMI HOSPITALS OF TEXAS INC	L02192	LAREDO	16	05/28/98
LEWISVILLE	COLUMBIA MEDICAL CETNER OF LEWISVILLE SUBSIDIARY	L02739	LEWISVILLE	24	05/19/98
LLANO	LLANO COUNTY HOSPITAL AUTHORITY	L04438	LLANO	10	05/29/98

CONTINUED ADMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
LUBBOCK	SAINT MARY FO THE PLAINS HOSPITAL & REHAB CENTER	L01547	LUBBOCK	56	05/20/98
LUBBOCK	CARDIOLOGY ASSOCIATES	L04468	LUBBOCK	12	05/15/98

LUBBOCK	UNIVERSITY MEDICAL CENTER	L04719	LUBBOCK	20 05/28/98
MCALLEN	VALLEY HEART CENTER	L05149	MCALLEN	3 05/20/98
NACOGDOCHES	AMI NACOGDOCHES MEDICAL CENTER	L02853	NACOGDOCHES	20 05/20/98
ODESSA	SURESH GADASALLI MD PA	L05156	ODESSA	0 05/19/98
PASADENA	MEMORIAL HERMANN HOSPITAL SYSTEM	L03501	PASADENA	16 05/22/98
RICHMOND	POLLY RYON HOSPITAL AUTHORITY	L02406	RICHMOND	20 05/15/09
SAN ANTONIO	SOUTH TEXAS RADIOLOGY GROUP	L00325	SAN ANTONIO	83 05/20/98
SAN ANTONIO	BAPTIST HEALTH SYSTEM	L00455	SAN ANTONIO	76 05/21/98
SAN ANTONIO	CTRC CLINICAL FOUNDATION	L01922	SAN ANTONIO	46 05/28/98
SAN ANTONIO	METHODIST HEALTHCARE SYTEM OF SAN ANTONIO	L02266	SAN ANTONIO	62 05/15/98
SAN ANTONIO	CTRC RESEARCH FOUNDATION	L03350	SAN ANTONIO	21 05/27/98
SAN ANTONIO	CARDIOVASCULAR ASSOCIATES OF SAN ANTONIO PA	L04996	SAN ANTONIO	1 05/22/98
SUGARLAND	FORT BEND IMAGING INC	L04459	SUGARLAND	21 05/12/98
TAHOKA	LYNN COUNTY HOSPITAL DISTRICT	L03383	TAHOKA	10 05/22/98
THE WOODLANDS	MONTGOMERY COUNTY CARDIOVASCULAR ASSOCIATION	L0515	THE WOODLANDS	0 05/28/98
THROUGHOUT TEXAS	TRINITY ENGINEERING TESTING CORPORATION	L01351	CORPUS CHRISTI	35 05/19/98
THROUGHOUT TEXAS	MAXIM TECHNOLOGIES, INC	L01934	FORT WORTH	58 05/27/98
THROUGHOUT TEXAS	HOUSTON LIGHTING AND POWER	L02063	HOUSTON	57 05/29/98
THROUGHOUT TEXAS	RAYTHEON ENGINEERS AND CONSTRUCTORS INC	L02662	HOUSTON	68 05/27/98
THROUGHOUT TEXAS	GENERAL WELDING WORKS INC	L02895	HOUSTON	37 05/18/98
THROUGHOUT TEXAS	SMITH BROTHERS PIPE INC	L04275	MIDLAND	3 05/27/98
THROUGHOUT TEXAS	PITT DES MOINES INC	L04502	PITTSBURGH	16 05/21/98
THROUGHOUT TEXAS	CONAM INSPECTION	L05010	HOUSTON	12 05/12/98
THROUGHOUT TEXAS	FLUOR DANIEL NDE SERVICES	L05034	DEEK PARK	4 05/26/98
VICTORIA	KARL K CHEN MD PHD	L04327	VICTORIA	5 05/19/98
WACO	TEXAS STATE TECHNICAL COLLEGE AT WACO	L01926	WACO	33 05/29/98
WEST	HILLCREST BAPTIST MEDICAL CENTER	L02979	WEST	21 05/20/98
WHARTON	SOUTH TEXAS MEDICAL CLINICS PA	L05163	WHARTON	0 05/19/98

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
BAY CITY	MATAGORDA COUNTY HSOPITAL DISTRICT	L02701	BAY CITY	7	05/20/98
DALLAS	THE UNIVERSITY OF TEXAS SOUTWESTERN MEDICAL CENTER	L00384	DALLAS	66	05/28/98
FORT WORTH	JOHN PETER SMITH HOSPITAL	L02208	FORT WORTH	36	05/20/98
MCALLEN	VALLEY CARDIOLOGY PA	L04692	MCALLEN	7	05/22/98
MISSOURI CITY	FORT BEN HOSPITAL INC	L03457	MISSOURI CITY	17	05/29/98
ODESSA	ODESSA REFINING COMPANY	L01882	ODESSA	12	05/19/98
SAN ANGELO	SHANNON MEDICAL CENTER ST JOHN'S CAMPUS	L020343	SAN ANGELO	29	05/28/98
THROUGHOUT TEXAS	SCIENCE ENGINEERING INC	L04677	NEDERLAND	4	05/19/98

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
DENISON	SITARAM G KADEKAR MD	L04689	DENISON	2	05/20/98
HOUSTON	RACON FRAC TRACER	L04235	HOUSTON	13	05/27/98
THROUGHOUT TEXAS	SJS STAR JET SERVICES INC	L04818	OKLAHOMA CITY	3	05/27/98
THROUGHOUT TEXAS	TEHAS SOILS ENGINEERING COMPANY	L05060	MCGREGOR	1	05/29/98

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public

or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756–3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9809008
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 4, 1998

♦ ♦ ♦

Notice of Public Hearings for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992, Public Law 102-531, 1992, (Act), the Texas Department of Health (department) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services (PHHS) Block Grant during federal fiscal year (FFY) 1999. Provisions in the Act require the chief executive officer of each state to annually furnish a description of the intended use of block grant funds in advance of each FFY. This description is to be made public within each state in such a manner as to facilitate comments and/or any complaints regarding the quality of services funded by the block grant.

The PHHS Block Grant previously funded only six of the department's programs. The grant can now be used to support virtually any public health activity. This was accomplished by new language in the 1992 amendments that allows block grant monies to be expended for "*activities consistent with making progress toward achieving the objectives established by the year 2000 health objectives.*" (42 USC §300w-3(a)(1)(A))

In FFY 1998, seventeen activities were funded under the block grant. These included children and tobacco use prevention, sexual assault prevention and crisis services, public information, health promotion, minority health initiative, minority health initiative (low birth weights), language services, continuing nursing education, behavioral risk factor surveillance system, trauma registry, local health departments, regional emergency health care system, birth defects, Texas drinking water fluoridation program, border environmental health, adult and community health, and community-based primary care (put prevention into practice).

The PHHS Block Grant award for FFY 1998 was $6,040,204. This is a 4.3% decrease from 1997. Of this amount, $496,657 was required to be used for sexual assault prevention and crisis services.

The Crime Bill, which was enacted in FFY 1996, provides approximately $42 million for rape prevention education activities which will be divided among the states by population. Texas received $2,990,791 in FFY 1998. Although these monies are appropriated through the U. S. Department of Justice, the federal government has chosen to pass the funding to the states through the PHHS Block Grant award.

The department prepared the following schedule for the development and review of the FFY 1999 State Plan for the PHHS Block Grant: In July of 1998, the department will hold public hearings in four public health regions (PHR):

On Tuesday, July 7, 1998, 11:00 a.m., Public Health Regions 6 and 5, 5425 Polk Avenue, 4th Floor, Room 4D, Houston, Texas.

On Wednesday, July 8, 1998, 2:00 p.m., Public Health Region 8, 7430 Louis Pasteur Drive, San Antonio, Texas.

On Wednesday, July 8, 1998, 4:00 - 6:00 p.m., Public Health Regions 9 and 10, 6070 Gateway East, Suite 401, El Paso, Texas.

On Monday, July 20, 1998, 4:00 - 6:00 p.m., Public Health Region 7, 1100 West 49th Street, Austin, Texas.

Following these hearings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availability of published summaries of these hearings. In August of 1998, the department will prepare the final 1999 State Plan for the PHHS Block Grant and forward it to the Governor and federal government.

Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments regarding the PHHS Block Grant may be submitted through July 24, 1998, to Philip Huang, M.D., Chief, Bureau of Chronic Disease Prevention and Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. For further information, call (512) 458-7200.

TRD-9809173
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 8, 1998

♦ ♦ ♦

Notice of Request for Application (RFA) for the Medicaid Managed Care Program for the Dallas and El Paso Service Areas

The Texas Department of Health (department) is releasing a Request for Application (RFA) for the Dallas and El Paso service areas. The purpose of the RFA is to solicit applications from qualified entities to provide health care services through a managed care delivery system to certain Medicaid-eligible individuals in the Dallas and/or El Paso service areas. The Dallas service area includes the counties of Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall. The El Paso service area includes the counties of Culberson, El Paso, and Hudspeth.

Qualified entities from whom applications will be accepted are health maintenance organizations (HMOs) and §5.01(a) nonprofit health corporations. All entities must have or receive a certificate of authority from the Texas Department of Insurance (TDI) to provide health care services in a managed care delivery system in all contiguous counties of the Dallas and El Paso service areas, on or before the date contracts are executed.

Major milestones in the RFA timetable are as follows:

RFA release date (June 17, 1998), Applicant Conference (July 2, 1998), 10:00 a.m. - 12:00 p.m., Department of Human Services (DHS) Public Hearing Room, John H. Winters Building, 701 West 51st Street, Austin, Texas.

HMO RFA responses must be received at the Bureau of Managed Care, Texas Department of Health, 11044 Research Boulevard (US 183), Building D, Suite 214, Austin, Texas 78714-9030 by 5:00 p.m. central daylight savings time, for the Dallas service area on September 15, 1998, and by 5:00 p.m. central standard time, for the El Paso service area on November 3, 1998.

HMO finalists will be named for the Dallas service area on November 2, 1998, and for the El Paso service area on December 1, 1998.

A copy of the RFA may be obtained either in person or by submitting a written request to the department at its Bureau of Managed Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, facsimile number (512) 338-6546, and telephone number (512) 794-5163.

In person written requests should be taken to the Bureau of Managed Care, Texas Department of Health, 11044 Research Boulevard (US 183), Building D, Suite 214, Austin, Texas 78714-9030, Bureau of Managed Care Web page Internet address is http://www.tdh.state.tx.us/hcf/mcstart.htm.

A copy of the RFA will be sent by overnight delivery if the request is submitted by facsimile transmission to the number noted above and the Federal Express, Airborne Express, or PS billing number of the requestor is included in the request.

TRD-9809335
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 10, 1998

♦ ♦ ♦

Health and Human Services Commission

Cancellation of Public Hearing

The Health and Human Services Commission (HHSC) and the Texas Department of Mental Health and Mental Retardation (TDMHMR) announce the cancellation of the joint public hearing to receive public comment on proposed reimbursement rates for the Home and Community-Based Services (HSC) and Mental Retardation Local Authority (MRLA) Medicaid programs that was originally scheduled for June 15, 1998. Notice of the public hearing was published in the June 12, 1998 edition of the *Texas Register*. The hearing will be rescheduled to a later date and details will be published separately in the *Texas Register*. For further information regarding the rescheduling of the meeting, please contact Ms. Barbara Tejero, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711, telephone number (512) 424-6576.

TRD-9809325
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: June 10, 1998

♦ ♦ ♦

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 98–11, Amendment Number 550.

The amendment eliminates the requirement to submit A State Plan Amendment by April 1 of each year documenting access to OB/PED services. The amendment is effective April 1, 1998.

If additional information is needed, please contact Genie DeKneef, Texas Department of Health, a (512) 338–6505

TRD-9809248
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: June 9, 1998

♦ ♦ ♦

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to Texas for ACCREDITED SURETY AND CASUALTY COMPANY, INC., a foreign property and casualty company. The home office is located in Orlando, Florida.

Application to change the name of PREFERRED PHYSICIANS INSURANCE COMPANY to PREFERRED PROFESSIONAL INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Omaha, Nebraska.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9809199
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 8, 1998

♦ ♦ ♦

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to Texas for AMERICAN HORIZON HOLDINGS, INC., a foreign property and casualty company. The home office is located in Deerfield, Illinois.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9809260
Bernice Ross
Deputy Chief Clerk

Texas Department of Insurance
Filed: June 9, 1998

♦ ♦ ♦

Notice of Call for Issues Related to 1998 Biennial Title Hearing

Texas Insurance Code Article 9.07 (c) requires the Department of Insurance to hold a biennial hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any association, any title insurance company, any title insurance agent, any member of the public, or as the commissioner may determine necessary to consider. Notice of the hearing will appear in the *Texas Register* at a later date. Any association, any title insurance company, any title insurance agent, or any member of the public that would like to request that any matter or subject, other than the rates for title insurance, be considered at the biennial hearing must provide a detailed description of the matter or subject no later than July 22, 1998.

All requests should be addressed to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, (please refer to reference number (O-0698-15-I). It is encouraged that the requests be additionally submitted in 3 1/2 inch diskette format.

TRD-9809102
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 5, 1998

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of AmeriHealth Administrators, Inc., (using the assumed name of AmeriHealth Administrators), a foreign third party administrator. The home office is Horsham, Pennsylvania.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Texas Department of Insurance, Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9809195
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 8, 1998

♦ ♦ ♦

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Quality Plan Administrators, Inc., a foreign third party administrator. The home office is Washington, D.C.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9809303
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 10, 1998

♦ ♦ ♦

Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2365, on July 6, 1998, at 1:30 p.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas concerning 28 TAC §§5.4007-5.4008, relating to building code specifications in the plan of operation of the Texas Windstorm Insurance Association Created in 1971 by the Texas Legislature as the Texas Catastrophe Property Insurance Association.

The proposed amendments and the statutory authority for the proposed amendments, was published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5932).

TRD-9809220
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 8, 1998

♦ ♦ ♦

Texas Lottery Commission

Game Procedures - Instant Game Number 119

1.0 Name and Style of Game.

A. The name of Instant Game Number 119 is "SEASONS GREETINGS". This ticket contains six games, indicated as "Game 1", "Game 2", "Game 3", "Game 4", "Game 5" and "Game 6". The play styles of the game are a "Match 3 Like Dollar Amounts" play style in Game 1, a "Beat Score" play style in Game 2, a "Tic-Tac-Toe" play style in Game 3, a "Match 3 Like Symbols" play style in Game 4, a "Key Number Match with Automatic Win" play style in Game 5, and an "Add Up" play style in Game 6.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game Number 119 shall be $5.00 per ticket.

1.2 Definitions in Instant Game Number 119.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, TREE, "O", STOCKING, CANDLE, BELL, WREATH, HOLLY, CANDY CANE, GIFT, $5.00, $10, $25, $50, $100, $500, $1,000, and $40,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in Caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$25.00	TWFIV
$50.00	FIFTY
$100	ONEHUND
$500	FIVHUND
$1,000	ONETHOU
$40,000	40THOU
1	ONE
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
STOCKING	STKING
CANDLE	CANDL
BELL	BELL
TREE	TREE
WREATH	WRTH
HOLLY	HOLLY
CANDY CANE	CANE
GIFT	GIFT

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering over the Play Symbol area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Non-winning and high-tier winning tickets will have different combinations of any three of the following letters, excluding the combinations listed above: E, F, G, H, I, L, N, Ø, R, S, T, V, W, X

All codes from $1 through $24 not used for this game are protected. Other combinations of these letters are to be used for commons and high-tier winners. The letter "Ø" will only be used on the appropriate winning codes and will always have a slash through it.

F. Validation Number- A unique 12 digit number appearing under the latex scratch-off covering on the front of the ticket. Nine digits of the Validation Number relate to the game Play Symbols. There is a one digit prize code and a two digit check digit, which will verify the recording accuracy of the ten digit Validation Number, or VIRN (Void If Removed Number). There is a four digit control number which will be boxed and placed randomly within the VIRN number. The Validation Number is positioned beneath the bottom row of play data in the scratched-off play area.

The format will be: 0000****0000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 and $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $200 and $500.

I. High-Tier Prize - A prize of $1,000, $5,000 and $40,000.

J. Bar Code - A 20 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number and eight digits of the Validation Number and a two digit filler. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 digit number consisting of the three digit game number (119), a seven digit pack number and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 119-0000001-000.

L. Pack - A pack of "SEASONS GREETINGS" Instant Game tickets contains 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. Ticket 000 will be on the top page, ticket 001 will be on the next page, and so forth with ticket 074 on the last page. Packs will be fanfolded so one side of the pack shows the front of the tickets and one side shows the back of the tickets through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SEASONS GREETINGS" Instant Game Number 119 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SEASONS GREETINGS" Instant Game is determined once the latex on the ticket is scratched off to expose "Game 1", "Game 2", "Game 3", "Game 4", "Game 5" and "Game 6" on the front of the ticket. On "Game 1", if three like dollar amounts are revealed, the holder of the ticket wins that amount. On "Game 2", if "YOUR SCORE" beats "THEIR SCORE", the holder of the ticket wins the prize for that same play. A player could win twice on this game. On "Game 3", if three TREE symbols are revealed in the same row, column or diagonal, the holder of the ticket wins the prize shown. On "Game 4", if three like holiday symbols are revealed, the holder of the ticket wins the prize shown. On "Game 5", if any of YOUR NUMBERS match the LUCKY NUMBER, the holder of the ticket wins the prize shown. If a CANDLE symbol is revealed, the holder wins that prize automatically. A player could win twice on this game. On "Game 6", if the two numbers add up to exactly ten, the holder of the ticket wins $10. A player could win on all six games. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 36 Play Symbols must appear under the latex overprint front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each Play Symbol Caption must be present in its entirety and be fully legible;

5. Each of the Play Symbols and the Play Symbol Captions must be printed in black ink;

6. The ticket shall be intact;

7. The Validation Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

8. The Validation Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

9. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

10. The ticket must not be counterfeit in whole or in part;

11. The ticket must have been issued by the Texas Lottery in an authorized manner;

12. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

13. The Play Symbols, Play Symbol Captions, Validation Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

14. The ticket must be complete and not miscut, and have exactly 36 Play Symbols with exactly 36 Play Symbol Captions under the latex overprint on the front of the ticket, exactly one Validation Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

15. The Validation Number of an apparent winning ticket shall correspond with the Texas Lottery's Validation Numbers for winning tickets, and a ticket with that Validation Number shall not have been paid previously;

16. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

17. Each of the 36 Play Symbols must be exactly one of those described in section 1.2.C of these Game Procedures, and each of the Play Symbol Captions to those Play Symbols must be exactly one of those described in section 1.2.D of these Game Procedures;

18. Each of the 36 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Validation Numbers must be printed in the Validation font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

19. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

20. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, replace an invalid ticket with an unplayed ticket in that Instant Game (or ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket. The decision as to which action to take with a defective ticket is solely within the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. In Game 1, no game will contain more than one set of three matches.

B. In Game 1, no game will have four or more of the same prize amounts.

C. In Game 1, no game will have three pairs of prize amounts.

D. In Game 2, each of the 2 YOUR SCORE play spots and the 2 THEIR SCORE play spots will have unique numbers.

E. In Game 2, non-winning prize amounts will be unique on a game.

F. In Game 3, games will contain four trees and five ∅'s or five trees and four ∅'s.

G. In Game 3, there will never be three ∅'s in the same row, column or diagonal straight line.

H. In Game 4, no game will contain more than one set of three matches.

I. In Game 4, no game will contain three pairs of like play symbols.

J. In Game 5, non-winning prize symbols will never be the same as the winning prize symbols.

K. In Game 5, no game will contain two like non-winning prize symbols.

L. In Game 5, no game will contain two like non-winning YOUR NUMBERS (1-9).

M. In Game 5, no prize amount in a non-winning prize spot will be the same as the corresponding YOUR NUMBER symbol (i.e. 5-$5).

N. In Game 6, the two numbers will never match on a non-winning game.

O. Adjacent tickets will not have identical patterns in any of the Games 1 through 6.

2.3 Procedure for Claiming Prizes.

A. To claim a "SEASONS GREETINGS" Instant Game prize of $5.00, $10.00, $15, $20, $25, $50, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and may present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer, acting pursuant to the applicable Lottery rules, may validate the claim. If the Texas Lottery Retailer determines that the ticket is a valid winning ticket by validating the ticket, and the claimant presents proper identification, the Texas Lottery Retailer shall make payment of the amount due the claimant and physically void the ticket. In the event the Texas Lottery Retailer cannot validate the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any

of the above prizes under the procedure described in sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SEASONS GREETINGS" Instant Game prize of $1,000, $5,000 or $40,000, the claimant must sign the winning ticket, must thoroughly complete a claim form, and may present both at Texas Lottery Headquarters in Austin. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SEASONS GREETINGS" Instant Game prize, the claimant must sign the winning ticket, must thoroughly complete a claim form, and may present both at any Texas Lottery Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. A claimant may also claim a prize by signing the winning ticket, thoroughly completing a claim form, and mailing both to: Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under the Human Resource Code, Chapter 31;

4. in default on a loan made under the Education Code, Chapter 52; or,

5. in default on a loan guaranteed under the Education Code, Chapter 57.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in section 2.3E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SEASONS GREETINGS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SEASONS GREETINGS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game Number 119. The expected number and value of prizes in the game are as follows:

Prize Amount	Approximate Number of Winners	Chances of Winning
$5.00	5,200,000	1:5.77
$10.00	1,800,000	1:16.67
$15.00	1,200,000	1:25.00
$20.00	600,000	1:50.00
$25.00	130,000	1:230.77
$50.00	76,250	1:393.44
$100	22,500	1:1,333.33
$200	9,375	1:3,200.00
$500	4,500	1:6,666.67
$1,000	1,875	1:16,000.00
$5,000	63	1:476,190.48
$40,000	10	1:3,000,000.00
Total	9,044,573 / 30,000,000	1:3.32

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Executive Director.

5.0 Termination of the Instant Game. The Executive Director may, at any time, announce a termination date for the Instant Game Number 119 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 119, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9809294
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 10, 1998

♦ ♦ ♦

Game Procedures - Instant Game Number 138

1.0 Name and Style of Game.

A. The name of Instant Game Number 138 is "LONE STAR MILLIONAIRE". The play style of the game is a "Match 3 of 6 Dollar Amounts" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game Number 138 shall be $1.00 per ticket.

1.2 Definitions in Instant Game Number 138.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in

Symbol font in black ink in positive. The possible Play Symbols are: $1.00, $2.00, $5.00, $10, $20, $100, $5,000 and STAR.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in Caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$100	ONEHUND
$5,000	FIVTHOU
STAR	STAR

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering over the Play Symbol area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Non-winning and high-tier winning tickets will have different combinations of any three of the following letters, excluding the combinations above: E, F, G, H, I, L, N, Ø, R, S, T, V, W, X

All codes from $1 through $24 not used for this game are protected. Other combinations of these letters are to be used for commons and high-tier winners. The letter "Ø" will only be used for the appropriate winning codes and will always have a slash through it.

F. Validation Number- A unique 12 digit number appearing under the latex scratch-off covering on the front of the ticket. Nine digits of the Validation Number relate to the game Play Symbols. There is a one digit prize code and a two digit check digit, which will verify the recording accuracy of the ten digit Validation Number, or VIRN (Void If Removed Number). There is a four digit control number which will be boxed and placed randomly within the VIRN number. The Validation Number is positioned beneath the bottom row of play data in the scratched-off play area.

The format will be : 0000****0000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10 or $20.

H. Mid-Tier Prize - A prize of $100.

I. High-Tier Prize - A prize of $5,000.

J. Bar Code - A 20 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number and eight digits of the Validation Number and a two digit filler. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 digit number consisting of the three digit game number (138), a seven digit pack number and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 138-0000001-000.

L. Pack - A pack of "LONE STAR MILLIONAIRE" Instant Game tickets contains 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 to 004 are on the top page, tickets 005 to 009 are on the next page, and so forth with tickets 245 to 249 on the last page. Tickets 000 and 249 will

be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LONE STAR MILLIONAIRE" Instant Game Number 138 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LONE STAR MILLIONAIRE" Instant Game is determined once the latex on the ticket is scratched off to expose the six Play Symbols on the front of the ticket. The holder of the ticket wins the dollar amount that appears three times in the play area. If the STAR symbol appears once in the play area, the holder of the ticket can complete the information requested on the back of the ticket and mail it in the special pre-addressed entry envelope found at Lottery retailers for the chance to win $1,000,000 in one of the six Grand Prize Drawings. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each Play Symbol Caption must be present in its entirety and be fully legible;

5. Each of the Play Symbols and the Play Symbol Captions must be printed in black ink;

6. The ticket shall be intact;

7. The Validation Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

8. The Validation Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

9. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

10. The ticket must not be counterfeit in whole or in part;

11. The ticket must have been issued by the Texas Lottery in an authorized manner;

12. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

13. The Play Symbols, Play Symbol Captions, Validation Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

14. The ticket must be complete and not miscut, and have exactly six Play Symbols with exactly six Play Symbol Captions under the latex overprint on the front portion of the ticket, exactly one Validation Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

15. The Validation Number of an apparent winning ticket shall correspond with the Texas Lottery's Validation Numbers for winning tickets, and a ticket with that Validation Number shall not have been paid previously;

16. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

17. Each of the six Play Symbols must be exactly one of those described in section 1.2.C of these Game Procedures, and each of the Play Symbol Captions to those Play Symbols must be exactly one of those described in section 1.2.D of these Game Procedures;

18. Each of the six Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Validation Numbers must be printed in the Validation font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

19. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

20. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, replace an invalid ticket with an unplayed ticket in that Instant Game (or ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket. The decision as to which action to take when a defective ticket is purchased is solely within the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No ticket will contain more than one set of three matching symbols.

B. The "Lucky Lone Star" will never appear on a cash winning ticket.

C. Adjacent tickets will not have identical patterns.

D. No ticket will have three pairs of prize amounts.

E. No ticket will have four or more of the same prize amount on a ticket.

F. The "Lucky Lone Star" symbol will never appear more than once on an entry ticket and will never appear with three like prize amounts.

2.3 Procedure for Claiming Prizes.

A. To claim a "LONE STAR MILLIONAIRE" Instant Game prize of $1.00, $2.00, $5.00, $10, $20 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and may present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer, acting pursuant to applicable Lottery rules, may validate the claim. If the Texas Lottery Retailer determines that the ticket is a valid winning ticket by validating the ticket, and the claimant presents proper identification, the Texas Lottery Retailer shall make payment of the amount due the claimant and physically void the ticket. In the event the Texas Lottery Retailer cannot validate the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "LONE STAR MILLIONAIRE" Instant Game prize of $5,000, the claimant must sign the winning ticket and may present it at Texas Lottery Headquarters in Austin. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming any "LONE STAR MILLIONAIRE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and may present both at any Texas Lottery Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. A claimant may also claim a prize by signing the winning ticket, thoroughly completing a claim form, and mailing both to: Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under the Human Resource Code, Chapter 31;

4. in default on a loan made under the Education Code, Chapter 52; or,

5. in default on a loan guaranteed under the Education Code, Chapter 57.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in section 2.3E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LONE STAR MILLIONAIRE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LONE STAR MILLIONAIRE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days after the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those persons whose name appears thereon be designated by such persons to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 40,320,000 tickets in the Instant Game Number 138. The expected number and value of prizes in the game are as follows:

Prize Amount	Approximate Number of Winners	Chances of Winning
$1.00	4,112,640	1:9.80
$2.00	3,225,600	1:12.50
$5.00	645,120	1:62.50
$10.00	362,880	1:111.11
$20.00	120,960	1:333.33
$100	3,696	1:10,909.09
$5,000	42	1:960,000.00
Total	8,470,938 / 40,320,000	1:4.76
STAR	1,612,800	1:25.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Executive Director.

5.0 Termination of the Instant Game. The Executive Director may, at any time, announce a termination date for the Instant Game Number 138 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 138, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9809293
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 10, 1998

♦ ♦ ♦

Texas Department of Mental Health and Mental Retardation

Public Hearing Notice

Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation Notice of Joint Public Hearing on Home and Community-Based Services (HCS) Rates and Mental Retardation Local Authority (MRLA) Rates.

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on proposed reimbursement rates for Home and Community-Based Services (HCS) effective September 1, 1998, through August 31, 1999, and Mental Retardation Local Authority (MRLA) effective September 1, 1998, through August 31, 1999. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Monday, June 29, 1998, at 8:30 a.m. in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by noon on Monday, June 29, 1998. Interested parties may obtain a copy of the reimbursement briefing package by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512)206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay operator by calling 1-800-735-2988.

For More Information: (512) 206-4516

TRD-9809328
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: June 10, 1998

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Notice Of Application For Municipal Solid Waste Management Facility Permit

THE CITY OF GARLAND for Proposed Permit Amendment Number MSW1895-A which will authorize horizontal and vertical expansion to an existing Type I municipal solid waste management facility. The amendment will increase the acreage from the currently permitted 373.5 acres to 476 acres and will increase the maximum fill height of the completed landfill from the currently permitted height of approximately 530 feet mean sea level to 600 feet mean sea level. The application, originally submitted in March of 1997, proposed expansion to approximately 482 acres. The six acres were eliminated during technical review because this area was not necessary for the design and operation of the facility. The site will receive an estimated 2,178 cubic yards per day. The total disposal capacity of the landfill is approximately 34,400,000 in-place cubic yards. The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; municipal solid waste resulting from construction or demolition projects, Class 2 industrial solid waste, Class 3 industrial solid waste, and special wastes that are properly identified. The site is authorized to operate from 7:00 a.m. to 6:00 p.m., Monday through Saturday. The waste management facility is located approximately 400 feet northwest of the intersection of Princeton and Yeager Roads in the City of Garland, Dallas County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9809317
Eugenia K. Brumm, Ph. D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 19, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by **5:00 p.m. on July 19, 1998**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Dallas County Water Control And Improvement District Number 6; DOCKET NUMBER: 98-0221-PWS-E; IDENTIFIER: Public Water Supply Number 0570032; LOCATION: Balch Springs, Dallas County, Texas; TYPE OF FACILITY: public drinking water supply; RULE VIOLATED: 30 TAC §290.46(g) and (s), by failing to disinfect repaired facilities, submit to approved Texas Department of Health laboratory water samples for bacteriological analysis, and immediately issue a boil water notification; PENALTY: $440; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2)COMPANY: John Gardner; DOCKET NUMBER: 96-1114-OSSE; IDENTIFIER: Registration Number 20474; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.4(a) and the Code, §26.121(a)(1), by failing to obtain a permit prior to disposing of septage onto his property and by allowing an unauthorized discharge of septage onto his property; 30 TAC §312.144, by failing to prominently mark vacuum pump truck; and 30 TAC §312.145, by failing to use trip tickets to record and maintain records of the septage; PENALTY: $5,940; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Lyle Gunderson and Roane Harwood; DOCKET NUMBER: 97-1128-IHW-E; IDENTIFIER: Enforcement Identification Number 11955; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §335.2(b), by allowing waste to be stored at an unauthorized facility; 30 TAC §335.63(a) and 40 Code of Federal Regulations (CFR) §262.12, by failing to obtain an Environmental Protection Agency identification number before hazardous waste was offered for transportation; 30 TAC §335.6(c), by generating hazardous waste and offering hazardous waste for transportation without prior notification; 30 TAC §335.431(c) and 40 CFR §268.7(a)(1), by sending restricted waste off-site for disposal without the required land disposal restriction notification; 30 TAC §335.69(a)(2) and (3) and 40 CFR §262.34(a)(2) and (3), by failing to label hazardous waste containers with a waste accumulation start date and the words "Hazardous

Waste"; 30 TAC §335.66 and 40 CFR §262.31, by failing to mark each drum with hazardous waste labels before transporting; 30 TAC §335.67 and 40 CFR §262.32, by failing to mark each drum with the generator's name, address, and manifest document numbers; and 30 TAC §335.10(b) and 40 CFR §262.20, by failing to correctly complete and include all required information for a hazardous waste manifest; PENALTY: $3,968; ENFORCEMENT COORDINATOR: Adele Noel, (512) 239-1045; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(4)COMPANY: Hydra Rig Incorporated, A Division of Tuboscope Vetco International Incorporated; DOCKET NUMBER: 98-0171-AIR-E; IDENTIFIER: Account Number TA-0191-I; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: offshore drilling equipment manufacturing plant; RULE VIOLATED: 30 TAC §116.115(a), Permit Number 2841, and the Act, §382.085(b), by failing to provide records of actual material usage in gallons, operating hours totaled on a monthly and annual basis, and calculated monthly and annual volatile organic compound emissions from all coating operations; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Kenneth Lehrman; DOCKET NUMBER: 97-1129-AIR-E; IDENTIFIER: Account Number MB-0450-K; LOCATION: Mart, McLennan County, Texas; TYPE OF FACILITY: residence; RULE VIOLATED: 30 TAC §111.201 and the Act, §382.085(b), by failing to comply with outdoor burning rules; PENALTY: $600; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(6)COMPANY: Neches Industrial Park, Incorporated; DOCKET NUMBER: 98-0080-AIR-E; IDENTIFIER: Account Number JE-0092-J; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: ammonia storage terminal; RULE VIOLATED: 30 TAC §116.115(a), Permit Number 28899, and the Act, §382.085(b), by failing to construct concrete and steel post barriers or a concrete retaining wall around ammonia storage tanks; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(7)COMPANY: Phillips Petroleum Company; DOCKET NUMBER: 98-0143-AIR-E; IDENTIFIER: Account Number HW-0018-P; LOCATION: near Borger, Hutchinson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(a), Permit Number 9868A, Prevention of Significant Deterioration Permit Number PSD-TX-102M4, and the Act, §382.085(b), by failing to obtain a minimum hydrogen sulfide destruction efficiency of 99.9% on two units, by failing to have operational a continuous emissions monitoring system or predictive emissions monitoring system on one unit, and by failing to document compliance during year 1996 with emission cap values for carbon monoxide; PENALTY: $22,800; ENFORCEMENT COORDINATOR: Kevin Cauble, (512) 239-1874; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8)COMPANY: Transpetco I; DOCKET NUMBER: 98-0259-AIR-E; IDENTIFIER: Account Number OA-0021-O; LOCATION: near Perryton, Ochiltree County, Texas; TYPE OF FACILITY: oil production enhancement; RULE VIOLATED: 30 TAC §122.130(a) and the Act, §382.085(b), by failing to submit a timely and complete Federal Operating Permit application; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-9809233
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 9, 1998

♦ ♦ ♦

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code, §7.075. Section 7.705 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the Texas Register not later than the 30th day before the date on which the public comment period closes, which in this case is July 18, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 18, 1998. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Carotex, Inc.; DOCKET NUMBER: 97-0304-AIR-E; ENFORCEMENT ID NUMBER: 10045; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: marine barge cleaning plant; RULES VIOLATED: 30 TAC §115.112(a)(1) and Texas Health and Safety Code, §382.085(b) by placing, storing, or holding volatile organic compounds in tank numbers 1006, 1007, 1008, 1009, 1010, 2500, and 2501 which were not equipped with a vapor control device; 30 TAC §115.132(a) and Texas Health and Safety Code, §382.085(b) by operating two volatile organic compounds water separators (steel lagoons "E" and "F") without the required air emission controls; 30 TAC §115.542(b)(1) and Texas Health and Safety Code, §382.085(b) by failing to operate the vapor control system (direct flame oxidizer) to control the vapors from cleaning of marine vessels; 30 TAC §115.546(1)(C) and Texas Health and Safety Code, §382.085(b) by failing to maintain records pertaining to the estimated liquid quantities of volatile organic compounds material removed from each vessel cleaned; 30 TAC§116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b) by failing to obtain a permit renewal or exemption prior to the replacement of Boiler Numbers 1 and 2; 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b) by failing to obtain a permit renewal due to expiration; 30 TAC §118.5 and Texas Health and Safety Code, §382.085(b) by failing to prepare and maintain an emission reduction

plan; PENALTY: $28,350; STAFF ATTORNEY: Cecily Small Gooch, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2)COMPANY: Frank Prasifka & Sons; DOCKET NUMBER: 97-0339-MSW-E; ENFORCEMENT ID NUMBER: 2778; LOCATION: Hutchins, Dallas County, Texas; TYPE OF FACILITY: tire disposal facility; RULES VIOLATED: 30 TAC §330.4(a) and (h) by storing whole used or scrap tires without first having been issued a permit, registration, or other authorization; PENALTY: $4,320; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 79109-4996, (806) 353-9251.

(3)COMPANY: Grissom Bros. Oil Co.; DOCKET NUMBER: 98-0433-PST-E; ACCOUNT NUMBER: 0020115U; LOCATION: Andrews, Andrews County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC§334.22 and Texas Water Code, §26.358(d) by failing to pay outstanding annual petroleum storage tank facility fees for the years 1990 through 1997; PENALTY: $975; STAFF ATTORNEY: Ali Abazari, Litigation Support Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5421, (915) 570-1359.

(4)COMPANY: James Stevens doing business as Stevens Water Company; DOCKET NUMBER: 97-1041-PWS-E; ENFORCEMENT ID NUMBER: 11818; LOCATION: Barlow Lake Estates, Mont Neches Lake Estates, and Town Bluff Estates in Tyler County; and Commodore Cape and Forest Springs in Polk County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.43(e) by failing to provide a properly constructed intruder-resistant fence around the facilities; 30 TAC §290.42(e)(8) by failing to provide proper locked housing for the hypochlorination solution containers to protect them from adverse weather and vandalism; and 30 TAC §290.44(d)(4) by failing to provide accurate metering devices at each service connection; 30 TAC §290.46(m) by failing to initiate a program to facilitate cleanliness and improve the general appearance of all plant facilities; 30 TAC §290.41(c)(3)(N) by failing to provide the well with a properly working flow metering device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(e) by failing to enclose the facility with a properly constructed intruder-resistant fence; 30 TAC §290.44(d)(4) by failing to provide accurate metering devices at each service connection; 30 TAC §290.45(b)(1)(C)(ii) by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) by failing to provide a service pump capacity of 2.0 gallons per minute per connection; and 30 TAC §290.43(d)(3) by failing to provide a device for readily determining the air-water-volume; PENALTY: 7,600; STAFF ATTORNEY: Bill Jang, Litigation Support Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(5)COMPANY: Johannes Herman De Goede doing business as Johannes Herman De Goede Dairy; DOCKET NUMBER: 97-0961-AGR-E; ENFORCEMENT ID NUMBER: 11667; LOCATION: 18 miles east of Quitman, approximately two miles east of intersection of Highway 154 and FM 2869, Wood County, Texas; TYPE OF FACILITY: dairy facility; RULES VIOLATED: 30 TAC §321.33(d)(1) and the Texas Water Code, §26.121 by operating this Facility without a permit; 30 TAC §321.33(e) and the Texas Water Code, §26.121 by failing to properly operate and maintain waste control facilities; 30 TAC §281.19(b) by failing to provide requested permit renewal information in a timely manner; 30 TAC §305.503 and the Texas Water Code, §26.0291 by failing to pay wastewater treatment inspection fees; 30 TAC §320.21 by failing to pay water quality assessment fees; PENALTY: $3,000; STAFF ATTORNEY: Walter Ehresman, Litigation Support Division, MC 175, (512) 239-0573; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(6)COMPANY: International Family Missions (Formerly Georgia Baca dba House of Cornelius); DOCKET NUMBER: 96-1959-PWS-E; ENFORCEMENT ID NUMBER: 6337; LOCATION: Fabins, El Paso County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.46(f) by failing to maintain a free chlorine residual of 0.2 milligrams per liter in the far reaches of the distribution system; 30 TAC §290.106(a) by failing to submit samples of water collected from the distribution system for bacteriological analysis for the months of May 1995, June 1995, November 1995, and May 1996; 30 TAC §290.45(b)(1)(B)(i) by failing to provide a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design flow; 30 TAC §290.46(e) by failing to operate the system under the direct supervision of a certified water works operator; 30 TAC §290.46(u) by failing to operate the system to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; 30 TAC §290.46(w) by failing to post a legible sign which provides the name of the water supply and an emergency telephone number where a responsible person can be contacted at each of its facilities; 30 TAC §290.41(c)(1)(F) by failing to protect the system's facilities by establishing a 150-foot radius sanitary control easement prohibiting all septic tanks within 50 feet of the well and open-jointed drain fields within a 150-foot radius of each well; 30 TAC §290.41(c)(3)(N) by failing to provide the well with a flow measuring device to measure production yields and provide for the accumulation of water production data; and 30 TAC §290.46(h) by failing to keep on hand a supply of calcium hypochlorite disinfectant for use when making repairs, setting meters, and putting new mains into service; PENALTY: $3,040; STAFF ATTORNEY: Kara Salmanson, Litigation Support Division, (512) 239-1738, MC 175; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(7)COMPANY: Lifetime Doors, Inc.; DOCKET NUMBER: 97-0481-AIR-E; TNRCC ID NUMBER: RI-0010-S; LOCATION: Hearne, Robertson County, Texas; TYPE OF FACILITY: wooden door manufacturing plant; RULES VIOLATED: 30 TAC §116.115; TNRCC Permit Number 3190, Special Provision 3; and the Texas Health and Safety Code, §382.085(b) by exceeding the allowable hourly volatile organic compound emission limits from the Prefinish Roller Coat Line; 30 TAC §116.115(a); TNRCC Permit Number 3190, Special Provisions 3 and 7; Agreed Order Number 95-0643-AIR-E, Section III(3)(a) and Texas Health and Safety Code, §382.085(b) by exceeding the allowable hourly volatile organic compound emission limits from the Prefinish Roller Coat Line and the allowable annual coating material topcoat usage limits for the time periods of March 1995 through February 1996; and March 1996 through February 1997; PENALTY: $8,250; STAFF ATTORNEY: Mary R. Risner, Litigation Support Division, MC 175; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(8)COMPANY: Mutawe and Albanna Enterprises, Inc., and Bercasey III, L.P.; DOCKET NUMBER: 97-0519-PST-E; ENFORCEMENT ID NUMBER 11448; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: Texas Water Code, §26.12 by allowing a gasoline release at the Facility which impacted a tributary of Mills Creek, groundwater, and a storm drain; 30 TAC §334.50(b)(1)(A) and (2)(A) by failing to provide proper release detection for the underground storage tanks and

for the pressurized piping associated with the underground storage tanks; 30 TAC §115.246(1) by failing to maintain a copy of the California Air Resources Board Executive Order at the Facility; 30 TAC §115.245 by failing to complete system testing within 30 days of the installation of Stage II equipment at the Facility; 30 TAC §115.246(5) by failing to maintain a record of the results of testing conducted at the motor vehicle fuel dispensing facility; 30 TAC §115.242(3)(A) by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.242(3)(J) by failing to maintain the Stage II vapor recovery system in proper operating condition, and free of defects that would impair the effectiveness of the system; 30 TAC §115.222(10) by failing to maintain a proper Stage I vapor recovery system; PENALTY: $20,000; STAFF ATTORNEY: Cecily Small Gooch, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(9)COMPANY: Peter De Ridder dba Chalk Mountain Dairy; DOCKET NUMBER: 97-1050-AGR-E; ENFORCEMENT ID NUMBER 9549; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy facility; RULES VIOLATED: Texas Water Code, §26.121 and 30 TAC §321.31 by discharging agricultural waste into or adjacent to water in the state; Texas Water Code, §26.0291 and 30 TAC §305.503 by failing to pay outstanding annual waste treatment inspection fees; and Texas Water Code, §26.0135(h) by failing to pay outstanding water quality assessment fees; PENALTY: $3,125; STAFF ATTORNEY: Cecily Small Gooch, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-4699, (817) 469-6750.

(10)COMPANY: Richard Keenan doing business as K&B Waterworks; DOCKET NUMBER: 96-1614-PWS-E; ENFORCEMENT ID NUMBER: 11430; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.46(e) by failing to employ a certified public water works operator at the Facility; 30 TAC §290.6(e)(2) by failing to collect the required bacteriological samples for the months of March, June, and September 1996; 30 TAC §290.106(a)(1) by failing to develop and submit a sample siting plan; 30 TAC §290.3 and/or §290.13 by failing to sequester the level of manganese in the water which was recorded at a concentration of 0.07 milograms per liter, exceeding the maximum permissible level for this constituent of 0.05 milograms per liter; 30 TAC §290.41(c)(3)(O) by failing to secure the well unit and pressure tank by either an intruder-resistant fence or a locked, ventilated well house to exclude possible contamination or damage to the Facility by trespassers; 30 TAC §290.46(w) by failing to provide at the Facility a legible sign in plain view with the name of the water supply and an emergency telephone number where a responsible official can be reached; 30 TAC §290.43(d)(2) by failing to provide the pressure tank with a pressure release device; 30 TAC §290.43(d)(3) by failing to equip the pressure tank with some sanitary means of determining the air-to-water ratio; 30 TAC §290.46(p)(2) by failing to properly inspect the pressure tank annually to ensure that the tank walls, endcaps, and welded seams continue to provide the necessary structural integrity; PENALTY: $9,080; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11)COMPANY: Water Valley Water Co-op; DOCKET NUMBER: 97-0564-PWS-E; ENFORCEMENT ID NUMBER: 11430; LOCATION: Garfield, Travis County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.120 and Texas Health and Safety Code, §341.031 by failing to submit water samples from the Facility for lead/copper analysis; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.106 by failing to collect and submit samples for bacteriological analysis for the monthly sampling periods of July 1996 and August 1997; 30 TAC §290.105 by exceeding the maximum contaminant level for bacteria in February 1997; PENALTY: $930; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(12)COMPANY: Z. A. Niehay and Theresa Niehay; DOCKET NUMBER: 97-0898-PST-E; ENFORCEMENT ID NUMBER: 11833; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.54(d)(1)(B) by failing to permanently remove from service underground storage tanks which have been temporarily removed from service for longer than 12 months; 30 TAC §334.22(a) by failing to pay annual underground storage tank fees as required; PENALTY: $3,200; STAFF ATTORNEY: Walter Ehresman, Litigation Support Division, MC 175, (512) 239-0573; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6412, (817) 469-6750.

TRD-9809304
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is July 18, 1998. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or consideration that indicate that the consent to the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these Default Orders should be sent to the attorney designated for each Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 18, 1998. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders

and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in writing.

(1)COMPANY: Francisco Ramirez DBA Flamingo Motors; DOCKET NUMBER: 97-0798-AIR-E; ENFORCEMENT ID NUMBER: 11787; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULES VIOLATED: 30 TAC §114.1(c)(1) and Texas Health and Safety Code, §382.085(b) by offering for sale a vehicle with a missing emission control device; PENALTY: $500; STAFF ATTORNEY: Barbara Lazard, Litigation Support Division, MC 175; (512) 239-0674; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(2)COMPANY: Jim Schumacher doing business as Woodhaven Mobile Home Park; DOCKET NUMBER: 97-0566-PWS-E; ENFORCEMENT ID NUMBER: 11432; LOCATION: Kerr County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.031 and 30 TAC §290.120(c)(5) by failing to submit to the commission water samples for lead/copper analysis for the period of January 1995 through June 1995; 30 TAC §290.51 and Texas Health and Safety Code, §341.041 by failing to pay Public Health Service fees; PENALTY: $480; STAFF ATTORNEY: John Peeler, Litigation Support Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 494-3556.

(3) COMPANY: Malik Dhanani; DOCKET NUMBER: 97-0503-PST-E; ACCOUNT NUMBER: ENFORCEMENT ID NUMBER 11481; LOCATION: Kennedale, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.7(d)(3) by failing to provide amended registration for any change or additional information regarding Underground Storage Tanks within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable; 30 TAC §334.22(a) by failing to pay annual facility fees for Underground Storage Tanks at the time and in the manner and amount provided by 30 TAC Chapter 334, Subchapter B; and 30 TAC §115.241 by failing to install an approved Stage II vapor recovery system which is certified to reduce the emissions of volatile organic compounds to the atmosphere by at least 95%; PENALTY: $10,600; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 79109-4996, (806) 353-9251.

(4)COMPANY: Water Association of North Lake, Inc.; DOCKET NUMBER: 97-0680-PWS-E; ACCOUNT NUMBER: 0610171; LOCATION: Denton County, Texas; TYPE OF FACILITY: public drinking water; RULES VIOLATED: 30 TAC §290.120 by failing to submit to the commission water samples for said water system for lead/copper analysis for the sampling period January 1, 1995 through June 30, 1995; Texas Water Code, §13.541 and 30 TAC §291.76 by failing to pay Regulatory Assessment fees for the years of 1994 and 1995 a total of $202; PENALTY: $480; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 79109-4996, (806) 353-9251.

TRD-9809313
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

Notice of Opportunity to Comment on Shutdown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Order. Texas Water Code, §26.3475 authorizes the TNRCC to order the shutdown of any Underground Storage Tank system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the Underground Storage Tank system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of a underground storage tank facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1993, cathodic protection violations documented at the facility. Pursuant to the Texas Water Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is July 18, 1998. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or considerations that indicate that the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Shutdown Order is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 18, 1998. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Order and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Order should be submitted to the TNRCC in writing.

(1)COMPANY: Jack Morton, owner and Howard Lewis, operator; DOCKET NUMBER: 98-0672-PST-E; ACCOUNT NUMBER: 006823; LOCATION: Carthage, Panola County, Texas; TYPE OF FACILITY: gasoline station with retail sales of gasoline from underground storage tanks; RULES VIOLATED: shut-down order under Texas Water Code, §26.3475 is sought because of the following violations: 30 TAC §334.50(a)(1)(A) by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank system which contains regulated substances; 30 TAC § 334.50(b)(2) by failing to monitor piping in a manner designed to detect releases from any portion of the underground storage tank's piping system; 30 TAC §334.50(b)(2)(A)(i) by failing to equip each pressurized line with an automatic line leak detector; and 30 TAC §334.50(d)(1)(B)(ii) by failing to reconcile inventory control records on a monthly basis; PENALTY: $0; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-9809314
Kevin McCalla

Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

Notice of Public Hearing (§106.261, §106.262)

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 30 TAC Chapter 106.

The commission proposes amendments to §106.261, concerning Facilities (Emission Limitations) and §106.262, concerning Facilities (Emission and Distance Limitations). The amendment to §106.261 is proposed to require persons to register their claim of exemption under that section. The amendment to §106.262 is proposed to update the emission limitations contained in that section to incorporate 1997 toxicological information.

A public hearing on the proposal will be held July 14, 1998, at 2:00 p.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 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.

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development,MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., July 20, 1998, and should reference Rule Log Number 98019-106-AI. For further information, please contact Susana Hildebrand, New Source Review Permits Division, (512) 239-1562, Dale Beebe-Farrow, New Source Review Permits Division, (512) 239-1310, or Jim Dodds, Air Policy and Regulations Division, (512) 239-0970.

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.

TRD-9808965
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 3, 1998

♦ ♦ ♦

Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on June 2, 1998 on Executive Director's Report and Petition Assessing Administrative Penalties and Requiring Certain Actions of Friend Enterprises, Inc.; SOAH Docket Number. 582-98-0190; TNRCC Docket Number. 96-0945-PST-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9809318
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

Public Notices

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the amended selection of a remedy for the Jerrell B. Thompson Battery State Superfund Site (JBT Site), a site which constitutes an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment. The public notice was published in the June 18, 1998, edition of the Canton Herald.

In accordance with 30 Texas Administrative Code (TAC) §335.349(a), and §361.187 of the Texas Health and Safety Code, Solid Waste Disposal Act as amended, a public meeting regarding the amended proposed remedy for the JBT Site must be held 30 days after publishing a notice in the Texas Register and a newspaper of general circulation in the county in which the facility is located.

The public meeting is scheduled for Thursday, July 23, 1998, beginning at 7:00 p.m. at the Canton City Hall, Council Chambers, 290 East Tyler Street, Canton, Texas. The public meeting will be legislative in nature and is not a contested case hearing under the Texas Government Code, Chapter 2001.

The site for which the remedy is being amended is the JBT Site, proposed for listing on the State Registry of Superfund Sites in the September 25, 1990, issue of the *Texas Register* (15 TexReg 5623).

The JBT Site is located north of Phalba, Texas on Van Zandt County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas State Highway 198. The site was used for automotive battery reclamation operations beginning in 1970. From 1993 to 1994, the TNRCC performed a remedial investigation and baseline risk assessment. The remedial investigation results indicate that metal contamination (lead, arsenic, cadmium, and antimony) exists at the site at levels which may threaten human health and the environment. A baseline risk assessment concluded that further action was needed to eliminate any potential imminent and substantial endangerment to human health and the environment from the contamination at the site.

In May 1997, the TNRCC completed the Presumptive Remedy Document. The Presumptive Remedy Document was prepared to screen and evaluate technologies that could be used to remediate the JBT Site based on the TNRCC's Presumptive Remedies Guidance Document for Soils at Texas State Superfund Sites. In the September 11, 1997, edition of the Canton Herald and the September 12, 1997, issue of the Texas Register (22 TexReg 9348), the TNRCC initially proposed on-site containment with stabilization as the remedy. A public meeting was held on October 30, 1997, in Phalba, Texas, to discuss public comments concerning the originally proposed remedy for the JBT Site.

From September 1997 through February 1998, additional field sampling activities were conducted to further characterize and identify the contamination in surface water, sediments, and soils. Additional field sampling included properties adjacent to the JBT Site and soils underneath the on-site structures which were not investigated previously. After review of the results from the additional sampling and further consideration of the remedial investigation results, the estimated volume of contaminated materials requiring treatment and the estimated volume of contaminated material that may be considered as characteristically hazardous waste is significantly less than previously indicated in the Presumptive Remedy Document.

Soil contaminated with arsenic, cadmium and lead is classified as a hazardous waste if the samples fail the Toxicity Characteristic Leaching Procedure (TCLP) test with levels equal or greater than the regulatory limits listed in 40 CFR Part 261. Soil exceeding such criteria must be treated prior to disposal while soils that are not classified as hazardous waste can be disposed of without treatment. The reduction in volume suggests that off-site disposal rather than the originally selected remedy of on-site stabilization and consolidation is the preferred remedial alternative. Off-site disposal is the preferred remedial alternative because it is more economical and it will eliminate the need for engineering controls and future monitoring. In May 1998, the Amended Presumptive Remedy Document was completed and detailed the development and evaluation of the remedial alternatives based on the newly defined volume of contaminated materials.

Based on a detailed analysis of the alternatives, the most favorable alternative for the JBT Site is excavation, treatment (as required for disposal), and off-site disposal of contaminated material above action levels. No long-term maintenance or monitoring would be required because all contaminated materials above action levels will be removed. The proposed amended remedy will change the remedy from on-site containment with stabilization to off-site disposal with treatment as required for disposal.

The public comment period for this amended proposed remedy will begin June 19, 1998, and end at the completion of the public meeting on July 23, 1998. Written comments concerning the amended remedial action may be submitted to Fay Duke, Project Manager, Superfund Cleanup Section, MC 144, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087.

A portion of the public records for this site are available for public review during regular business hours at the Van Zandt County Library 317 First Monday Lane, Canton, Texas, telephone (903) 567-4276, or at the TNRCC Central Records Center, 12100 Park 35 Circle, Building D, North entrance, Room 190, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a fee.

For further information, please call: (800) 633-9363 (within Texas only) or (512) 239-2463.

TRD-9809295
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing an official public notice of deletion of a facility from the state registry (state Superfund registry) of sites which may constitute an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment.

The site which has been deleted is the Bestplate, Inc. state Superfund site which was originally placed on the state Superfund registry list in the January 22, 1988, issue of the Texas Register (13 TexReg 427-428). This notice is issued to finalize the deletion process which began on May 8, 1998, when the executive director of the TNRCC issued a public notice in the Texas Register (23 TexReg 4683-4684) of TNRCC's intent to delete the Bestplate, Inc., site from the list of sites proposed for listing on the state Superfund registry, following the determination made pursuant to 30 TAC §335.344(c), that the site does not present an imminent and substantial endangerment to public health and safety. The notice further indicated that the TNRCC shall hold a public meeting, as required in 30 TAC §335.344(b), if a written request is filed with the executive director of the TNRCC within 30 days, challenging the determination by the executive director made pursuant to 30 TAC §335.344(c). Equivalent publication of the notice was also published in the May 8, 1998 edition of the Dallas Morning News.

The TNRCC did not receive a request for a public meeting from any interested persons during the request period (within 30 days of publication of notice); therefore, the Bestplate, Inc. site is hereby deleted from the Texas state Superfund registry. In accordance with §361.188(d) of the Health and Safety Code, a notice was filed in the real property records of Dallas County, Texas stating that Bestplate, Inc. state Superfund site has been deleted from the state Superfund registry.

All inquiries regarding the deleting of this site should be directed to Barbara Daywood, TNRCC Community Relations, 1-800-633-9363 (within Texas only) or (512) 239-2463.

TRD-9809302
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 10, 1998

♦ ♦ ♦

Plateau Water Planning Group

Notice of Application for State Financial Assistance for the Development of a Scope of Work for a Regional Water Plan

The Upper Guadalupe River Authority (UGRA), on behalf of the Region "J" Regional Water Planning Group (RWPG) for the Senate Bill 1 Regional Water Planning Program, is providing notice that it will submit an application for financial assistance for the development of a Scope of Work for a Regional Water Plan to he Texas Water Development Board (TWDB). The Region "J" has been established under provisions of Texas Senate Bill 1 to develop a regional water plan for the TWDB Region "J", which includes the following counties: Bandera, Edwards, Kerr, Kinney, Real, and Val Verde. The Regional Water Plan for this area will identify specific strategies to meet the water demands of all categories of water use for the next 30 years, and identify options to meet these water needs 30 to 50 years into the future.

The first task in the planning process is the development of a scope of work for the water plan. Notice is hereby given that a public hearing of the Region "J" RWPG will be held on Thursday, June 25th, 1998, beginning at 2:00 p.m., at the American Legion Park Building in Rocksprings, Edwards County, Texas, to receive public comment on the items that may be included in the scope of work and to gather suggestions and recommendations as to issues that should be addressed or provisions included in the regional water plan

The Region "J" RWPG has designated the UGRA to make application to the TWDB for state financial assistance for the development of the scope of work. Copies of the application may be obtained from the UGRA offices at the address listed as follows. Any comments on the application must be filed with the Executive Administrator of the TWDB (see address listed) and the UGRA within 30 days of either the date of publication of this notice or the postmark date of this notice.

Rules for the Senate Bill 1 State and Regional Water Planning Program are contained in 31 Texas Administrative Code, Chapter 355, 357, and 358. Additional information may be obtained from

the TWDB (TWDB internet address: http://www/twdb.state.tx.us) or from Springhills Water Management District (see address listed)

To file comments or for further information, contact:

Jim Brown, General Manager, Upper Guadalupe River Authority, 125 Lehmann Drive, Suite #100, Kerville, Texas 78029–5909, Phone (830) 896–5445, FAX: (830) 257–2621

Cameron Cornett, Region "J" Secretary, Springhills Water Management District, P.O. Box 771, Bandera, Texas 78003–0071, Phone (830) 796–7260, FAX: (830) 796–8262

Mr. Craig Pedersen, Executive Administrator, Texas Water Development Board, P.O. Box 13231– Capitol Station, Austin, Texas 78711–3231, Phone (512) 463–7847, FAX: (512) 936–0889

TRD-9809333
Cameron E. Cornett
Secretary
Plateau Water Planning Group
Filed: June 10, 1998

Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule 23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 5, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule 23.25, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Application of Southwestern Bell Telephone Company (SWBT) to Introduce a New Optional Service Called Nationwide Listing Service Pursuant to P.U.C. Substantive Rule 23.25. Tariff Control Number 19461.

The Application: SWBT filed an application to introduce an optional service called Nationwide Listing Service (NLS). NLS will offer customers the opportunity to secure listing information on a nationwide basis. Customers may obtain NLS information with a local call to 411. The customer will be charged $.95 or $1.10, depending on the billing method, for each listing request made during the call. The nationwide listing rate applies per listing request whether or not a number is provided; this includes requests for non-published or non-listed numbers. Competitive Local Exchange Companies may purchase NLS at the tariffed rate with the appropriate negotiated discount.

Persons who wish to intervene in this proceeding 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 by June 24, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9809278
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 1998

♦ ♦ ♦

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 20, 1998, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of Southwestern Bell Telephone (SWBT) to Institute Residence Installment Billing Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 19367.

The Application: SWBT filed an application to institute an optional residence installment billing plan for residence customers. Residence Installment Billing provides the customer the option of paying nonrecurring charges in equal payments over a specified time frame rather than paying all the charges on the first bill. A one-time service handling charge of $5.00 will be applied to the customer's first monthly payment. The $5.00 service handling charge will be waived for any residential customer that meets the eligibility requirements for either the Tel-Assistance Service Program or the Lifeline Discount Telephone Service Program.

Persons who wish to intervene in this proceeding 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 by June 24, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9809038
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 4, 1998

♦ ♦ ♦

Notice of Amendment to Interconnection Agreement

On June 1, 1998, Southwestern Bell Telephone Company and Winstar Wireless of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of 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 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19424. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to 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 19424. 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 July 2, 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 issue a notice of approval, denial, or 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 submission 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 project or who wish to comment on the joint 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 19424.

TRD-9809224
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 8, 1998, United Telephone Company, d/b/a Utel filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60125. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of United Telephone Company, d/b/a Utel for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19464.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than June 24, 1998. You may contact the PUC's Office of Customer Protection at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19464.

TRD-9809279
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 1998

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 3, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Communications Pearl, LLC. for a Service Provider Certificate of Operating Authority, Docket Number 19429 before the Public Utility Commission of Texas.

Applicant intends to provide resold, non-facilities based, switched-access, local telecommunications service to business and residential customers other than itself.

Applicant's requested SPCOA geographic area includes the geographic areas of Texas served by Southwestern Bell Telephone Company and GTE Southwest, Inc.

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 no later than June 24, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9809116
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

Notice of Intent to File Pursuant to P.U.C. Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to P.U.C. Substantive Rule 23.27 for an addition to the existing PLEXAR-Custom service for Aldine Independent School District (ISD) in Houston, Texas

Tariff Title and Number: Application of Southwestern Bell Telephone Company for an addition to the existing PLEXAR-Custom service for Aldine ISD in Houston, Texas pursuant to P.U.C. Substantive Rule. 23.27. Tariff Control Number 19460.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Aldine ISD in Houston, Texas. The designated exchange for this service is the Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9809277
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 1998

♦ ♦ ♦

Notices of Interconnection Agreement

On June 2, 1998, Southwestern Bell Telephone Company and Level 3 Communications, L.L.C., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of 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 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19428. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

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 19428. 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 July 2, 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 issue a notice of approval, denial, or 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 submission 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 project or who wish to comment on the joint 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 19428.

TRD-9809221
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

On June 1, 1998, West Plains Telecommunications, Inc. and Poka-Lambro PCS, 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 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19422. 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 19422. 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 July 3, 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 submission 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 19422.

TRD-9809222
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

On June 1, 1998, Five Area Telephone Cooperative, Inc. and Poka-Lambro PCS, 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 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19423. 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 19423. 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 July 3, 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 submission 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 19423.

TRD-9809223
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

On June 2, 1998, Southwestern Bell Telephone Company and Tech Telephone Company, Ltd., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of 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 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19425. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

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 19425. 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 July 2, 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 issue a notice of approval, denial, or 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 submission 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 project or who wish to comment on the joint 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 19425.

TRD-9809225
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

On June 2, 1998, Southwestern Bell Telephone Company and Suretel, 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 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19427. 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 19427. 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 July 3, 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 submission 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 19427.

TRD-9809226
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 1998

♦ ♦ ♦

Texas Racing Commission

Notice of Deadline for Applications for Recognition as Horsemen's Representative

The Texas Racing Commission announces that the Commission will accept applications for commission recognition as a horsemen's representative organization. Under the Texas Racing Commission rules, §309.202, the executive secretary shall establish a deadline for filing a request for commission recognition as a horsemen's representative organization and publish that deadline in the *Texas Register* at least 20 days before the deadline. The executive secretary has established July 20, 1998 as the deadline to file an application. Completed applications must be received in the commission's Austin office by 5:00 p.m. on that date.

In accordance with the Texas Racing Commission rules, §309.202, an organization must file a written request for recognition on the prescribed form. The form must be obtained from the commission. The Texas Racing Commission offices are located at 8505 Cross Park Drive, Suite 110, Austin, Texas 78711. To obtain a copy of the application form or for more information, contact, Gloria Giberson, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, and (512) 833-6699.

TRD-9809269
Roselyn Marcus
General Counsel
Texas Racing Commission
Filed: June 9, 1998

♦ ♦ ♦

Texas A&M University System

Request for Proposal

Texas A&M University requests proposals from consulting firms qualified to assist in contract negotiations with air carriers in accordance with FAA Rates and Charges Policy. Interested firms should be thoroughly versed and experienced in contract negotiations and preparation of applications to impose and use Passenger Facility Charges.

Information can be obtained from Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013. Mr. Janne can be reached at (409) 845-3425 or e-mail at r-janne@tamu.edu. Proposals from interested firms should be directed to his attention at the above listed previously.

Selection criteria will include competence, experience, knowledge and qualifications in the area of airport contract negotiations. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas.

Proposals must be received on or before 2:00 p.m., July 14, 1998.

TRD-9809268
Thelma Isenhart
Administrative Assistant
Texas A&M University System
Filed: June 9, 1998

♦ ♦ ♦

Texas Department of Transportation

Public Notices

The Texas Department of Transportation published proposed new §17.52, concerning vehicle emissions enforcement system in the June 12, 1998, issue of the *Texas Register*. Under the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning the proposed new rule.

The public hearing will be held at 11:00 a.m. on Tuesday, June 30, 1998, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas 78701. The hearing will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 10:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new section may be submitted to Jerry Dike, Director, Vehicle Titles and Registration Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on July 13, 1998. For additional information, Mr. Dike may be contacted at (512) 465-7570.

TRD-9809037
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: June 4, 1998

♦ ♦ ♦

Public Notice: In the June 12, 1998, issue of the *Texas Register*, the Texas Department of Transportation adopted amendments to §§9.30-9.33, 9.37-9.39, and 9.41-9.43, concerning contracting for Architectural, Engineering and Surveying Services. Effective June 21, 1998, prime providers and subproviders for surveying services must be precertified with TxDOT by the due date of the Letter of Interest. The information concerning the Letter of Interest, Notices, and the precertification process is contained on TxDOT's Internet page under the title "Consultant Contracts/Professional Services for (Eng., Arch., Commercial Lab and Surveying)," and subtitles "TxDOT's Notice for Letter of Interest" and "TxDOT's Precertification Process."

For all providers of engineering, architectural and surveying services, §9.33 now eliminates the use of the *Texas Register* for publication of notice and provides that TxDOT will advertise projects in local newspapers in addition to advertising them on the TxDOT Internet page located at WWW.DOT.STATE.TX.US/BUSINESS/BUSINESS.HTM.

TRD-9809305
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: June 10, 1998

♦ ♦ ♦

Texas Water Development Board

Request for Proposals

The Texas Water Development Board (TWDB) requests, pursuant to 31 Texas Administrative Code (TAC) §355.92, the submission of regional water planning proposals leading to the possible award of contracts to develop regional water plans as described in 31 TAC Chapter 357. In order to receive a grant, the applicant must be a political subdivision and must have been designated an eligible applicant by a regional water planning group as defined in 31 TAC §355.91.

Description of Funding Consideration. Total funding for development of regional water plan when combined with grant funds for the scope of work shall not exceed 75% of the total cost of the planning per regional water planning area as defined in 31 TAC §355.91. In the event that acceptable proposals are not submitted, the TWDB retains the right to not award contract funds.

In-kind services such as administrative costs, staff time, and travel costs of the staff and members of the regional water planning group that are directly related to development of the regional water plan

may be substituted for any part of the local matching funds, if such services are directly in support of the planning effort, are properly documented, and are approved in advance by the Board. However, time regional water planning group members spend in regional water planning group meetings may not be counted as in-kind contribution. Local matching funds expended and in-kind services performed from the date of the first meeting of the regional water planning group are eligible with Board approval. 31 TAC §355.99(b) and (c).

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete regional planning grant application must be filed with the Board prior to 5:00 p.m., August 1,1998. Proposals must be directed either in person to Phyllis Lightner-Gaynor, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, or by mail to Phyllis Lightner-Gaynor, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

Applications will be evaluated according to 31 TAC §355.94 and the evaluation criteria included in the Texas Water Development Board's application instruction sheet for Senate Bill One Regional Water Planning Grants. All potential applicants must contact the Board to obtain these guidelines. Requests for information, the Board's rules and guidelines covering the research and planning fund, including evaluation criteria, may be directed to Phyllis Lightner-Gaynor at the preceding address by calling (512) 463-3154, or by e-mail at phyllis@TWDB.state.tx.us. This information can be found on the Internet at the following address: http://www.twdb.state.tx.us/www/twdb/sb1_hp.html.

TRD-9809322
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: June 10, 1998

♦ ♦ ♦

Texas Workforce Commission

Local Innovation and Job Retention and Reemployment Assistance RFA Internet Address

The Request for Applications (RFA) packet for the above grants is available on the Internet, located on the TWC Welfare Reform homepage at:

http://www.twc.state.tx.us/welref/welf.html

TRD-9809283
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

Notice of Availability of Funds and Request for Applications

LOCAL INNOVATION AND JOB RETENTION AND REEMPLOYMENT ASSISTANCE DISCRETIONARY GRANTS

The Texas Workforce Commission (TWC) Welfare Reform Division announces the availability of funds and request for applications (RFA packet) under the following two Fiscal Year 1998 strategies: (1) Local Innovation and (2) Job Retention and Reemployment Assistance. The TWC, as authorized by federal and state laws, invites eligible entities to submit applications for FY 1998 funding of grants to serve welfare recipients in their transition from welfare to self-sufficiency.

Funds for transportation must reasonably accomplish a purpose of the Temporary Assistance for Needy Families (TANF) program. Guidance to TANF funds is attached to the RFA packet.

Under the FY 1998 local innovation strategy, the TWC plans to develop demonstration projects for providing services to welfare recipients that will remove barriers to employment at self-sufficient wage levels, with a focus on collaborative local strategies that address transportation issues.

Under the FY 1998 job retention and reemployment assistance strategy, the TWC plans to develop demonstration projects for providing services to welfare recipients that will improve their ability to retain and advance in a job.

The two strategies are components of the TWC *Choices* program. TWC *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. A description of the *Choices* program is attached to the RFA packet

The TWC anticipates announcing a second round of discretionary grants following the same strategies for FY 1999 in September 1998.

AUTHORIZATION OF FUNDING

The TWC certifies that it has authority of funding from federal and state laws. The funds for these programs are federal funds from the U.S. Department of Health and Human Services, Temporary Assistance for Needy Families (TANF) block grants. Funds are subject to the requirements of the Title VI Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 7 U.S.C. §201.1, et seq. and state laws and regulations, including the 1997-98 state appropriations act (House Bill 1, Rider 27).

ELIGIBLE APPLICANTS

To be eligible, applicants must provide a non-binding, written Notification of Intent to Apply (form attached to RFA packet) to Monica Moguel, TWC Welfare Reform Division, 101 E. 15th Street, Room 434T, Austin, TX 78778-0001. Fax: (512) 463-7379; Email: monica.moguel@twc.state.tx.us ; Ph: (512) 936-3540. This must be received by the TWC no later than 4:30 P.M., Friday, July 3, 1998; this form may be mailed, faxed or emailed. This requirement is necessary to facilitate administrative planning; applicants who fail to provide notification of intent to apply by the stated deadline may be considered ineligible.

For both programs, eligible applicants are private and public entities that can provide services in any of the designated *Choices* counties in the state of Texas. A list of *Choices* counties in Texas and contact information is attached to the RFA packet. Applicants must submit signed certification and endorsement of their proposed project by the Local Workforce Development Board (LWDB) responsible for service delivery in the county(s) to be serviced by the proposed project. To facilitate compliance with this requirement, a list of designated LWDB contacts and a standard form letter documenting LWDB certification and endorsement is attached to the RFA packet. In *Choices* counties without a local workforce development board, applicants should consult directly with the TWC. The local TWC contact is listed in the RFA packet.

Note: LWDBs are not eligible entities as applicants for these discretionary grants. Applicants must consult with LWDBs prior to the development of their applications to ensure that projects are consistent with LWDB policies and priorities.

Applicants may submit only one proposal for services in a single Local Workforce Development Area (LWDA). If the applicant wishes

to provide services in more than one LWDA, the applicant must submit a separate application for each LWDA to be served, with the required endorsement from each respective LWDB.

Applicants seeking an award under the local innovation strategy must also provide documentation of consultation and collaboration during project development with the Texas Department of Transportation district Public Transportation Coordinators (PTC), the local Transit Authority, and/or private or community-based organizations that provide transportation services. Contact information for PTCs is attached to the RFA packet. Note that PTCs serve as single points of contact for direct referral to local Transit Authority officials in your area.

AVAILABLE FUNDING

For the local innovation strategy, applications for FY 1998 projects may request up to $100,000. The maximum amount for the total projects to be funded is $400,000. For the job retention and reemployment assistance strategy, TWC will consider proposals for funding ranging from $20,000 to $300,000, to support a diverse array of projects varying in intensity of service and number of *Choices* participants served. The maximum amount of funding for the job retention and reemployment assistance strategy for FY 1998 is $3,000,000. Discretionary grant funds not awarded for FY 1998 will be added to the funds available for the anticipated second round of grants in FY 1999.

DISCRETIONARY GRANT DESCRIPTION - GOALS AND OBJECTIVES

(1) Local Innovation Strategy

The goal of the local innovation strategy is to invest in the long-term success of welfare recipients in their transition from welfare to self-sufficiency.

The specific objectives of the local innovation strategy are:

To develop, implement and evaluate demonstration projects for providing services to *Choices* participants that will remove barriers to employment at self-sufficiency wage levels.

To develop a set of models for addressing high priority problems confronting the welfare reform effort that may be replicated by local workforce development boards throughout the state. For FY 1998, transportation is the high priority problem to be addressed.

(2) Job Retention and Reemployment Assistance Strategy

The goal of the job retention and reemployment assistance strategy is to invest in the long-term success of welfare recipients in their transition from welfare to self-sufficiency.

The specific objectives of the job retention and reemployment assistance strategy are:

To develop, implement and evaluate demonstration projects for providing services to *Choices* participants that improve their ability to retain and advance in a job.

To develop a set of models for addressing job retention and reemployment assistance problems that may be replicated by local workforce development boards throughout the state.

PROJECT DESIGN FEATURES

Under both the local innovation and job retention and reemployment assistance strategies, proposed projects must be responsive to the needs of the employers and *Choices* participants served in the LWDA. While projects will necessarily reflect the unique resources and circumstances of a particular region, the preference for funding will be given to those project designs that are potentially replicable and adaptable to different LWDAs. Projects must also be responsive to the needs of *Choices* participants to enable them to move toward self-sufficiency as quickly as possible due to state and federally imposed time limits.

(1) Local Innovation Strategy

The local innovation strategy will require a creative approach to meeting the transportation needs of *Choices* participants. These needs involve access to reliable, affordable, and efficient transportation to jobs, training, and services such as child care. Addressing these needs in a cost-effective way is critical to the successful transition from welfare to work for many *Choices* participants.

The strength of proposed projects depends on the extent to which they involve planning and collaboration with the Texas Department of Transportation and/or the local Transit Authority. National research has found a variety of welfare-to-work transportation designs which have been tested in both major metropolitan areas and rural areas and involving a variety of populations, resources, and services. The common characteristic of these successful programs is their systemic approach to removing transportation barriers to welfare-to-work transition. Suggested innovative practices from this research include but are not limited to:

evaluation, planning and coordination to integrate welfare reform priorities within the local transportation system;

specific activities such as reverse commuting, van pooling, and various forms of expanded public and/or private service;

collaboration among workforce development, transportation, social service, and community-based organizations;

marketing and outreach; and

employer engagement.

For further information, see a recent publication by the Department of Transportation and the Community Transportation Association of America entitled "Access to Jobs: A Guide to Innovative Practices in Welfare to Work Transportation." This publication is available on the Internet at http://www.ctaa.org/welfare.

(2) Job Retention and Reemployment Assistance Strategy

The job retention and reemployment assistance strategy will fund demonstration projects that provide model strategies for improving the ability of *Choices* participants to retain and advance in a job. They may involve any of a full spectrum of services that vary in intensity depending on the number of *Choices* participants referred to an employer and/or the needs of particular *Choices* participants.

Suggested job retention strategies include but are not limited to:

Designated job coaches who monitor, counsel, and work with particular *Choices* participants for a specified period of time to respond effectively on an as-needed basis to a comprehensive range of individual needs and situations.

Choices participant incentives to reward participants for achieving good job retention; this could include cash incentives or vouchers for work related expenses, such as clothing and tools, or for investments such as training.

Designated workplace mentors on job sites with multiple *Choices* participants who receive a stipend to assist participants as a group in resolving workplace problems to ensure a successful transition from welfare to work.

Outside coaches who facilitate peer counseling and group problem-solving at job sites with multiple *Choices* participants.

Emergency plans for dependent care and transportation crises that make use of community volunteers to provide drop-in dependent care or temporary transportation to work.

Systemic approaches to removing transportation barriers that put *Choices* participants at heightened risk of job instability.

Individual Development Accounts (IDAs) to cover business capitalization expenses to establish a transportation service such as a van pool, shuttle, or door-to-door transportation service or other job retention strategy.

Workplace training and adult literacy.

A list of selected references and resources will be attached to the RFA packet.

LENGTH OF CONTRACT

The contract period for both discretionary grants is expected to start by August 31, 1998 and end by August 31, 1999. However, the length of the contract may be extended where needed to provide sufficient time to conduct a reliable evaluation.

SCHEDULE OF MAJOR EVENTS

The schedule of major events for both discretionary grants is:

Release NOFA 6/19/98

Notification of intent to apply due 7/03/98

Application submission deadline 7/22/98

Selection notification begins 7/31/98

Contract negotiation begins 8/03/98

Contract signed by 8/28/98

Project expected start date by 8/31/98

Project expected end date 8/31/99

SELECTION CRITERIA

(1) Local Innovation Discretionary Grant

The selection criteria:

Contractor experience in program or concept development and delivery of workforce development and related support services, including transportation, for low-income individuals and recipients of public assistance.

Strength of contractor's consultation during project development with Texas Department of Transportation and/or the local Transit Authority. Strength of contractor's project design for coordination and collaboration among workforce development, social service and transportation providers.

Strength of contractor's project design for engaging employers in partnerships that provide businesses and the *Choices* participants they employ reliable, affordable and efficient transportation.

Contractor ability to leverage existing resources to offer services. Contractor ability to leverage non-state and non-federal financial support for extending service coverage and enhancing service quality.

Strength of contractor's project design for potential cost-effective replicability and adaptation to different LWDBs.

Strength of proposed evaluation plan.

(2) Job Retention and Reemployment Assistance Strategy

The selection criteria are:

Contractor experience in program or concept development and delivery of comprehensive job retention and reemployment assistance services for low-income individuals and recipients of public assistance.

Strength of contractor's project design for engaging employers in partnerships that enable businesses and the *Choices* participants they employ to develop mutually beneficial, long-term relationships.

Strength of contractor's project design for potential cost-effective replicability and adaptation to different LWDBs.

Contractor ability to leverage existing resources to offer services. Contractor ability to leverage non-state and non-federal financial support for extending service coverage and enhancing service quality.

Strength of proposed evaluation plan.

APPLICATION PROCESS

Applicants must request an RFA packet from the Welfare Reform Division. Applications must be submitted by July 22, 1998. Call Monica Moguel at (512) 936-3540 to request an RFA packet or fax a request to (512) 463-7379 directed to the attention of Monica Moguel. Requests may also be by email to monica.moguel@twc.state.tx.us.

SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

A panel of Texas Workforce Commission and outside readers will evaluate applications. Evaluation criteria is included in the RFA packet. Contract negotiation will take place immediately after selection. A designated person from the selected entity must be readily available to respond to inquiries, prepare proposed amendments, and negotiate with TWC concerning budget and/or programmatic revisions during the entire contract negotiation process. If a designated person is not readily available to promptly respond to requests for revisions, the applicant will not be considered for contract. The LWDB of the county(s) served by the proposed project must be involved in the negotiation of the contract.

Final selection is contingent upon successful negotiation. TWC reserves the right to vary all provisions of this Notice of Availability of Funds prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

DUE DATE AND AGENCY CONTACT

The deadline for receipt and consideration of applications under the local innovation and the job retention and reemployment assistance strategies is 5:00 P.M., Wednesday, July 22, 1998. For further information on this RFA, contact Jeffrey Kaufman, Contract Specialist, Texas Workforce Commission, Welfare Reform Division, 101 E. 15th Street, Room 452T, Austin, TX 78778-0001. Phone: 512/936-3560; FAX: 512/463-9994; Email jeffrey.kaufman@twc.state.tx.us.

A notice of the award grantees will be published in the *Texas Register* following contract execution.

TWC's OBLIGATIONS

TWC's obligations under this Notice are contingent upon the actual receipt by the Agency of funds from the U.S. Department of Health and Human Services. If adequate funds are not available to make payment under this grant, TWC shall terminate this request for applications or the resulting contract and will not be liable for failure to make payments.

TRD-9809250

J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 9, 1998

♦ ♦ ♦

Notices of Grant Awards

The Texas Workforce Commission files this notice of grant recipients receiving contracts for the Texas School-Age Child Care Grant. Authority of funding was granted in the Texas Education Code Annotated, §33.902 (Vernon Supp. 1998).

The original request appeared in the July 15, 1997, issue of the *Texas Register*.

Grants were awarded to: Austin Independent School District whose business address is 1111 W. 6th Street #D-150, Austin, Texas 78703-5399; Brownwood Independent School District whose business address is P.O. Box 730, Brownwood, Texas 76804; Comfort Independent School District whose business address is P.O. Box 398, Comfort, Texas 78013-0398; Del Valle Independent School District whose business address is 2407 Shapard Lane, Del Valle, Texas 78617; Fort Worth Independent School District whose business address is 100 N. University Drive, Fort Worth, Texas, 76107; Giddings Independent School District whose business address is P.O. Box 389, Giddings, Texas 78942; Hitchcock Independent School District whose business address is 8117 Highway 6, Hitchcock, Texas 77563; Keller Independent School District whose business address is 305 Lorine Street, Keller, Texas 78363; Pittsburg Independent School District whose business address is P.O. Box 621, Pittsburg, Texas 75686; Royse City Independent School District whose business address is P.O. Box 479, Royse City, Texas 75189; San Antonio Independent School District whose business address is 510 Morningview Drive, San Antonio, Texas 78220; Sante Fe Independent School District whose business address is P.O. Box 370, Sante Fe, Texas 77517; Snyder Independent School District whose business address is 2901 37th Street, Snyder, Texas 79549; Sonora Independent School District whose business address is 807 S. Concho, Sonora, Texas 76950; and Spearman Independent School District whose business address is 403 East 11th Street Spearman, Texas 79081.

The total funding awarded for this grant was $400,000 with each contract having a beginning date of October 1, 1997 and an ending date of August 31, 1998.

Funds are to be used for the expansion and/or quality improvement of existing child care programs and reasonable start-up costs for new programs that serve school-age children.

TRD-9809307
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

The Texas Workforce Commission files this notice of grant recipients receiving contracts for the Texas Child Care Resource and Referral Grant. Authority for funding is under the FY 1997 Appropriations Bill for the Federal Department of Health and Human Services.

The original request appeared in the February 7, 1997, issue of the *Texas Register*.

Grants were awarded to: Austin Families whose business address is 3000 Centre Park Drive #360, Austin, Texas 78754; Family Service Association of San Antonio whose business address is 130 Lewis Street, San Antonio, Texas 78212; First Texas Council of Camp Fire, Inc. whose business address is 2700 Meacham Boulevard, Fort Worth, Texas 76137-4699; Initiatives for Children, Inc. whose business address is 5433 Westheimer, Suite 620, Houston, Texas 77056-5305; and The Child Care Group, whose business address is 1222 Riverbend, Suite 250, Dallas, Texas 75247.

The total funding awarded for this grant was $250,000 with each contract having a beginning date of July 1, 1997 and an ending date of August 31, 1998.

Funds are to be used for direct service activities in planning, development, establishment, operation, expansion and or improvement of child care resource and referral services.

TRD-9809312
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

The Texas Workforce Commission files this notice of grant recipients receiving contracts for the Texas Information and Referral Child Care Grant. Authority for funding is under the FY 1997 Appropriations Bill for the Federal Department of Health and Human Services.

The original request appeared in the July 15, 1997, issue of the *Texas Register*.

Grants were awarded to: Casa De Amigos of Midland, Texas, whose business address 1101 E. Garden Lane, Midland, Texas 79701-3683; Kleberg County Aleman Services whose business address 720 E. Lee, Kingsville, Texas 75686; United Way of Brazoria County whose business address P.O. Box 1959, Angelton, Texas 77516-1959; United Way of Grayson County whose business address is P.O. Box 1112, Sherman, Texas 75091; United Way of Metropolitan Forth Worth/ Tarrant County whose business address is 210 E. 9th Street, Fort Worth, Texas 76102-6494; United Way of San Antonio and Bexar County whose business address is P.O. Box 89, San Antonio, Texas 78293-0898; and United Way of Texas Gulf Coast whose business address is P.O. Box 924507, Houston, Texas 77292-4507.

The total funding awarded for this grant was $200,000 with each contract having a beginning date of October 1, 1997 and an ending date of August 31, 1998.

Funds are to be used for the expansion of information and referral services for working families with child care needs.

TRD-9809308
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

The Texas Workforce Commission files this notice of grant recipients receiving contracts for the Community Representatives Training Grant. Authority for funding was granted by the Texas Labor Code Annotated, §81.0045 (Vernon 1996).

The original request appeared in the October 3, 1997, issue of the *Texas Register*.

Grants were awarded to: Nancy Hard whose business address is 130 Lewis Street, San Antonio, Texas 78212; Phyllis Jack-Moore whose

business address is P.O. Box 160697, Austin, Texas 78716; and Sue McCormick whose business address is 6908 Hillwood Lane, Dallas, Texas 75248.

The total funding awarded for this grant was $24,000 with each contract having a beginning date of January 1, 1998 and an ending date of August 31, 1998.

Funds are to be used to provide training and assistance to designated employer groups and community organizations to develop the capacity to construct a functioning local employer coalition whose purpose is to assess, improve, and expand dependent care services to working families.

TRD-9809309
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

The Texas Workforce Commission files this notice of grant recipients receiving contracts for the Local Community Employer Coalition Capacity Building Grant. Authority for funding was granted by the Texas Labor Code Annotated, §81.0045 (Vernon 1996).

The original request appeared in the October 3, 1997, issue of the *Texas Register*.

Grants were awarded to: Austin Families, Inc. whose business address is 8000 Centre Park Dr., #360, Austin, Texas 78754; Del Mar College whose business address is 101 Baldwin, Corpus Christi, Texas 78404-3897; University of North Texas Center for Parent Education whose business address is P.O. Box 13857, Denton, Texas 76203-6857; Children's Enterprises, Inc. whose business address is 1901 University, Suite 421A, Lubbock, Texas 79410; and Champions for Children whose business address is P.O. Box 6053, Tyler, Texas 75711.

The total funding awarded for this grant was $90,000 with each contract having a beginning date of January 1, 1998 and an ending date of August 31, 1998.

Funds are to be used to develop community capacity to build a local employer coalition to improve and expand dependent care services to working families.

TRD-9809310
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

The Texas Workforce Commission files this notice of grant recipients receiving contracts for the Texas School-Age Enhancement Grant (Federal). Authority for funding is under the FY 1997 Appropriations Bill for the Federal Department of Health and Human Services.

The original request appeared in the January 24, 1997, issue of the *Texas Register*.

Grants were awarded to: Amarillo Community Center whose business address is 609 South Carolina, Amarillo, Texas 79106; American Institute for Learning whose business address is 422 Congress Avenue, Austin, Texas 78701; Austin Independent School District whose business address is 1111 W. 6th Street, Austin, Texas 78703; Brenham Independent School District whose business address is 711 Mansfield, Brenham, Texas 77834; Child Crisis Center whose business address is 2100 N. Stevens, El Paso, Texas 79930; Ed White Memorial Youth Center whose business address is 1513 Third Street, Seabrook, Texas 77586; Family Crisis of the Big Bend whose business address is P.O. Box 1470, Alpine, Texas 79831; First Texas Council of Camp Fire Inc. whose business address is 2700 Meacham Blvd., Fort Worth, Texas 76137; Hitchcock Independent School District whose business address is 8117 Highway 6, Hitchcock, Texas 77653; Panhandle Plains Council of Camp Fire Inc., 2808 Canyon Drive, Amarillo, Texas 79109; Pittsburg Independent School District whose business address is P.O. Box 621, Pittsburg, Texas 75686; Port Aransas Kiwanis Club whose business address is 1106 Channel Vista Drive, Port Aransas, Texas 78373; Snyder ISD whose business address is 2901 37th Street, Snyder, Texas 79549; YMCA of Fort Worth whose business address is 540 Lamar, Fort Worth, Texas 76102; YMCA of San Antonio whose business address is 5726 Ingram Road, San Antonio, Texas 78228; YWCA of Lubbock whose business address is 3103 35th Street, Lubbock, Texas 79413; YWCA of Metropolitan Dallas whose business address is 4621 Ross Avenue, Dallas, Texas 75204; Victoria Independent School District whose business address is P.O. Box 1759, Victoria, Texas 77901; and Winters Independent School District whose business address is P.O. Box 125, Winters, Texas 79567.

The total funding awarded for this grant was $486,000 with each contract having a beginning date of May 1, 1997 and an ending date of August 31, 1998.

Funds are to be used for the planning, development, establishment, operation, expansion, and/or improvement of programs to provide school-age child care services before and after school in public or private school facilities.

TRD-9809311
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 10, 1998

♦ ♦ ♦

Notice of Intent to Review Catalogue

The Texas Workforce Commission (TWC) announces a Request for Offers (RFO) to solicit proposals for the development of an internet-based job matching system in support of the agency's workforce development system. This system will be tailored to meet the needs of Texas employers and job seekers, and must meet all program and reporting guidelines required by the United States Department of Labor (USDOL). The system must also support the Local Workforce Development Area (LWDA) structure, and must meet a considerable number of other requirements, including interfaces with existing database systems and other applications. A complete list of system requirements is included within the formal Request for Offers.

Respondents must respond with an offer for services to commence in **July 1998**. Additionally, any respondent must be a Qualified Information Services Vendor (QISV), approved by the General Services Commission (GSC) on the date an offer is submitted. Interested vendors are responsible for ensuring that they meet GSC criteria as a QISV. Closing date: **5:00 P.M., July 8, 1998**.

Vendors capable of meeting the above requirements who are interested in obtaining a copy of the Request for Offers may contact: Jane B. Haney, Director, IRP&P Department, Room 153, Texas Workforce Commission, 101 E.15th Street, Austin, Texas 78778-0001,

Telephone (512) 463-2482, Facsimile: (512) 463-2442; or email: Jane.Haney@twc.state.tx.us

TWC reserves the right to reject any and all responses submitted and to accept the offer that is to be considered to be the best value to TWC and the State of Texas. TWC may request additional information as necessary to clarify, explain, and verify any aspect of an offer. TWC shall be the sole judge of the acceptability of any offer.

TRD-9809251
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 9, 1998

♦ ♦ ♦

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette ❑ 5 1/4" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials, State	(512) 463-6334
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

❒ **Change of Address**

❒ **Back Issue**
_____ Quantity
Volume _____,
Issue # _____
(Prepayment required for back issues)

❒ **New Subscription (Yearly)**

Printed ❒ $95

Diskette
❒ 1 to 10 users $200
❒ 11 to 50 users $500
❒ 51 to 100 users $750
❒ 100 to 150 users $1000
❒ 151 to 200 users $1250
More than 200 users--please call

Online BBS
❒ 1 user $35
❒ 2 to 10 users $50
❒ 11 to 50 users $90
❒ 51 to 150 users $150
❒ 151 to 300 $200
More than 300 users--please call

NAME _____

ORGANIZATION_____

ADDRESS _____

CITY, STATE, ZIP _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

❒ **Bill Me** ❒ **Payment Enclosed**

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additonal entry offices
_____
_____