TEXAS REGISTER

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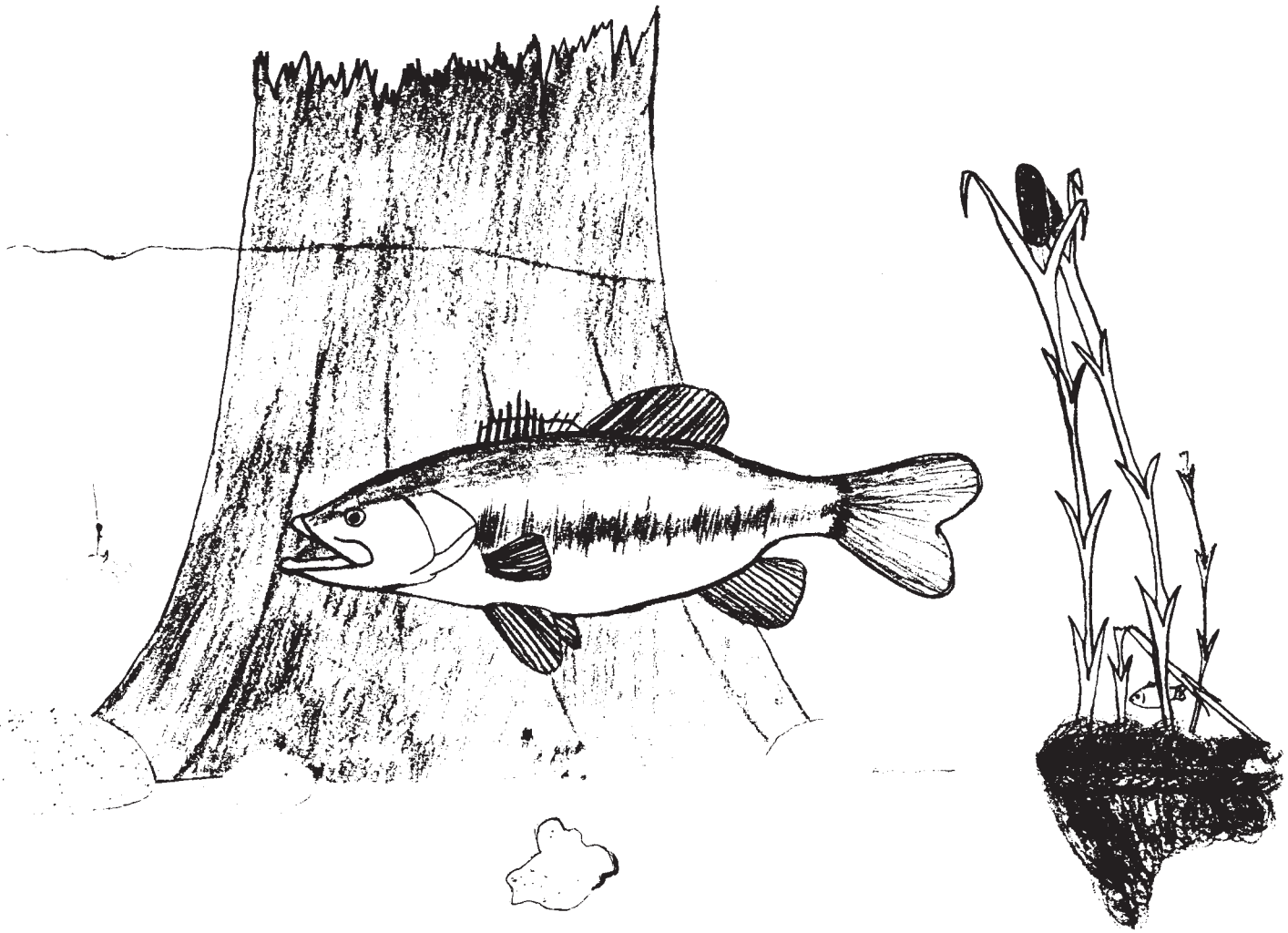

This month's front cover artwork:

Artist: *Cody McGallion*

8th Grade

Warren Middle 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.

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ATTORNEY GENERAL

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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. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Decision

(ORD-659)(ID# 120980) Mr. Wayne Scott Executive Director Texas Department of Criminal Justice P.O. Box 13084 Austin, Texas 78711 Open Records Decision No. 659 Re: Whether communications made in a victim-offender mediation session are confidential under section 154.073 of the Civil Practice and Remedies Code. (ORQ-29)

S U M M A R Y The victim-offender mediation conducted by the Texas Department of Criminal Justice is not mediation as contemplated by chapter 154 of the Civil Practice and Remedies Code because the victim and offender are engaged in a healing process rather than attempting to resolve a dispute. Therefore, communications made during the victim-offender mediation are not confidential under §154.073. However, the participants' communications and records of the victim-offender mediation may be protected from public disclosure by common-law privacy as encompassed by §552.101 of the Government Code.

TRD-9905188
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: August 16, 1999

♦ ♦ ♦

(ORD-660)(ORQ-14) The Honorable Carl E. Lewis County Attorney Nueces County Courthouse 901 Leopard, Room 206 Corpus Christi, Texas 78401-3680 Open Records Decision No. 660 Re: Whether section 52(a) of article III of the Texas Constitution prohibits the Port of Corpus Christi from complying with a request under chapter 552 of the Government Code for a computer version of a digital map of the Port of Corpus Christi and related questions (ORQ-14)

S U M M A R Y Section 52(a) of Article III of the Texas Constitution does not prohibit the Port of Corpus Christi Authority from releasing a computer generated digital map, created by the Port with public funds, in response to a request made under chapter 552 of the Government Code. Furthermore, the Federal Copyright Act may not be used to deny access to or copies of the public information under the Public Information Act when the governmental body owns the copyright. We conclude, however, that, while the Public Information Act requires the Port to provide access to or copies of public information, the Port may place reasonable restrictions on the use of its copyrighted works consistent with the rights of a copyright owner under the FCA.

TRD-9905212
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: August 17, 1999

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Requests for Opinions

RQ-0093 Requested by: The Honorable Edwin E. Powell, Jr. Coryell County Attorney 113 South Seventh Street Gatesville, Texas 76528 Re: Meaning of the term "initially" for purposes of collecting

fees under section 51.702, Government Code (Request Number 0093-JC) Briefs requested by September16, l999

RQ-0094 Requested by: The Honorable Edwin E. Powell, Jr. Coryell County Attorney 113 South Seventh Street Gatesville, Texas 76528 Re: Allocation of fees collected by a county under section 51.702, Government Code (Request Number 0094-JC) Briefs requested by September 16, 1999

RQ-0095 Requested by: The Honorable Stephen H. Smith 119th Judicial District Attorney 124 West Beauregard San Angelo, Texas 76903 Re: Whether a county is required to meet certain requirements regarding the salary of a county court-at-law judge (Request Number 0095-JC) Briefs requested by September 16, l999

RQ-0096 Requested by: The Honorable Debra Danburg Chair, Committee on Elections Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910 Re: Whether an ad hoc intergovernmental working group is subject to the Open Meetings Act, chapter 551, Government Code (Request Number 0096-JC) Briefs requested by September 18, l999

RQ-0097 Requested by: Mr. Steven G. Moore McLennan County Auditor 214 North Fourth Street, Suite 100 Waco, Texas 76701-1366 Re: Disposition of moneys received from interest earned on motor vehicle inventory tax escrow funds under section 26.122, Tax Code (Request Number 0097-JC) Briefs requested by September18, l999

RQ-0098 Requested by: The Honorable Tim Curry Tarrant County Criminal District Attorney Justice Center 401 West Belknap Fort Worth, Texas 76196-0201 Re: Whether a governmental body may permit members of the public to comment on items not specified on the posted agenda, and related questions (Request Number 0098-JC) Briefs requested by September 18, l999

RQ-0099 Requested by: Mr. Robert A. Swerdlow, Ph.D. Chair, Texas Council on Purchasing from People with Disabilities P.O. Box 13047 Austin, Texas 78711-3047 Re: Whether the Texas Council on Purchasing from People with Disabilities may engage in lobbying (Request Number 0099-JC) Briefs requested by September 18, l999

RQ-0100 Requested by: Mr. Charles W. Heald, P.E. Executive Director Texas Department of Transportation 125 East 11th Street Austin, Texas 78701-2483 Re: Whether a county may bid on state highway maintenance contracts (Request Number 0100-JC) Briefs requested by September 19, l999

RQ-0101 Requested by: The Honorable Eddie Lucio, Jr. Chair, Special Committee on Border Affairs Texas Senate P.O. Box 12068 Austin, TX 78711 Re: Whether the term "national park" as used in article 2.122, Code of Criminal Procedure, includes other federal park designations (Request Number 0101-JC) Briefs requested by September 19, l999

TRD-9905262
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: August 18, 1999

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 255. Finance

1 TAC §255.4

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §255.4, concerning the Definition of a Local Exchange Access Line and an Equivalent Local Exchange Access Line.

The section is being amended to implement Senate Bill 484 as passed by the Texas Legislature. In Senate Bill 484, the 76th Texas Legislature gave the ACSEC the responsibility and charge through rulemaking to determine what constitutes a local exchange access line and an equivalent local exchange access line for all 9-1-1 emergency service fees imposed statewide. The amendment specifically provides that the definition of a local exchange access line and an equivalent local exchange access line does not include "a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages."

The proposed amendment does not affect the authority of an emergency communication district to charge different rates for 9-1-1 emergency service fees depending on whether the line is a residential line, a business line, or a trunk line, except that the emergency communication district may not impose a 9-1-1 emergency service fee on any line that is excluded from the ACSEC definition in §255.4.

James D. Goerke, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Goerke, 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 greater clarity in the administration of 9-1-1 emergency service fees. While no historical data is available, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the amendment must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.063, 771.071, and 771.0711.

Other statutes, articles or codes are affected by the proposed amendment are Health and Safety Code, Chapter 772, §§772.114, 772.214, 772.314, and 772.403.

§255.4. Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line.

The term "local exchange access line" or "equivalent local exchange access line" means any telephone line or service for which a federal subscriber line charge is assessed by a local exchange service provider on the customer's bill or any cellular telephone, communication channel, personal communication system, commercial mobile radio service, cable/broadband services, or any other wire or wireless means that connects the customer to the public switched telecommunications network and provides the customer with ability to reach a public safety answering point by dialing the digits 9-1-1. The term does not include coin-operated public telephone equipment, public telephone equipment operated by card reader, commercial mobile radio service that provides access to a paging or other one-way signaling service, a communication channel suitable only for data transmission, a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages, a wireless roaming service or other nonvocal commercial mobile radio service, a private telecommunications system, or a wireless telecommunications connection subject to Texas Health and Safety Code, §771.0711.

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 August 16, 1999.

TRD-9905152
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 305–6933

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Part XV. Health and Human Services Commission

Chapter 355. Medicaid Reimbursement Rates

Subchapter M. Miscellaneous Medicaid Programs

The Health and Human Services Commission (HHSC) proposes a new Division 1, under Chapter 355, Subchapter M, concerning Early Childhood Intervention: Case Management Services for Infants and Toddlers with Developmental Disabilities, a program administered by the Texas Interagency Council on Early Childhood Intervention (ECI). The Health and Human Services Commission proposes the repeal and replacement of §§355.9001-355.9010 and §§355.9012-355.9014. The new Division title name will be "Early Childhood Intervention: Reimbursement Methodology for Case Management Services for Infants and Toddlers with Developmental Disabilities".

The purpose of the new chapter is to establish the methodology by which the rate for case management services will be calculated.

In conjunction with the repeal and replacement of §§355.9001-355.9010 and §§355.9012-355.9014, the Interagency Council on Early Childhood Intervention is simultaneously proposing the repeal and replacement of §§621.121-621.128, concerning Case Management Services for Infants and Toddlers with Developmental Disabilities elsewhere in this issue of the *Texas Register*.

Don Green, Chief Financial Officer, HHSC, has determined for the first five-year period the proposed sections are in effect, the fiscal impact will be an increase in federal funds to ECI providers of approximately $1,500,000. The effect on state expenditures will be to reduce the need for general revenue to be used to provide these services.

Mr. Green also has determined that for each of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be that increased funding will allow families of children with disabilities to receive increased services from ECI programs. The Reimbursement Methodology for Case Management Services for Infants and Toddlers with Developmental Disabilities rules will have no adverse economic impact on small businesses or on persons complying with the rules as proposed. There will be no impact on local employment.

Questions about the content of this proposal may be directed to Glenn Hart at the Texas Interagency Council on Early Childhood Intervention, Division of Provider Funding, at (512) 424-6830. Written comments on the proposal may be submitted to Glenn Hart, Division of Provider Funding, Texas Interagency Council on Early Childhood Intervention, 4900 North Lamar, Austin, Texas 78751-2399, within 30 days of publication in the *Texas Register*.

Division 1. Early Childhood Intervention: Case Management Services for Infants and Toddlers with Developmental Disabilities

1 TAC §§§355.9001-355.9010, 355.9012–355.9014

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Government Code §531.033, which provides the commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a).

The repeals affect Texas Government Code §531.021(b), which authorizes HHSC to propose rules covering Medicaid reimbursement.

§355.9001. Reimbursable Services.

§355.9002. General Reimbursement Information.

§355.9003. Methodology.

§355.9004. Cost Reporting Procedures.

§355.9005. Basic Objectives and Criteria for Desk Review of Cost Reports.

§355.9006. Notification.

§355.9007. Reimbursement Rate Determination.

§355.9008. Determination of Inflation Indices.

§355.9009. Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs.

§355.9010. Allowable Cost Information.

§355.9012. List of Allowable Costs.

§355.9013. List of Unallowable Costs.

§355.9014. Reviews and Administrative Hearings.

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 August 16, 1999.

TRD-9905169
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 424–6756

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Division 1. Early Childhood Intervention: Reimbursement Methodology for Case Management Services for Infants and Toddlers with Developmental Disabilities

1 TAC §§355.9001–355.9010, 355.9012–355.9014

The new sections are proposed under Texas Government Code §531.033, which provides the commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a).

The new sections affect Texas Government Code §531.021(b), which authorizes HHSC to propose rules covering Medicaid reimbursement.

§355.9001. Reimbursable Services.

(a) Case management services are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in 25 TAC §621.125 (relating to Conditions for Medicaid Case Management Provider Participation). Reimbursable case management services include face-to-face and telephone contacts with the child's caregiver on behalf of the child, or with other service providers or professionals on behalf of the child, for the purpose of assisting that child in gaining access to needed medical, social, educational, developmental, and other appropriate services. Case management providers are paid one flat monthly rate each month in which at least one reimbursable case management contact occurred.

(b) Case management services are not reimbursable as Medicaid services when another payor is liable for payment or if case management services are associated with the proper and efficient administration of the state plan. Case management services associated with the following are not payable as optional targeted case management services under Medicaid:

(1) Medicaid eligibility determinations and redeterminations;

(2) Medicaid eligibility intake processing;

(3) Medicaid preadmission screening;

(4) Prior authorization for Medicaid services;

(5) Required Medicaid utilization review;

(6) Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program administration;

(7) Medicaid "lock-in" provided for under the Social Security Act;

(8) Services that are an integral or inseparable part of another Medicaid service;

(9) Outreach activities that are designed to locate individuals who are potentially eligible for Medicaid; and

(10) Any medical evaluation, examination, or treatment billable as a distinct Medicaid-covered benefit. However, referral arrangements and staff consultation for such services are reimbursable as case management services.

§355.9002. General Reimbursement Information.

The Commission determines prospective uniform reimbursement rates for the Texas Early Childhood Intervention Program (ECI) Medicaid programs. ECI reimburses ECI program providers according to the reimbursement methodology in §355.9003 of this title (relating to Methodology). The commission determines the case management rate based on costs contained in the ECI providers' Time and Financial Information (TAFI) reports, which are reported on a quarterly basis.

§355.9003. Methodology.

(a) Except when otherwise specified under this title, the Commission follows the requirements set forth in subsections (b)-(k) of this section to determine rates for reimbursing contracted providers for Texas Early Childhood Intervention Program (ECI) Medicaid programs.

(b) Amended Time and Financial Information (TAFI) Report Due Dates. All contracted providers must submit TAFI reports to ECI or its designee in a manner prescribed by ECI. ECI accepts amended TAFI reports submitted on the request of the provider until 180 days after the due date of the TAFI report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system without a provision for reconciliation, amended TAFI reports filed after this date have no effect on the rate and are not accepted. Amended TAFI report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(c) Audits. As specified in §355.9005 of this title (relating to Basic Objectives and Criteria for Desk Review of TAFI reports), ECI or its designee conducts desk reviews of all the TAFI reports that it receives. ECI or its designee also conducts on-site audits of provider records and TAFI reports. Although the number of on-site audits performed each year may vary, ECI seeks to maximize the number of on-site audited TAFI reports available for use in its cost projections. Whenever possible, the records necessary to verify information submitted to ECI on Medicaid TAFI reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to ECI audit staff, or its designee in the state of Texas.

(d) In addition to the exclusions and adjustments made during desk reviews and on-site audits, ECI may exclude or adjust certain expenses in the TAFI data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

(e) ECI may project expenses in the TAFI report data base to account for cost inflation between the reporting period and the prospective rate period. ECI's procedures for determining inflation indices to account for cost inflation between the reporting period and the prospective rate period are specified in §355.9008 of this title (relating to Determination of Inflation Indices).

(f) ECI also adjusts rates when new legislation, regulations, or economic factors affect costs, as specified in §355.9009 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(g) After making appropriate exclusions and adjustments, ECI uses the adjusted TAFI report data to project the cost per unit of service during the prospective rate period.

(h) The Commission must hold a public hearing before setting the reimbursement rate. The purpose of the hearing is to give interested persons an opportunity to comment on the Commission's proposed rate. The Commission must provide notice of the hearing to the public; and at least ten working days before the hearing takes place, the Commission must make material pertinent to the proposed rates available to the public. At a minimum, this material must include the Commission's proposed rates and any inflation rates used to determine them. The Commission must furnish this material to anyone who requests it. After the hearing, ECI staff must provide the Commission with a written summary of the comments made during the public hearing.

§355.9004. TAFI Reporting Procedures.

Provider agencies must submit to the Texas Early Childhood Intervention Program (ECI) financial and statistical information on a quarterly basis on Time and Financial Information (TAFI) software provided by ECI. Providers must complete the TAFI report according to

the rules and specifications set forth in this section. The Commission determines reimbursement rates as specified in §355.9002 and §335.9003 of this title (relating to General Reimbursement Information and Methodology).

(1) TAFI report due date. Provider agencies must submit TAFI reports to ECI by the due date specified by ECI.

(2) Extension of due date. ECI may grant extensions of due dates for good cause. A good cause is defined as one that the provider agency could not reasonably be expected to control. Provider agencies must submit requests for extensions in writing to ECI before the TAFI report due date. ECI will respond to requests within 10 workdays of receipt.

(3) Reporting period. The provider agency must prepare the TAFI report to reflect the activities of the provider agency during the specified fiscal quarter.

(4) Failure to file an acceptable TAFI report. If a provider agency fails to file a TAFI report according to all applicable rules and instructions, ECI may withhold all provider payments until the provider agency submits an acceptable TAFI report.

(5) Accounting requirements. The provider agency's treatment of any financial or statistical item must reflect the application of the generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants.

(6) Allocation method. If allocation of cost is necessary, provider agencies must use reasonable methods of allocation. ECI adjusts allocated costs if ECI considers the allocation method to be unreasonable. The provider agency must retain work papers supporting allocations.

(7) TAFI report certification. Provider agencies must certify the accuracy of TAFI reports submitted to ECI in the format specified by ECI. Provider agencies may be liable for civil and/or criminal penalties in the case of misrepresented or falsified information.

(8) TAFI report supplements. ECI may at times require additional financial and statistical information other than the information contained in the TAFI report.

(9) Review of TAFI reports. ECI staff, or ECI's designee, review each TAFI report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. The review of the TAFI report includes a desk review. ECI reviews all TAFI reports according to the criteria in §355.9005 of this title (relating to Basic Objectives and Criteria for Desk Review of TAFI reports). If a provider agency fails to complete TAFI reports according to TAFI report instructions or rules, ECI or its designee requires the provider to submit corrected reports. ECI may require information other than that contained in the TAFI report to substantiate reported information.

(10) On-site audits. ECI or its designee may perform on-site audits on all provider agencies that participate in the ECI program. ECI determines the frequency and nature of audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(11) Access to records. Each provider agency or its designated agent(s) must allow access to any and all records necessary to verify information submitted to ECI on TAFI reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider agency. If a provider agency does not allow inspection of pertinent records within 30 days following written notice from ECI, ECI may place a hold on vendor payments until access to the records is allowed. If the provider agency continues to deny access to records, ECI may cancel the provider agency's contract.

(12) Failure to maintain adequate records. If a provider agency fails to maintain adequate records to support the financial and statistical information reported in TAFI reports, ECI allows 90 days for the provider agency to bring record keeping into compliance. If a provider agency fails to correct deficiencies within 90 days from the date of notification of the deficiency, ECI may cancel the provider agency's contract for services.

§355.9005. Basic Objectives and Criteria for Desk Review of Time and Financial Information (TAFI) Reports.

(a) The Texas Early Childhood Intervention Program (ECI) or its designee conducts desk reviews of all provider TAFI reports to ensure that the financial and statistical information submitted in the TAFI reports conforms to all applicable rules and instructions.

(b) The basic objective of the desk review is to verify that each provider's TAFI reports:

(1) display financial and statistical information in the format required by ECI;

(2) report expenses in conformity with ECI's lists of allowable and unallowable costs, and

(3) follow generally accepted accounting principles except as otherwise specified in ECI's lists of allowable and unallowable costs.

(c) ECI or its designee verifies the information specified in subsection (b) of this section by:

(1) comparing each provider's reported costs to:

(A) past patterns of expenditures for similar services,

(B) the results of previous on-site audits,

(C) normal operating cost relationships, and

(D) provider average costs;

(2) reviewing each provider's reported costs to search for:

(A) reported unallowable costs,

(B) omitted allowable costs, and

(C) overstated or understated allowable costs;

(3) checking for completion of required information;

(4) checking the format for proper cost classification;

(5) checking for mathematical accuracy; and

(6) adjusting improperly prepared reports.

(d) ECI may conduct on-site audits of TAFI reports that show unusual fluctuations or trends in costs or statistics. ECI may also conduct on-site audits when desk reviews are insufficient to verify the accuracy of reported costs.

§355.9006. Notification.

The Texas Early Childhood Intervention Program (ECI) or its designee furnishes providers with written reports of the results of on-site audits. ECI mails each on-site audit report within 21 days after the final exit interview with the provider. An exit interview is final when ECI or other designated audit staff have received, reviewed, and analyzed all documentation from the provider pertinent to the scope

of the audit. The on-site audit report consists of a professional report prepared by the audit staff to enumerate the results of an on-site audit. Each on-site audit report includes a specification of:

(1) The Time and Financial Information (TAFI) report line-items that have been adjusted or excluded,

(2) the amount of each adjustment or exclusion, and

(3) the principal reason for each adjustment or exclusion.

§355.9007. Reimbursement Rate Determination.

The Commission determines the reimbursement rate as follows:

(1) Exclusion of certain reported expenses. Provider agencies must ensure that all unallowable costs are eliminated from the Time and Financial Information (TAFI) report. The Texas Early Childhood Intervention Program (ECI) excludes any unallowable costs that are included in the TAFI report.

(2) Projected case management costs. ECI projects all allowable expenses from the reporting period to the next ensuing rate period. ECI determines reasonable and appropriate economic adjusters as described in §355.9008 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. ECI also adjusts rates if new legislation, regulations, or economic factors affect costs as specified in §355.9009 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(3) Rate setting methodology. ECI staff develops proposed reimbursement rates and recommends them to the Commission. The recommended rate is determined in the following manner:

(A) Each provider's total reported costs on the TAFI report are compared with their total reported costs on the ECI financial reports.

(B) Providers whose variance between reported costs on the TAFI report and the ECI financial reports exceeds plus or minus two standard deviations of the mean provider variance are eliminated.

(C) Total allowable case management costs for each provider will be determined from the allowable historical costs reported on the TAFI report.

(D) Each provider's total allowable case management cost is projected from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.9008 of this title (relating to Determination of Inflation Indices).

(E) Each provider's total allowable case management cost is divided by their associated number of unduplicated case management contacts for the period, thus determining the provider's cost per contact.

(F) The mean provider cost per contact is calculated, and the statistical outliers (those providers whose cost per contact exceeds plus or minus two standard deviations of the mean provider cost per contact) are eliminated. After removal of the statistical outliers, the mean cost per contact is calculated.

(G) The mean cost per contact is the proposed reimbursement rate.

(4) Rate setting authority. The Commission establishes the reimbursement rate in an open meeting after consideration of financial and statistical information and public testimony. The Commission sets rates which, in its opinion, are within budgetary constraints, adequate to reimburse the cost of operations for an efficient and economic provider, and justifiable given current economic conditions.

§355.9008. Determination of Inflation Indices.

The Texas Early Childhood Intervention Program (ECI) uses the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) as its cost inflation index. The IPD-PCE is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the U.S. Department of Commerce.

§355.9009. Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs.

(a) The Commission must adjust the reimbursement rate when federal or state laws, rules, regulations, policies, or guidelines are adopted, promulgated, judicially interpreted, or otherwise changed in ways that can reasonably be expected to affect allowable costs or alter the rates of change in allowable costs. The Commission must propose adjustments to the rate for these reasons at the earliest feasible opportunity to become effective on the effective date of the federal or state laws, rules, regulations, policies, or guidelines or at the beginning of the nearest calendar quarter for which federal financial participation is available. These adjustments must result in increases or decreases in the reimbursement rate.

(b) The Commission may also adjust reimbursement rates when changes in economic factors significantly affect allowable costs or alter the rates of change in allowable costs. Such changes in economic factors include, but are not limited to, substantial changes in the rate of wage and price inflation that are not discernible in Time and Financial Information (TAFI) report data, increases in the number of participating providers with significantly different costs, increases in the number of clients with significantly different costs, and changes in The Texas Early Childhood Intervention's (ECI's) budgetary capabilities.

(c) The Commission must consider all known changes in laws, rules, regulations, policies, guidelines, or economic factors at the time of the Commission's regular determination of reimbursement rates.

(d) The Commission may promulgate downward rate adjustments for budgetary reasons whenever such adjustments are necessary for ECI to operate within the limits of appropriated funds.

§355.9010. Allowable Cost Information.

(a) Factors affecting allowable costs. To be allowable under the Texas Early Childhood Intervention Program (ECI), costs must be:

(1) necessary and reasonable for the proper and efficient administration of the program to deliver services for which ECI has contracted;

(2) authorized or not prohibited under state or local laws or regulations;

(3) consistent with any limitations or exclusions described in this section, federal or state laws or other governing limitations as to types or amounts of cost items:

(4) consistent with policies, regulations, and procedures that apply uniformly to both the ECI program and other activities of the organization of which the provider agency is a part;

(5) treated consistently using generally accepted accounting principles appropriate to the circumstances;

(6) not allocable to or included as a cost of any other program in either the current or a prior period; and

(7) the net of all applicable credits.

(b) Reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, ECI considers the following:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the business or the performance under the contract;

(2) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(3) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, or members, and the fulfillment of the purpose for which the business was organized.

§355.9012. List of Allowable Costs.

The following list of costs allowable on the Texas Early Childhood Intervention Program (ECI) Time and Financial Information (TAFI) report is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost from this list does not necessarily mean that it is not an allowable cost.

(1) Compensation of ECI provider employees, which includes:

(A) wages and salaries. This can include deferred compensation, overtime pay, other monies subject to withholding taxes and Federal Insurance Contributions Act (FICA) deductions.

(B) payroll taxes and insurance. This includes FICA, unemployment compensation insurance, and workmen's compensation insurance.

(C) employee benefits. This includes employer-paid health and life insurance premiums and employer contributions to employee retirement accounts.

(2) Employee travel expenses. Expenses based on mileage are allowable if there is adequate documentation of the mileage and if the expenses were related to delivery of services for which ECI has contracted.

(3) Building, equipment, supplies and capital expenses.

(A) Depreciation and amortization expense. Property owned by the provider and improvements to owned, leased, or rented property valued at more than $1,000 at the time of purchase must be depreciated or amortized, using the straight-line method, with the following restrictions.

(i) For buildings, allowable depreciation is calculated by deducting the estimated salvage value from the historical cost and dividing the result by the asset's remaining years of useful life.

(ii) For building equipment, allowable depreciation expenses include air conditioners, furnaces, chairs, tables, and building and grounds improvements.

(B) Rental and lease expense. Rental and lease expense paid to a related party is limited to whichever is lower: the actual cost to the related party, or the actual cost if rented or purchased elsewhere. This includes buildings, building equipment, and furniture.

(C) Tax expense. This includes ad valorem, real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees.

(D) Insurance expense. This includes facility fire and casualty, professional liability and transportation equipment liability insurance.

(E) Utilities expense. This includes electricity and natural gas, water, waste water, garbage collection, and telephone.

(F) Materials and supplies. This includes office, reproduction and printing, and postage supplies.

(G) Training expenses. These are limited to direct costs for travel, lodging, food, and registration fees for training directly related to the provision of ECI services.

(H) Contract services provided by outside providers. This includes professional services provided by therapists to ECI clients, other professional services such as those of accountants and attorneys, and other services such as building maintenance.

§355.9013. List of Unallowable Costs.

Costs that are unallowable to report on the Texas Early Childhood Intervention Program (ECI) Time and Financial Information (TAFI) report are those expenses incurred by a provider agency which are not directly or indirectly related to the provision of contracted services according to applicable laws, rules, and standards. A provider agency may expend funds on unallowable cost items, but those costs must not be included in the TAFI report and are not used in calculating a rate recommendation. The following list is a general guide to the various unallowable costs frequently encountered in TAFI reports submitted by provider agencies and is not intended to be inclusive of all possible unallowable costs:

(1) advertising expenses other than those for employee recruitment, yellow page listings no larger than one column width and one inch length, and advertising to meet statutory or regulatory requirements;

(2) allowances for bad debts or other similar accounts;

(3) expenses not related to the provision of services for which ECI has contracted;

(4) contributions to political activities or contributions to charity;

(5) headquarters expenses that are not directly involved in providing services or supplies used by ECI Program staff in normal operations related to early intervention services;

(6) depreciation expenses other than those based on straight-line depreciation;

(7) discounts for administrative reasons; courtesy, cash, trade, and quantity discounts; rebates; or other discounts granted;

(8) dues and membership fees to organizations whose primary emphasis is not related to the services for which ECI has contracted;

(9) entertainment expenses, such as the costs of amusements and social activities;

(10) fund-raising expenses;

(11) expenses which are not the legal obligation of the provider agency;

(12) fines and other penalties for violation of statutes or ordinances; penalties for late payment of taxes, utilities, mortgages, loans, and other similar penalties;

(13) premiums for life insurance policies in which the beneficiary is the provider organization, unless life insurance is a requirement of a loan agreement and the loan is related to client care;

(14) interest expenses;

(15) medical equipment and supplies;

(16) personal compensation not related to the delivery of services for which ECI has contracted;

(17) personal expenses not related to the delivery of services for which ECI has contracted;

(18) expenses for the purchase of services, facilities, or supplies from related organizations or parties, if the expenses exceed whichever is lower: the cost to the related party or organization; or the price of comparable services, facilities, or supplies purchased in an arm's length transaction;

(19) rental or lease expense on any item not related to the delivery of services for which ECI has contracted;

(20) tax expense for federal, state, or local income tax; any tax levied on assets not related to the delivery of services for which ECI has contracted;

(21) transportation expenses for vehicles which are not generally suited to functions related to the provision of services for which ECI has contracted. Mileage expense may be included at a cost per mile not to exceed the current reimbursement rate set by the legislature for state employee travel;

(22) attorney fees;

(23) building depreciation expenses based on less than a 30-year life;

(24) contributions to self-insurance funds that do not represent payment on current liabilities;

(25) expenses that cannot be adequately documented;

(26) forms of compensation that are not clearly enumerated to dollar amount or that represent profit distributions;

(27) insurance premiums pertaining to items of unallowable cost; and

(28) values assigned to the services of unpaid workers or volunteers.

§355.9014. Reviews and Administrative Hearings.

(a) General requirements. A provider who disagrees with the Early Childhood Intervention Program (ECI) desk-review or on-site audit exclusions or adjustments, determination of inflation indices, or rate adjustments in response to new legislation, regulations, or economic factors under the provisions of §§621.132, 621.133, 621.135, or 621.136 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports; Notification; Determination of Inflation Indices; and Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs) must follow the procedures for informal reviews and administrative hearings set forth in this section to resolve the disagreement. Only contracted providers have standing to file for informal reviews and administrative hearings.

(b) Separation of reviews and hearings from the rate-setting process. The filing of a review or administrative hearing under the provisions of this section cannot stay the implementation of reimbursement rates adopted by Health and Human Services Commission (HHSC).

(c) Informal review. A provider who disagrees with an ECI decision or action under the criteria specified in subsection (a) of this section is entitled to an informal review with ECI staff. The review is an informal meeting, rather than a formal administrative hearing. It is intended to encourage open discussion between the provider and the staff, and to promote resolution of the matters in dispute. ECI staff shall conduct the review according to the following procedures:

(1) If the provider disagrees with ECI desk-review or on-site audit exclusions or adjustments, the provider must contact the executive director of ECI in writing within 30 calendar days of receiving ECI's written notification of the exclusions or adjustments, and request a review.

(2) If the provider disagrees with ECI's determination of inflation indices or with rate adjustments that have resulted from new legislation, regulations, or economic factors, the provider must contact the executive director of ECI in writing within 30 calendar days of the setting of rates by the ECI council, and request a review. Reviews of inflation indices and rate adjustments may only consider whether ECI staff followed the requirements of this chapter in developing its rates.

(3) On receipt of a request for review, the executive director of ECI or his designee appoints three ECI staff members as the review panel. The panel members must be knowledgeable in cost-report auditing or rate-setting issues, as appropriate. The executive director designates one of the three panel members as the lead reviewer. The lead reviewer arranges a meeting at the earliest possible date convenient to both the provider and review staff. At the meeting, the provider may present all the information he considers pertinent to his position. The review panel considers the provider's information and all the ECI information it deems necessary to reach a decision. Within 30 days of the review, the panel must send the provider its written decision.

(d) Administrative hearings. If a provider disagrees with the result of an informal review, the provider may request a formal administrative hearing. The provider must file a written request for a hearing with ECI, 4900 North Lamar Boulevard, Austin, Texas 78751-2399 within 15 days after receiving the review panel's decision. A provider may not request an administrative hearing before receiving ECI's written review decision as specified in subsection (c) of this section. The administrative hearing is limited to the issues that were considered in the informal review process.

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 August 16, 1999.

TRD-9905168
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 424–6756

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Chapter 361. Children's Health Insurance Program

1 TAC §361.1

The Health and Human Services Commission submits proposed new §361.001 in new Chapter 361, Children's Health Insurance Program, concerning the definition of significant traditional providers in the Children's Health Insurance Program (CHIP). Section 62.155(b) of the Health and Safety Code, added by Senate Bill 445, 76th Legislature, directs the Health and Human Services Commission to define significant traditional providers in the Children's Health Insurance Program by rule. New §361.001 contains the new proposed definition.

Don Green, Chief Financial Officer, has determined that for the first five-year period that the section is in effect, there will be no net fiscal implications as a result of administering §361.001. There will be no fiscal implications for local governments.

Mr. Green has also determined that for the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be the inclusion of providers who have traditionally served a majority of the recipients in the Medicaid program and enrollees in Texas Healthy Kids Corporation's program. There will be no costs to small businesses or persons complying with the section as proposed. There will be no impact on local employment.

Comments may be submitted in writing to Elizabeth Stanford, Children's Health Insurance Program, Texas Health and Human Services Commission, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, (512) 424-6568, or e-mail at elizabeth.stanford@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new rule is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority and under Texas Health and Safety Code, chapter 62, §62.051(d), which authorizes the commissioner to adopt rules necessary to implement the child health plan for certain low-income children.

The new rule implements Health and Safety Code, §62.155(b).

§361.001. Definition of Significant Traditional Provider.

In the Children's Health Insurance Program, significant traditional provider (STP) means:

(1) all hospitals receiving disproportionate share hospital funds in State Fiscal Year 1999; and

(2) all other providers in a county that, when listed by provider type in descending order by the amount of recipient or enrollee billings, provided the top 80 percent of recipient or enrollee billings for either the Texas Medicaid Program in State Fiscal Year 1998 as determined by the Texas Department of Health or the Texas Healthy Kids Corporation in State Fiscal Year 1999 as determined by the Texas Healthy Kids Corporation for each provider type.

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 August 16, 1999.

TRD-9905171
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 424–6576

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 2. General Policies and Procedures

Subchapter A. Principles and Procedures of the Commission

13 TAC §2.1

The Texas State Library and Archives Commission proposes an amendment to 13 TAC §2.1 relating to the definitions of a friends organizations. The amendment reinstates the definition of a friends organization to Chapter 2, General Policies and Procedures. The definition was deleted by accident in a reorganization of the section numbers of this chapter.

Raymond Hitt, Assistant State Librarian of the Texas State Library and Archives Commission, has determined that for the first five years the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Hitt also has determined that for each of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be to establish a harmonious working relationship with any affiliated nonprofit friends organizations that may be organized to support the purposes and duties of the commission. There are no cost implications to either small businesses or persons required to comply with the amended rule.

Comments on the proposed amendment may be submitted to Nancy Webb, Public Information Officer, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711-2927.

The amendment is proposed under the Government Code §441.006(b).

The proposed amendment affects the Government Code, §441.006(b) and §2255.001.

§2.1. Definitions.

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

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

(6) Friends group–An affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the commission.

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

Filed with the Office of the Secretary of State, on August 13, 1999.

TRD-9905081
Raymond Hitt
Assistant State Librarian

Texas State Library and Archives Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 463-5440

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Part II. Texas Historical Commission

Chapter 26. Practice and Procedure

13 TAC §26.15, §26.27

The Texas Historical Commission (THC) proposes amendments to Sections 26.15 and 26.27, concerning Memoranda of Understanding and Agreement (MOU), and Disposition of Archeological Artifacts and Data. The change to Section 26.15 is needed because the THC and the Texas Department of Transportation (TxDOT) have agreed that modifications are warranted to the existing MOU between the two agencies. The amendment to Section 26.27 extends the final due date for which curatorial facilities must be accredited to hold artifacts collected under Antiquities Permits.

F. Lawerence Oaks, Executive Director of the THC, has determined that for the first five-year period the rule is in effect there should be limited fiscal implications for state or local government as a result of enforcing or administering the proposed rule amendments.

Mr. Oaks has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of administering the proposed rule amendments will assist TxDOT and the THC in streamlining the review and compliance aspects of their relationship as it applies to the management of cultural resources within TxDOT right-of-ways. There should be limited effect on small businesses that contract with TxDOT, and there should also be no fiscal implications for private citizens, due to these amendments. The proposed changes to Section 26.27 may cause some fiscal impacts on curatorial facilities across the state if those institutions choose to become accredited by January of 2001. These costs will vary depending on the current condition of their collection care.

Any written comments on the proposed amendments may be submitted to Dr. James E. Bruseth, Director, Archeology Division, Texas Historical Commission, P. O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.* Any questions regarding these proposed amendments should be directed to Mark H. Denton, at the same address, or by calling (512) 463-5711.

The amendments are proposed under Section 442.005(q), Title 13 Part II of the Texas Government Code, and Section 191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statues, articles, or codes are affected by these amendments.

These rule amendments implement Section 442.005(b) of the Texas Government Code and Section 191.051 of the Texas Natural Resources Code.

§26.15. Memoranda of Understanding and Agreement.

(a) Introduction. It is the public policy and in the interest of the State of Texas to locate, protect, and preserve archeological sites and historic properties situated on public lands. Furthermore, it is in the public interest to enter into agreements to provide for timely and efficient construction of transportation facilities, reservoirs, public buildings, parks, and infrastructure. Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) are formal agreements which provide for the preservation of environment and cultural resources; wise, productive use of the cultural and natural resources; good stewardship of publicly owned landmarks; and protection of public and private investment in historic preservation.

(b) Primary Considerations and Stipulations. All agreements are subject to §26.17, 26.20, and 26.21 of this title (relating to Issuance of Permits, Archeological Permit Categories, and Application for Archeological Permit). Primary considerations in the development of permit specific memoranda shall include: the significance of the cultural resource(s); the nature the impact of the project on the cultural resource(s); and fiscally appropriate and cost-effective means to mitigate the effect of the project on the cultural resource(s). The memoranda will stipulate basic information related to the data recovery program for each permitted project, including, but not limited to: the significance of the area to be excavated; the methods and techniques to be employed; the coordination of the excavation with project construction schedules; and the estimated budget for all phases of work related to the investigation, including artifact analysis and report production. The committee may also require a performance bond to be posted prior to issuance of an antiquities permit. Memoranda of Understanding between the committee and other public agencies follow.

(1) Memorandum of Understanding with the Texas Department of Transportation.

(A) Purpose.

(i) It is the policy of the Texas Department of Transportation (TxDOT) to:

(I) identify the environmental impacts of TxDOT transportation projects, to coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordination in the environmental documentation for each project;

(II) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;

(III) receive input from the public through the public involvement process;

(IV) utilize a systematic interdisciplinary approach as an essential part of the development process for transportation projects; and

(V) strive for environmentally sound transportation activities through appropriate avoidance, treatment or mitigation, where feasible and prudent, in coordination with appropriate resource agencies.

(ii) In order to pursue this policy, the Texas Department of Transportation and the Texas Historical Commission (THC) have agreed to develop this Memorandum of Understanding (MOU), which will supersede the MOU which became effective on October 16, 1992.

(iii) It is the intent of this MOU to provide a formal mechanism by which THC may review TxDOT projects which have the potential to affect cultural resources within the jurisdiction of THC in order to assist TxDOT in making environmentally sound decisions, and to develop with TxDOT a system by which information developed by TxDOT and THC may be exchanged to their mutual benefit. Unless otherwise specified in this MOU, all definitions in 13

TAC Chapter 26, Rules of Practice and Procedures for the Antiquities Code of Texas, Texas Historical Commission, will be used.

(B) Authority.

(i) The Texas Transportation Code, §201.607, directs TxDOT to adopt MOU's with appropriate environmental resource agencies, including THC. The rules for coordination of state-assisted transportation projects found in §2.40-2.51, of this title (relating to Environmental Review and Public Involvement for Transportation Projects), underline the need for and importance of comprehensive environmental coordination for all transportation projects.

(ii) This MOU complements a Programmatic Agreement (PA) that TxDOT executed with the Federal Highway Administration (FHWA), the Texas State Historic Preservation Officer (TSHPO), and the Advisory Council on Historic Preservation (Council) in December of 1995. The PA delineates the process by which the signatory parties agree to carry out the National Historic Preservation Act, §106 (16 U.S.C. 470f) for federally assisted, permitted and licensed transportation projects within the state.

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

(i) Antiquities Code of Texas (ACT) - The state statute that designates the Texas Historical Commission as the legal custodian of all cultural resources, historic or prehistoric, within the public domain of the state, the body which issues antiquities permits, in accordance with 13 TAC Chapter 26 and as provided in ACT §191.054 and 191.091-098. The Texas Historical Commission assumed these responsibilities from the Texas Antiquities Committee which was abolished under Senate Bill 365, enacted by the 74th Legislature in 1995.

(ii) Antiquities permit - A permit issued by the Texas Historical Commission in order to regulate the taking, alteration, damage, destruction, salvage, archeological survey, testing, excavation and study of state archeological landmarks including prehistoric and historic archeological sites, and the preservation, protection, stabilization, conservation, rehabilitation, restoration, reconstruction, or demolition of historic structures and buildings.

(iii) Area of potential effects - The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist, as defined in 36 CFR Part 800.

(iv) Cultural resources - A general term referring to buildings, structures, objects, sites, and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(v) Eligibility - A site's eligibility for the National Register of Historic Places as set forth in 36 CFR Part 800, or for designation as a State Archeological Landmark, as set forth in 13 TAC Chapter 26.

(vi) Historic property - Any prehistoric or historic district, site, building, structure, or object which is included or eligible for inclusion in the National Register of Historic Places, as defined in 36 CFR Part 800, or meets the requirements for designation as a State Archeological Landmark as set forth in 13 TAC Chapter 26. (This term is used interchangeably with significant properties and significant cultural resources.)

(vii) National Register - The National Register of Historic Places (NRHP), which is the nation's inventory of historic places maintained by the U.S. Secretary of the Interior. (Historic properties included in or eligible for inclusion must meet National Register criteria for evaluation, as defined in 36 CFR Part 60.)

(viii) State Archeological Landmark (SAL) - Archeological and historic properties as defined in Subchapter D of the Antiquities Code of Texas (ACT) and identified in accordance with 13 TAC Chapter 26.

(D) Responsibilities.

(i) Texas Department of Transportation. The responsibilities of TxDOT pertain primarily to its functions as a transportation agency, and include:

(I) planning and designing safe, efficient, effective, and environmentally sensitive transportation facilities while avoiding, minimizing, or compensating for impacts to cultural resources to the fullest extent practicable;

(II) the timely and efficient construction of transportation facilities, in a manner consistent with approved plans and agreements which TxDOT has executed regarding the protection of significant cultural resources; and

(III) ongoing maintenance to provide safe, efficient, and environmentally sound transportation facilities for the traveling public.

(ii) Texas Historical Commission. The responsibilities of THC relate primarily to its functions as a cultural resource agency, and include:

(I) serving as the State Historic Preservation Office in Texas with responsibility under 36 CFR Part 800 - the regulations implementing §106 of the National Historic Preservation Act (16 U.S.C. 470f);

(II) reviewing federally assisted, licensed, or permitted undertakings with the potential to affect properties included in or eligible for inclusion in the National Register of Historic Places;

(III) providing assistance to agencies in their efforts to comply with the §106 process;

(IV) regulating the disposition and management of State Archeological Landmarks which are affected by non-federal undertakings, as described in the Antiquities Code of Texas and 13 TAC Chapter 26; and

(V) issuing permits for the taking, excavation, restoration, or study of State Archeological Landmarks as provided in ACT, §191.054 and 191.091-098.

(E) Early project planning for cultural resources.

(i) TxDOT is committed to performing early identification efforts for cultural resources located within the area of potential effects of proposed transportation projects and initiating THC coordination during the early planning stages of these projects, when the widest range of alternatives is open for consideration.

(ii) TxDOT is committed to implementing, in consultation with THC, alternative methods, techniques, and other strategies that are reasonable and feasible and that will enhance efficiency in complying with cultural resource laws. These include, but are not limited to, a programmatic approach to coordination of selected types of cultural resources, geoarcheological research to reduce archeological liabilities, development of significance standards, and alternative mitigation strategies. When implemented, with the concurrence of

THC, such alternative strategies will replace the procedures set forth in this MOU.

(iii) TxDOT is also committed to providing the public and interested parties with opportunities to provide input and express their views concerning potential project impacts to historic properties, and will ensure that cultural resource issues are incorporated into its regular public participation programs carried out under the National Environmental Policy Act (42 USC 4321-4347 et seq.), and §2.42-2.43 of this title (relating to Highway Construction Projects-Federal Aid, and Highway Construction Projects-State Funds), as far as practicable.

(iv) Cultural resource investigations by consultants.

(I) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards of 13 TAC Chapter 26, and as required by 36 CFR Part 800.

(II) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC through TxDOT's Environmental Affairs Division.

(F) Procedures for coordination regarding archeological resources. Survey and eligibility testing of archeological resources performed by the archeological staff of TxDOT's Environmental Affairs Division will not require an antiquities permit. All other archeological investigations shall require an antiquities permit. TxDOT and THC will consult to discuss the feasibility and benefits of TxDOT submitting a compilation of survey and test excavation results to THC in an annual or biannual report.

(i) Identification.

(I) TxDOT will undertake sufficient background research to determine which proposed projects require archeological surveys. Background research may include a search of records and files at THC and/or the Texas Archeological Research Laboratory (TARL), gathering information on soils, and a geomorphic history of the projects.

(II) Based on the results of background research, TxDOT will identify projects requiring coordination and/or archeological investigation for archeological resources.

(III) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide THC with a list of such projects on a monthly basis.

(ii) Archeological surveys.

(I) All projects, and portions of projects, recommended for survey by TxDOT during the initial phase of coordination will be subject to archeological survey using the methods agreed upon between TxDOT and THC in conformance with 36 CFR Part 800.

(II) An archeological survey will be conducted by a TxDOT professional archeological staff member or other archeologist who meets the state and federal standards. Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these are sufficient to determine that any sites present are unlikely to be eligible.

(III) When the archeological survey has been completed, TxDOT will submit the results of the survey to THC in a report of investigations, and request THC's review of the report. With its request for review, TxDOT will include:

(-a-) details of the results of the survey, including project description, anticipated project impact, and existing disturbance in the project area;

(-b-) environmental data on topography, soils, land use, survey methodology, survey results, and recommendations;

(-c-) the project location plotted on 7.5' Series USGS quadrangle maps;

(-d-) descriptions of any sites found;

(-e-) submission of electronic or paper copies of archeological site survey forms to TARL; and

(-f-) recommendations regarding whether the site(s) merit archeological testing or archeological monitoring.

(IV) THC will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

(-a-) a statement of concurrence or non-concurrence with the results of the survey; and

(-b-) any other comments relevant to the archeological resources which could be affected by the project.

(V) TxDOT will include the results of the archeological survey and recommendations in the environmental document for the project, as far as practicable.

(iii) Archeological eligibility testing phase.

(I) All sites and portions of sites recommended for eligibility testing by THC will be subject to archeological testing, using the methods agreed upon in writing by TxDOT and THC.

(II) THC may send a representative to observe any or all of the testing procedures.

(III) At the completion of testing, TxDOT will prepare a formal report of the results of testing.

(-a-) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 CFR Part 800.

(-b-) For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as a State Archeological Landmark is warranted, in accordance with ACT, §191.091-092, and 13 TAC Chapter 26.

(IV) TxDOT will send the testing report to THC with a request for review.

(V) In accordance with 36 CFR Part 800, THC will respond to the report within 30 days of receipt of TxDOT's request for review. The response will include:

(-a-) a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review; and

(-b-) a determination of the site's eligibility for listing in the National Register of Historic Places, or for designation as a State Archeological Landmark.

(iv) Archeological excavation/data recovery.

(I) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or eligible for designation as a State Archeological Landmark (for non- federal undertakings) based on consultation with THC during the survey phase or testing phase, will be subject to data recovery in conformance with a data recovery plan approved by THC.

(II) TxDOT, in consultation with THC, will develop a data recovery plan for each eligible site on a case-by-case basis, in accordance with 36 CFR Part 800 for federal undertakings and ACT §191 for non-federal undertakings. Final data recovery plans must be approved by THC prior to their implementation.

(III) Results of data recovery will be published as required by 36 CFR Part 800 and/or ACT §191.

(IV) All data recovery will be performed under an antiquities permit.

(v) Archeological sites found after award of contract.

(I) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction or any other activities that would affect the site.

(II) A TxDOT archeologist will examine the remains and report the findings to THC within 48 hours of the examination. The Federal Highway Administration (FHWA) and/or TxDOT will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 CFR Part 800, or as required by the Texas Antiquities Code for state funded projects.

(III) TxDOT and THC will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site or sites.

(IV) TxDOT may continue construction in the affected area upon approval of THC.

(vi) Artifact recovery and curation.

(I) Artifact recovery.

(-a-) The type and quantity of artifacts to be recovered will be detailed in the scope of work and will be selected to address the research questions.

(-b-) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation.

(-c-) To ensure proper care and curation, recovery methods must conform to 36 CFR Part 800, 13 TAC Chapter 26, and Council of Texas Archeologists (CTA) guidelines, as applicable.

(II) Artifact curation.

(-a-) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, all artifacts must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(-b-) Artifacts and samples will be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 CFR Part 79, the ACT, or CTA Curation Standards, as approved by THC. When appropriate, TxDOT will consult with THC to identify collections or portions of collections that do not have identifiable value for future research or public interpretation. This information may serve as the basis for future consultation between TxDOT and THC regarding the disposition of such collections or portions of collections. Final approval regarding the disposition of collections will be made by THC.

(-c-) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 CFR Part 79 and 13 TAC Chapter 26, as approved by THC.

(G) Procedures for coordination regarding historic properties, early project development. For purposes of this subsection and subsections (H) and (I) of this section, the term historic properties will refer only to non-archeological historic properties.

(i) Early in the project development process, TxDOT will determine whether federally assisted, licensed, or permitted transportation projects (federal projects) constitute undertakings under 36 CFR Part 800. In consultation with THC, it has been determined that certain types of projects do not require individual coordination and may be included in a monthly report. These projects involve culverts and other structures and objects which lack engineering, architectural or historical merit and projects which have a minimal potential to affect historic properties if such are present in the area of potential effects. TxDOT will notify THC of all such projects in a monthly report. The monthly report will include a summary of each project that is sufficient to allow THC to determine if more information is needed. THC will have 30 days to approve the monthly report or to request additional information concerning any of the projects on the list.

(ii) Early in the project development process, TxDOT will review its non-federal transportation projects and other activities occurring on any of the lands of the State of Texas (state projects) to determine whether they have the potential to affect properties 50 years of age or older under the terms of the ACT, 13 TAC Chapter 26. Effects include the removal, alteration, or renovation of one or more contributing elements to a historic property. TxDOT will notify THC of state projects which will not have an effect on any properties 50 years of age or older in a monthly report. The monthly report will include a summary of each project that is sufficient to allow THC to determine if more information is needed. THC will have 30 days to approve the monthly report or to request additional information concerning any of the projects on the list.

(iii) If TxDOT determines that a federal project constitutes an undertaking as defined in 30 CFR Part 800, or that a state project has the potential to affect a historic property, TxDOT will then individually coordinate the project with THC, except as noted in this MOU, in accordance with the provisions provided in subsequent sections of this agreement.

(H) Identification and evaluation of historic properties.

(i) For state and federal projects requiring individual THC coordination, TxDOT will identify properties 50 years of age or more that will be affected by state projects or that are located within the area of potential effects for federal projects. TxDOT will conduct a search of available records, including listings of Registered Texas Historic Landmarks, State Archeological Landmarks, and properties listed in the National Register as well as local historic property survey files on record at THC. THC will render all reasonable assistance to TxDOT in performing record searches on potentially historic properties.

(ii) TxDOT will conduct field surveys for all projects except those which qualify for inclusion on a monthly list. These surveys will be conducted in order to locate properties 50 years of age or more or properties that may otherwise be eligible for inclusion on the National Register of Historic Places or which may qualify as SAL's. If no such properties are identified, the following procedures will apply.

(I) For state projects, the project will be added to the monthly report coordinated with THC as described in this MOU.

(II) For federal projects, TxDOT will inform THC in accordance with 36 CFR Part 800.

(iii) If the identification efforts reveal properties 50 years of age or more, TxDOT will evaluate the significance of each property to determine if the property:

(I) qualifies as a SAL as defined by ACT, §191.092, for state projects; or

(II) is eligible for inclusion in the National Register, or is a contributing element of a National Register eligible or listed district, for federal projects.

(iv) If a state or federal project has the potential to affect a bridge-class structure more than 50 years of age and the structure is included in the State Historic Bridge Inventory (SHBI) that has been formally accepted by THC, the following procedures apply.

(I) If the structure has been determined not historically significant under the SHBI, TxDOT will coordinate with appropriate local entities to determine if the structure has local interest or significance. If no local interest or significance is identified, TxDOT will add the project to the monthly report. If TxDOT or THC identifies local interest or significance in these structures, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(II) If the bridge-class structure has been determined historically significant under the SHBI, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(v) If a state or federal project has the potential to affect a bridge-class structure more than 50 years of age that has not been included in a SHBI that has been formally accepted by THC, TxDOT will assess the significance of the structure to determine if it has potential engineering, architectural, or historic merit.

(I) In consultation with THC, bridge-class structures of types determined to have no potential merit will include, but not be limited to, common-type structures with no distinguishing features and those structures which have been substantially altered or widened within the past 50 years. When TxDOT determines that a bridge has no potential engineering, architectural or historic merit, TxDOT will add the project to the monthly report.

(II) When TxDOT determines that a bridge has potential engineering, architectural, or historic merit, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(III) If a state or federal project has the potential to cause an adverse effect to properties 50 years of age or more, as far as practicable, TxDOT will seek information and input concerning the historic significance of these properties from local entities, such as county historical commissions, local governments, city preservation officers, and neighborhood associations, that are likely to have knowledge of, or an interest in these properties.

(IV) TxDOT will coordinate with THC early in the project planning process to determine the historic significance of properties identified as 50 years of age or older that will be affected by state projects or that are located within the area of potential effects for federal projects. For state projects, TxDOT will initiate coordination with THC no later than 60 days prior to the contract bid opening for construction, as required by ACT, §191.098 and 13 TAC §26.22, or for federal projects, coordination for historic significance will follow 36 CFR Part 800 to ensure proper care and curation.

(V) For each project coordinated with THC, TxDOT will provide:

(-a-) a project description and scope;

(-b-) a map showing the location of the project as well as all properties 50 years of age or older documented through identification efforts;

(-c-) a statement detailing the efforts and methodology used to identify potentially historic buildings and structures in the project area;

(-d-) documentation on each identified property, including at least one photograph of the property, the address if known, an architectural description, and date of construction (estimated or known), and any known local, state or national historical designations; and

(-e-) a statement of historic significance for each identified property, including:

(-1-) for a state project, whether the property qualifies as a SAL;

(-2-) for a federal project, whether each property 50 years of age or more is eligible for inclusion in the National Register, including information as to whether the property is a contributing element of a National Register listed historic district or may be a contributing element of a potential National Register district;

(-f-) results of any coordination with interested parties concerning the significance of identified properties; and

(-g-) the results of TxDOT's historic significance evaluation for each identified property.

(VI) THC will respond within 30 days of receipt of TxDOT's request for review of individual projects as follows.

(-a-) For a state project, THC response will indicate whether the project will require an historic structures permit for a SAL or whether THC or another party intends to institute SAL proceedings for a property previously not designated a SAL in accordance with 13 TAC §26.11, 26.12 and 26.22, and ACT, §191.098. If THC does not respond within 30 days, TxDOT will assume that THC has no objection, and TxDOT will proceed with the project without further coordination with THC regarding historic property issues.

(-b-) For a federal project, all coordination with THC will follow the provisions of 36 CFR Part 800.

(I) Assessing and mitigating effects. TxDOT will assess the effects of state and federal projects on properties determined to qualify as SAL's for state projects and on properties determined to be listed or eligible for inclusion in the National Register for federal projects. TxDOT will then consult with THC using the following procedures.

(i) For a state project, TxDOT will consult with THC to determine if a historic structures permit is required for any proposed removals, alterations, or renovations to SAL's or to properties on which THC decides to institute SAL proceedings in accordance with 13 TAC §26.22 and ACT, §191.098.

(ii) For a federal project, TxDOT will apply the criteria of effect and consult with THC for a determination of effect in accordance with the provisions set forth in 36 CFR Part 800.

(iii) TxDOT will, to the maximum extent practicable, provide an early opportunity for the public and interested parties to receive information and to express their views on projects when a

historic property may be negatively affected by a transportation project.

(iv) TxDOT will also consult with THC to seek ways to avoid, minimize, or mitigate any negative effects on historic properties caused by federal and state projects in accordance with the following procedures.

(I) State project. TxDOT shall take THC comments into account when projects will have an effect on properties that are determined to qualify as SAL's or other properties that are listed or determined eligible for listing in the National Register. TxDOT will apply for historic structure permits for all projects that alter, renovate, or remove SAL's or other properties on which THC has instituted SAL proceedings, following the procedures delineated in 13 TAC §26.22 and ACT, §191.098.

(II) Federal project. TxDOT will follow the consultation procedures set out in 36 CFR Part 800.

(J) Environmental document and public involvement. TxDOT will include information on its efforts to identify archeological sites and historic properties, to determine the effects of projects on archeological sites and historic properties, and to mitigate any negative effect on these sites or properties in the environmental document, if one is prepared, and will include this information in public involvement activities to the maximum extent practicable.

(K) Dispute Resolution.

(i) If THC and TxDOT cannot reach agreement on any plans or actions carried out pursuant to this agreement, THC and TxDOT will consult to resolve the objection.

(ii) If THC and TxDOT cannot reach a compromise solution or otherwise resolve the objection through consultation, either TxDOT or THC may choose to invoke the dispute resolution provisions which are set forth in paragraph (3) of this subsection.

(iii) When these dispute resolution provisions are invoked, if TxDOT and THC cannot resolve their disagreement, the two agencies will resolve their dispute in accordance with the procedures established under state and federal rules.

(I) Federal undertakings will follow the dispute resolution procedures as stipulated in 36 CFR Part 800.

(II) State projects will follow the procedures provided in 13 TAC Chapter 26.

(L) Review of MOU. This memorandum shall be reviewed and updated by January 1, 2002, and by every fifth year from that date, as provided for in Transportation Code, §201.607.

~~[(1) Texas Department of Transportation (TxDOT).]~~

~~[(A) Need for agreement.]~~

~~*[(i)* It is the practice of TxDOT to:]~~

~~*[(I)* investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordination's in the environmental documentation for each project;]~~

~~*[(II)* base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;]~~

~~*[(III)* complete public involvement and a systematic interdisciplinary approach as essential parts of the development process for transportation projects; and~~

~~*[(IV)* mitigate project impacts to provide environmentally sound roadway projects where such mitigation is feasible and prudent and where such mitigation is agreed upon by appropriate agencies.]~~

~~*[(ii)* In order to pursue this policy, TxDOT, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) have agreed to develop the MOU, which will supersede TxDOT's MOU with the committee which became effective on January 5, 1972.]~~

~~*[(iii)* Senate Bill 352, enacted by the 72nd Legislature, directs TxDOT to adopt a memoranda of understanding with applicable environmental resources agencies.]~~

~~*[(iv)* The rules for coordination of state-assisted transportation projects developed by TxDOT, and published in the June 11, 1991, issue of the Texas Register (16 TexReg 3197) underline the need for and importance of comprehensive environmental coordination for all transportation projects.]~~

~~*[(v)* It is the intent of this MOU to provide a formal mechanism by which THC and the committee may review TxDOT projects which have the potential to affect historic properties (cultural resources) within the jurisdiction of THC and the committee, and to develop a system by which information held by TxDOT, THC, and the committee may be exchanged to their mutual benefit.]~~

~~*[(vi)* This memorandum supersedes that memorandum of understanding executed by TxDOT, THC, and the committee on January 31, 1992, and that memorandum of understanding is of no further force of effect.]~~

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

~~*[(i)* Antiquities Code of Texas (ACT)–Designates the Committee as the legal custodian of all cultural resources, historic and prehistoric, within the public domain of the State of Texas, and the body which issues antiquities permits, in accordance with this chapter and as provided in ACT, §191.054 and 191.091-191.098.]~~

~~*[(ii)* Antiquities permit–A permit issued by the committee in order to regulate site destruction, archeological testing, and archeological excavation.]~~

~~*[(iii)* Archeological excavation (data recovery)–Use of field techniques, including those of archeological testing, but with the goal of addressing specific research issues identified with the site's historic context. Excavation (data recovery) is conducted under an approved data recovery plan developed in consultation with the state historic preservation officer and the Advisory Council on Historic Preservation, following the procedure set forth under 36 Code of Federal Regulations 800, for federal undertakings; or in consultation with the committee for non-federal undertakings, in accordance with this chapter.]~~

~~*[(iv)* Archeological monitoring–Use of a professional archeologist present on-project when clearing and grubbing or other construction activities are being conducted. Should evidence of archeological remains be encountered, TxDOT will ensure that clearing and grubbing or other construction activities shall cease in the area of the archeological remains until these remains can be as-~~

sessed and evaluated in accordance with appropriate state and federal laws and regulations.]

[(v) Archeological resource/site–Locations where prehistoric or historic remains are found in a primary deposit, excluding extant standing structures dating from the historic time period. Note that archeological sites can be associated with a historic structure and historic structural ruins can be designated as archeological sites § 26.5 of this title (relating to Definitions). However, an extant standing structure itself (as contrasted to a historic structural ruin) does not constitute an archeological site in the absence of other associated remains. Prehistoric ruins are considered to be archeological sites.]

[(vi) Archeological survey–Archeological field methods used to locate archeological remains, including on-foot examination of the surface, shovel testing, and subsurface trenching by mechanical means where appropriate.]

[(vii) Archeological testing–Use of field techniques including excavation of holes larger or deeper than those of a shovel test, and including mechanical trenching and removal of artifacts. Archeological field research limited to determination of eligibility for the National Register of Historic Places (NRHP) for federal undertakings, as defined in 36 Code of Federal Regulations 800, or determination of significance for non-federal undertakings, as defined in Chapters 26, 27, and 28 of this title (relating to Practice and Procedure; Procedure; and State Archeological Landmarks). The review agency will determine what level of testing is appropriate under the MOU. The committee will determine when test phase investigations warrant an antiquities permit.]

[(viii) Committee–The Texas Antiquities Committee.

[(ix) Cultural resources–A general term synonymous with "historic properties."]

[(x) Eligibility–A site's eligibility for the NRHP as set forth in 36 Code of Federal Regulations 800.]

[(xi) Environmental documents–Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.]

[(xii) Historic property–Any prehistoric or historic district, site building, structure, or object included in, or eligible for inclusion in the NRHP, as defined in 36 Code of Federal Regulations 800.2.]

[(xiii) Historic resource–A feature of the built environment which is potentially eligible for listing in the NRHP as defined in 36 Code of Federal Regulations 60.]

[(xiv) Historic resource survey–Examination of the project for the presence of historic resources.]

[(xv) Mechanical testing–Excavation with backhoe, gradall, or other heavy equipment in order to locate archeological remains.]

[(xvi) Project development–The planning process of a highway project, which includes engineering design as well as environmental studies and public involvement procedures. Project development generally includes all studies of a project prior to actual construction.]

[(xvii) Review agency–The appropriate review agency for each particular circumstance. THC has jurisdiction over federal undertakings, as defined in 36 Code of Federal Regulations 800, and the Committee has jurisdiction over non-federal undertakings and the issuing of antiquities permits, as provided in ACT, § 191.054 and § 191.098.]

[(xviii) Right-of-way–The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.]

[(xix) Shovel testing–Excavation of test holes which shall measure at least 35 centimeters in diameter and shall be excavated to a basal horizon or bedrock, or to a depth of at least one meter if a basal horizon or bedrock is not reached. This technique is used both in areas where surface visibility is low and in areas where the potential for archeological remains is high. Shovel testing is also used when surface indications of archeological remains are encountered in order to provide a preliminary determination of the depth of the cultural deposits.]

[(xx) State archeological landmark–Archeological and historic properties as defined in the ACT, Subchapter D, and identified in accordance with Chapters 26 and 28 of this title (relating to Practice and Procedure and State Archeological Landmarks).]

[(xxi) Subsurface survey–Mechanical or hand-dug probing of a site or project area during the survey phase to record or examine subsurface deposits for the collection of archeological or geomorphic data.]

[(C) Responsibilities.]

[(i) TxDOT.]

[(I) The responsibilities of TxDOT pertain to its functions as a transportation agency, and include the following:]

[(-a-) planning and designing safe, efficient, cost-effective, and environmentally sound transportation facilities, and avoiding, minimizing, or compensating for environmental impacts as far as practicable when they are anticipated to occur;]

[(-b-) the timely and efficient construction of transportation facilities, executed in a manner consistent with approved plans or agreements which have been entered into by the department for the protection of the natural environment and cultural sites; and]

[(-c-) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the traveling public, and dedication to the protection of natural and cultural resources within the jurisdiction of TxDOT;]

[(-d-) a commitment to the preservation and enhancement of the human environment.]

[(II) Senate Bill 352 which became effective on September 1, 1991, directs TxDOT to adopt an MOU with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic and archeological resources.]

[(ii) THC. THC, through the Office of the State Historic Preservation Officer (SHPO), regulates the disposition and management of historic properties which are affected by federal undertakings, as described in the National Historic Preservation Act, § 106, and in 36 Code of Federal Regulations 800.]

[(iii) The committee.]

[(I) ~~The committee regulates the disposition and management of archeological landmarks which are affected by non-federal undertakings, as described in the ACT and this chapter.~~]

[(II) ~~The committee issues permits for the taking, excavation, restoration, or study of state archeological landmarks as provided in ACT, § 191.054 and 191.091-191.098.~~]

~~[(D) Provisions.~~]

[(i) ~~Procedures for coordination regarding archeological resources.~~]

[(I) ~~Initial coordination phase.~~]

~~[(-a-) TxDOT may combine the initial coordination phase with the archeological survey phase in order to expedite project coordination. In these cases, the review agency will be afforded an opportunity to comment on both the survey methodology and survey results.~~]

~~[(-b-) TxDOT will identify projects requiring coordination for archeological resources, as indicated by the level of project documentation. Such projects include:~~]

~~[(-1-) any project which, although classified as a categorical exclusion (CE), is judged to have the potential to affect archeological resources;~~]

~~[(-2-) all projects requiring issuance of a finding of no significant impact (FONSI), when such a project is judged to have the potential to affect archeological resources; and~~]

~~[(-3-) all projects requiring an environmental impact statement (EIS).~~]

~~[(-c-) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide THC and the Committee with a list of such projects on a monthly basis.~~]

~~[(-d-) TxDOT will begin coordination by conducting a search of the site files at the Texas Archeological Research Laboratory (TARL) as well as site files and survey records held at the THC and the Committee. THC and the Committee will render TxDOT all reasonable assistance in the search.~~]

~~[(-e-) TxDOT will request a review of the project by the review agency. TxDOT will submit for review:~~]

~~[(-1-) plans, project descriptions, and other documentation required by the review agency for review;~~]

~~[(-2-) a statement detailing the result of the site files search, including information on any sites listed in the site files and occurring on or near the project, including a list of properties on or near the project which are listed in the NRHP, or are designated as state archeological landmarks (SAL's); and~~]

~~[(-3-) a statement recommending which portions of the project are to be surveyed, the techniques to be used on each part of the project, and identifying the portions of the project which have high likelihood of yielding archeological remains.~~]

~~[(-f-) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will include:~~]

~~[(-1-) a statement of concurrence or nonconcurrence with the results of the site files check and the survey recommendations contained in the TxDOT request for review; and~~]

~~[(-2-) any other comments relevant to the archeological resources which could be affected by the project.~~]

~~[(-g-) TxDOT will include the results of the site files search, survey recommendations, and comments received from the review agency in any environmental assessment or draft EIS written as part of the project, and will present findings at the public hearing, if such hearing is held.~~]

[(II) ~~Archeological survey phase.~~]

~~[(-a-) All projects, and portions of projects, recommended for survey by TxDOT and for which concurrence has been obtained from the review agency during the initial phase of coordination will be the subjects of archeological survey using the methods agreed upon between TxDOT and the review agency.~~]

~~[(-b-) An archeological survey will be conducted by a member of the TxDOT professional archeological staff or other archeologist approved by the review agency.~~]

~~[(-c-) When the archeological survey has been completed, TxDOT will request a review of the results of the survey. With its request for review, TxDOT will include:~~]

~~[(-1-) a letter report or form detailing the results of the survey, including a discussion of any deviations from the methods agreed upon during the initial phase of coordination;~~]

~~[(-2-) the project location plotted on 7.5' Series USGS quadrangle maps;~~]

~~[(-3-) copies of archeological site survey forms for any new archeological sites discovered during survey;~~]

~~[(-4-) copies of archeological site survey forms for any previously recorded archeological sites; ~~]

~~[(-5-) recommendations regarding archeological testing or archeological monitoring; and~~]

~~[(-6-) if deemed necessary, the review agency may request TxDOT to produce a formal report of findings made as a result of a survey phase investigation.~~]

~~[(-d-) The review agency will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:~~]

~~[(-1-) a statement of concurrence or nonconcurrence with the results of the site files check and the survey results contained in the TxDOT request for review; and~~]

~~[(-2-) any other comments relevant to the archeological resources which could be affected by the project.~~]

~~[(-e-) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or final EIS, if one is prepared.~~]

[(III) ~~Archeological testing phase.~~]

~~[(-a-) All sites and portions of sites recommended for testing by TxDOT, THC, or the Committee will be subjects of archeological testing, using methods agreed upon by TxDOT and the review agency.~~]

~~[(-b-) The review agency may send a representative to observe any or all of the testing procedures.~~]

~~[(-c-) At the completion of testing, TxDOT will prepare a formal report of the results of testing.~~]

~~[(-1-) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 Code of Federal Regulations 800.~~]

[(-2-) For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as an SAL is warranted, in accordance with ACT, § 191.091 and § 191.092, and Chapters 26, 27, and 28 of this title (relating to Practice and Procedure; Procedure; and State Archeological Landmarks).]

[(-d-) TxDOT will send the testing report to the review agency with a request for review.]

[(-e-) THC, in accordance with 36 Code of Federal Regulations 800, will respond to the report within 30 days of receipt of the TxDOT request for review. The response will include:]

[(-1-) a statement of concurrence or nonconcurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;]

[(-2-) a determination of the site's eligibility for listing in the NRHP; and]

[(-3-) any other comments relevant to the archeological site which has undergone archeological testing.]

[(-f-) The Committee, in accordance with this chapter and the ACT, Chapter 191, will respond to the report within 60 days of receipt of the TxDOT request for review. The response will include:]

[(-1-) a statement of concurrence or nonconcurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;]

[(-2-) a determination of whether the site warrants designation as an SAL; and]

[(-3-) any other comments relevant to the archeological site which has undergone archeological testing.]

[(-g-) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or final EIS, if one is prepared.]

[(-h-) The Committee may require an antiquities permit be issued for some test phase investigations if the scope of the investigations warrants it. All testing performed by non- TxDOT staff archeologists must be performed under an antiquities permit.]

[(IV) Archeological excavation/data recovery.]

[(-a-) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or significant (for non-federal undertakings) based on consultation with the review agency during the survey phase or testing phase will be the subjects of data recovery.]

[(-b-) TxDOT (or their contracted agent), in consultation with the review agency, will develop a suitable data recovery plan for each eligible or significant archeological site on a case-by-case basis, in accordance with 36 Code of Federal Regulations 800 for federal undertakings and the ACT, Chapter 191, for non-federal undertakings. Final data recovery plans must be approved by the review agency prior to their implementation.]

[(-c-) Results of data recovery will be published as required by 36 Code of Federal Regulations 800 and/or the ACT, Chapter 191.]

[(V) Archeological sites found after award of contract.]

[(-a-) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction that would affect the site.]

[(-b-) A TxDOT archeologist will examine the remains and report the findings to the appropriate review agency. The Federal Highway Administration (FHWA) will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 Code of Federal Regulations 800.]

[(-c-) TxDOT and the review agency will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site.]

[(-d-) TxDOT may continue construction in the affected area upon approval of the review agency.]

[(ii) Procedures for coordination regarding historic resources.]

[(I) TxDOT will identify projects requiring coordination with the review agency for historic resources. Coordination will be required for:]

[(-a-) any project which, although classified as a CE, is judged to have the potential to affect historical resources;]

[(-b-) any project requiring the issuance of an FONSI, when such project is judged to have the potential to affect historic resources; and]

[(-c-) all projects requiring an EIS.]

[(II) TxDOT will identify which projects require individual coordination for historic resources. TxDOT will provide a list of those projects which do not require individual coordination to THC and the Committee on a monthly basis.]

[(III) For projects requiring individual coordination, TxDOT will conduct a search of available records, references, and resources, including listings of Registered Texas Historic Landmarks (RTHL's), SAL's, and properties listed in the NRHP, as well as local historic property survey files on record at THC. THC and the Committee will render all reasonable assistance to TxDOT in the search.]

[(IV) TxDOT will conduct historic resources surveys to locate historic resources which are potentially eligible for inclusion in the NRHP.]

[(V) For each project requiring individual historic resources coordination with the review agency, TxDOT will provide the following:]

[(-a-) plans, project descriptions, and other documentation as needed;]

[(-b-) a statement detailing the results of the records search; and]

[(-c-) a summary of the results of the historic resources survey, describing all resources:]

[(-1-) listed in or potentially eligible for listing in the NRHP for federal undertakings; or]

[(-2-) which possess historical interest as defined by the ACT, § 191.092, for non- federal undertakings.]

[(VI) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will be in accordance with 36 Code of Federal Regulations 800, ACT, Chapter 191, and this chapter.]

[(VII) TxDOT will include information on historic resources in the environmental assessment or final EIS, if one is prepared.]

[(VIII) All historic resources either listed in or determined eligible for listing in the NRHP (for federal undertakings)

or designated SAL's (for non-federal undertakings) which are affected by projects will be subject to mitigation of these effects.]

[(IX) TxDOT, in consultation with the review agency, will develop a suitable mitigation plan:]

[(-a-) in accordance with 36 Code of Federal Regulations 800 for historic resources listed in or determined eligible for listing in the NRHP for federal undertakings; or]

[(-b-) in accordance with the ACT, Chapter 191, for historic resources designated as SAL's for non-federal undertakings. Final mitigation plans must be approved by the review agency prior to implementation of mitigation efforts.]

[(iii) Artifact recovery and curation.]

[(I) Artifact recovery.]

[(-a-) All artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents must be cleaned, labeled, and processed in preparation for long-term curation.]

[(-b-) Recovery methods must conform to 36 Code of Federal Regulations 800, Committee rules, and/or Council of Texas Archeologists (CTA) guidelines to ensure proper care and curation.]

[(II) Artifact curation.]

[(-a-) TxDOT may temporarily house artifacts and samples during their laboratory analysis research, but all artifacts must be transferred to a permanent curatorial facility within a reasonable time period, to be decided by the review agency.]

[(-b-) All artifacts and samples must be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 Code of Federal Regulations 800, Committee rules, or CTA curation standards, as approved by the review agency.]

[(-c-) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 Code of Federal Regulations 79, Committee rules, or CTA curation standards, as approved by the review agency.]

[(iv) Resolution of objections.]

[(I) Should the reviewing agency timely object (within stipulated review period) to any plans provided for review or any actions proposed by TxDOT regarding:]

[(-a-) any phase of coordination for archeological resources including initial coordination, survey, testing, excavation/data recovery, and reporting;]

[(-b-) any phase of coordination for historic resources including initial coordination, historic resources survey, and mitigation; or]

[(-c-) curation of site materials, documentation, and samples, TxDOT and reviewing agency shall enter into consultation to resolve the objection.]

[(II) If the objection cannot be resolved through the consultation process, either TxDOT or the reviewing agency, at any time, may terminate consultation and invoke the provisions of subparagraph (E) of this paragraph.]

[(E) Dispute resolution.]

[(i) In such instances when TxDOT and the review agency are unable to reach a mutually agreeable plan of action regarding survey, testing, determination of eligibility or significance, or mitigation, a good-faith effort will be made to develop a compromise plan.]

[(ii) If TxDOT and the review agency cannot arrive at a compromise plan, the dispute will be resolved in accordance with procedures established under state and federal rules.]

[(I) Federal undertakings will follow the procedures provided in 36 Code of Federal Regulations 800, including consultation with the Advisory Council on Historic Preservation, if necessary.]

[(II) Non-federal undertakings will follow the procedures provided in Chapters 26, 27, and 28 of this title (relating to Practice and Procedure; Procedure; and State Archeological Landmarks).]

[(F) Review of MOU. This memorandum shall be reviewed and updated no later than January 1, 1997, and every fifth year after that date, as provided for in Senate Bill 352 and Texas Civil Statutes, Article 6673g, § 3(d).]

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

§26.27. Disposition of Archeological Artifacts and Data.

(a) Processing. Investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, and preserving all collections, specimens, samples, and records, and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the committee are contained in the Texas Natural Resources Code of 1977, Title 9, Chapter 191, Section 191.052 (b). The committee will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the policy of the committee that such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks.

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial institution approved by the committee. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) No later than December 31, 2002 [By January 1, 2000], institutions that curate artifacts recovered under Antiquities Permit(s) must be accredited through the Council of Texas Archeologists Accreditation and Review Council [Committee] accreditation program. Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905298
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Subchapter H. Telephone

16 TAC §23.95

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

The Public Utility Commission of Texas (commission) proposes the repeal of §23.95, relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives. Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, House Bill 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.95 will be duplicative of proposed new §26.172 of this title (relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

James Ezell, assistant general counsel, Office of Regulatory Affairs-Legal Division, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Ezell has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of a duplicative rule. There will be no effect on small businesses or micro businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Mr. Ezell has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.95.

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

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§23.95. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.

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 August 13, 1999.

TRD-9905100
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936–7308

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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter I. Alternative Regulation

16 TAC §26.172

The Public Utility Commission of Texas (commission) proposes new §26.172, relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives. The proposed new rule will replace §23.95 of this title (relating Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives). Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, House Bill 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the require-

ments of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

General changes to rule language:

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act have been updated to conform to the Texas Utilities Code throughout the sections and citations to other sections of the commission's rules have been updated to reflect the new section designations. The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 17709.

Other changes specific to each section:

Section 23.95(c)(9), (c)(10), (d)(9), and (d)(10) have not been included in proposed new 26.172. The sections relate to the use of a generic ballot and generic balloting instructions. The commission does not believe the use of a generic ballot or generic balloting instruction is necessary when a telephone cooperative is voting on its status of deregulation. The modification also removes the telephone cooperatives' requirement to file with the commission any alternative ballot language or alternative voting instructions.

Subsection (g) has been added to the rule. The subsection, titled "Reporting requirements," requires cooperatives to notify the commission when it votes to deregulate or reverse its deregulation. This reporting requirement will assist the commission in compiling an accurate list of telephone cooperatives that are deregulated.

James Ezell, assistant general counsel, Office of Regulatory Affairs-Legal Division, has determined that for each year of the first five-year period the proposed 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. Ezell has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to provide to all of the state's citizens adequate and efficient telecommunications service by facilitating the small incumbent local exchange carriers' abilities to offer, in a more timely manner, to subscribers those technologically advanced services that are available in metropolitan areas from large incumbent local exchange companies. There will be no effect on small businesses or micro businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Ezell has also determined that for each year of the first five years the proposed section is in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to Project Number 17709.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §53.306 which grants the commission authority to review changes proposed under Subchapter G.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §§53.301 - 53.308.

§26.172. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.

(a) Purpose. A cooperative seeking to partially deregulate or to reverse partial deregulation shall utilize the voting procedures required in this section.

(b) Definition. The term "majority vote" shall mean a vote of more than 50% of the valid ballots returned by the cooperative's members.

(c) Balloting. Balloting by a cooperative shall comply with the requirements in this subsection.

(1) A ballot and a postage-paid return envelope, or a ballot on a postage-paid postcard addressed to the cooperative, and instructions shall be provided to each member of the cooperative.

(2) Materials required in paragraph (1) of this subsection may be provided as bill inserts or as a separate mailing.

(3) The ballot shall be printed as a separate form on paper that is a different color from any other paper contained in the same mailing and shall be contained on one page or postcard.

(4) Ballots shall be written in English and in Spanish if §26.26 of this title (relating to Spanish Language Requirements) is applicable.

(5) The ballot shall be entitled:

(A) "BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or

(B) "BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.

(6) Each ballot shall:

(A) provide brief instructions to mark with an "X" either the box "FOR" or "AGAINST" the action that is the subject of the balloting;

(B) provide in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation; and

(C) contain a box labeled "FOR Authorizing the Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to partially deregulate, or contain a box labeled "FOR Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to reverse partial deregulation.

(7) Ballots must include the statement "By signing this ballot, I affirm that I am the member to whom this ballot was addressed" and must provide, following the statement, lined spaces for the member to provide his or her printed name, address, telephone number, and signature.

(8) Ballots shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.

(d) Instructions for balloting. Instructions for balloting by a cooperative shall comply with the requirements in this subsection.

(1) Instructions for balloting shall accompany each ballot provided to a member of the cooperative.

(2) Instructions shall be printed as a form separate from the ballot and any other insert provided in the same mailing and shall be provided in English and in Spanish, if §26.26 (relating to Spanish Language Requirements) is applicable.

(3) Instructions shall be entitled:

(A) "INSTRUCTIONS FOR BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or

(B) "INSTRUCTIONS FOR BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.

(4) Instructions shall explain in plain language the meaning of:

(A) partial deregulation and the effects of partial deregulation, if the vote is one to partially deregulate; or

(B) reversal of partial deregulation and the effects of reversal of partial deregulation, if the vote is one to reverse partial deregulation.

(5) Instructions must state in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation.

(6) Instructions shall explain that a ballot must be returned for tabulation via U.S. mail.

(7) Instructions shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.

(8) Instructions shall define majority vote and shall explain that a majority vote is required in order to achieve the action that is the subject of the balloting.

(e) Tabulation of ballots.

(1) A ballot will be tabulated if it:

(A) contains a mark in the box either "FOR" or "AGAINST" the action being sought;

(B) is postmarked for tabulation within 45 days following the date that ballots are mailed to members; and

(C) is returned via U.S. mail.

(2) The following votes will not be tabulated:

(A) a ballot for which neither a "FOR" nor an "AGAINST" vote is cast;

(B) a ballot for which both a "FOR" and an "AGAINST" vote is cast;

(C) a ballot that represents a second vote for the member;

(D) a ballot for which the procedures required by this section are not followed;

(E) a ballot for which the envelope or postcard bears a postmark later than the 45th day following the date the ballot or postcard was mailed to the member.

(F) a ballot that represents a vote from a non-member customer.

(G) a ballot which represents a proxy vote.

(H) a ballot for which the envelope or postcard bears no legible postmark from the U.S. Postal Service unless it is received by the cooperative via the U.S. mail within 45 days following the date the ballot or postcard was mailed to the member.

(f) Retention of Ballots.

(1) A cooperative shall retain for 90 days after the end of the 45 day voting period all ballots and envelopes returned by the members in the voting process.

(2) During the 90 day retention period a cooperative shall produce the ballots and envelopes to the commission for inspection if so requested by the commission.

(g) Reporting Requirement. Any telephone cooperative deregulated prior to the effective date of this section shall file a letter with the commission within 30 days from the effective date of this section. Any telephone cooperative deregulated or reversing its deregulation after the effective date of this section shall file a letter with the commission within 30 days of deregulation or reversal of deregulation. The letter shall state whether the cooperative is partially deregulating or reversing deregulation, the date of the change, and whether its members approved the change. The letter shall be filed in Project Number 21122.

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 August 13, 1999.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Subchapter R. Provisions Relating to Municipal Regulation and Rights-of-Way-Management

16 TAC §26.461

The Public Utility Commission of Texas (commission) proposes new §26.461, relating to Access Line Categories. The proposed new rule implements the provisions of House Bill 1777, 76th Legislature, Regular Session (1999). The proposed new rule will establish three competitively neutral categories of access lines for statewide use in establishing a uniform method for compensating municipalities for use of the public rights-of-way by certificated telecommunications providers. Project Number 20935 has been assigned to this proceeding.

D. Diane Parker, Senior Attorney, Office of Policy Development and Elango Rajagopal, Senior Policy Analyst, Office of Regulatory Affairs, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Parker and Mr. Rajagopal have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to minimize the effects of rate increases on telephone customers attributable to changes in the way municipalities are compensated for the use of public rights-of-way. In addition, the categories as proposed are anticipated to make the deployment of advanced telecommunication services affordable to residential customers. As a result of enforcing this section, small telecommunications businesses or micro-businesses will be required to invest in new billing software for tracking and categorizing access lines. The economic cost to persons who are required to comply with the section as proposed cannot be determined due to the diverse billing systems used in the telecommunications industry.

Ms. Parker and Mr. Rajagopal have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. Additionally, the commission seeks comment on whether the dividing line of 6.44 Mbps between proposed category 2 and category 3 is appropriate to address changes in technology in the provisioning of advanced telecommunications services. Should the commission review this proposed division in the future, and if so, how often? All comments should refer to Project Number 20935.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This proposed rule is also authorized by House Bill 1777, 76th Legislature, Regular Session (1999) §283.055 which provides that not later than November 1, 1999, the commission shall establish not more than three categories of access lines for statewide use.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and House Bill 1777, 76th Legislature, Regular Session (1999) §283.055.

§26.461. Access Line Categories.

(a) Purpose. This section establishes three competitively neutral, non-discriminatory categories of access lines for statewide use in establishing a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers (CTPs).

(b) Application. The provisions of this section apply to CTPs, as defined by subsection (c)(2) of this section, and to municipalities in the State of Texas.

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

(1) Access lines - As defined in Local Government Code §283.002 (1).

(2) Certificated telecommunications provider (CTP) - A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service.

(3) Customer - An end-use customer.

(4) Public right-of-way - The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airways above a right-of-way with regard to wireless telecommunications.

(d) Access line categories. There shall be three categories of access lines. The three categories shall be as follows:

(1) Category 1 shall include both analog and digital residential access lines, regardless of the bit rate delivered to the end use customer. This category shall not include point-to-point or private lines.

(2) Category 2 shall include all analog and digital non-residential access lines. For digital lines the bit rate delivered to the end use customer by each access line shall be less than or equal to 6.44 Mbps. This category shall also include residential and non-residential point-to-point lines or private lines. For digital point-to-point or private lines the bit rate delivered to the end use customer shall be less than or equal to 6.44 Mbps.

(3) Category 3 shall include all digital non-residential access lines where the bit rate delivered to the end use customer by each access line shall be greater than 6.44 Mbps. This category shall also include residential and non- residential point-to-point lines or private lines where the bit rate delivered to the end use customer shall be greater than 6.44 Mbps.

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

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TRD-9905077
Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
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TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §§153.1, 153.9, 153.10, 153.13, 153.15, 153.16, 153.17, 153.18, 153.20, 153.21, 153.25, 153.27

The Texas Appraiser Licensing and Certification Board proposes amendments to §§153.1, 153.9, 153.10, 153.13, 153.15, 153.16, 153.17, 153.18, 153.20, 153.21, 153.25 and 153.27, concerning provisions of the Texas Appraiser Licensing and Certification Act.

Section 153.1 is being amended to change the word "provision" to "rule" to comply with changes in USPAP-99.

Section 153.9 is being amended to correct a title reference.

Section 153.10 is being amended help to clarify when someone is certified, licensed, or authorized, and that they are not renewed until the TALCB acts.

Section 153.13 is being amended to help the Appraiser Licensing and Certification Board better conform to the AQB criteria for pre-licensing education. The section is also amended to clean up language. Other amendments include requiring answer key with exam, requiring completion certificate, placing "uniform" in the teaching of the Uniform Standards and requiring educational providers to notify the board of the AQB approval.

Section 153.15 is amended for clarification and to delete obsolete language.

Section 153.16 is amended to make identical requirements to the requirements for Appraiser Trainees, correct a subsection reference and make requirements for Provisional Licensees to keep a log (which will be submitted for each two-year renewal).

Section 153.17 is amended for conformity, to add a necessary reference and clarification. A new subsection (e) is added for clarification regarding appraisal logs for Provisional Licensees and Appraiser Trainees.

Section 153.18 is amended for clarification and to delete obsolete language. Subsection (b)(3) implements a later effective date for persons required to comply with continuing education hours for renewal of Appraiser Trainee Authorization. This requirement is not considered enforceable until January 1, 2000.

Elsewhere in this issue of the *Texas Register*, a "correction of error" notice has been published to rectify an erroneous effective date. An amendment to §153.18 was adopted and published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6293). The effective date was cited as January 1, 2000. This was an error on behalf of the Texas Appraiser Licensing and Certification Board. The correct date should have been August 15, 1999, which is the standard 20 days after submission to the Texas Register.

Section 153.20 is amended for clarification and deletion of obsolete language and to add new paragraphs (18) and (19) under subsection (a) which concerns credentials and failing to comply with the board.

Section 153.21 is amended to delete obsolete language.

Section 153.25 is amended to remove a dated reference.

Section 153.27 is amended to delete obsolete language and to correct a reference.

The Texas Appraiser Licensing and Certification Board previously published a proposed review of Chapter 153 in the June 11, 1999, issue of the *Texas Register* (24 TexReg 4481). The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Renil C. Linér, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government.

Mr. Linér also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules and the elimination of unnecessary and dated language. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted Renil C. Linér, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188 Austin, Texas 78711-2188.

The amendments are proposed 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.

Section 9, Licensing and Certification Requirements; §9A , Alternate Methods of Licensing; §14, Certificate and Licence Renewal, and §17, Appraiser Trainees are affected by the proposal.

§153.1. Definitions.

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

(1) Act - The Texas Appraiser Licensing and Certification Act.

(2) Analysis - The act or process of providing information, recommendations or conclusions on diversified problems in real estate other than estimating value.

(3) Applicant - A person seeking to be certified or licensed as an appraiser or approved as an appraiser trainee.

(4) Appraisal - The act or process of estimating value or an estimate of value.

(5) Appraisal Standards Board - The Appraisal Standards Board (ASB) of the Appraisal Foundation or its successor.

(6) Appraisal Subcommittee - The Appraisal Subcommittee of the Federal Financial Institutions Examination Council or its successor.

(7) Appraiser Qualifications Board - The Appraiser Qualifications Board (AQB) of the Appraisal Foundation or its successor.

(8) Appraiser trainee - A person approved by the Texas Appraiser Licensing and Certification Board to perform appraisals or appraiser services under the direction of a sponsoring certified appraiser.

(9) Board - The Texas Appraiser Licensing and Certification Board.

(10) Classroom hour - Fifty minutes of actual classroom session time.

(11) Client - Any party for whom an appraiser performs a service.

(12) College - A junior or community college, senior college, university, or any other postsecondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.

(13) Commissioner - The commissioner of the Texas Appraiser Licensing and Certification Board.

(14) Complete appraisal - An appraisal performed without invoking the departure rule [~~provision~~].

(15) Core real estate courses - Courses which are specified in the Real Estate Licensing Act, §7(a) (Texas Civil Statutes, Article 6573a) of which the Texas Appraiser Licensing and Certification Board (TALCB) will accept principles of real estate, real estate appraisal, real estate law, real estate finance, real estate math, property management, and real estate investments for partially meeting the educational requirements for appraiser certification or licensure.

(16) Council - The Federal Financial Institutions Examination Council (FFIEC) or its successor.

(17) Departure rule [~~provision~~] - A limited departure from a requirement of the Uniform Standards of Professional Appraisal Practice that is: classified as a specific guideline rather than a binding requirement, and permitted only if the result of the departure is not confusing or misleading and the specific guideline from which the appraiser departs is reported.

(18) Distance education - Any educational process based on the geographical separation of learner and instructor (e.g., CD-ROM, online learning, correspondence courses, video conferencing, etc.), that provides interaction between the learner and instructor and includes testing.

(19) Evaluation - An estimate of value that is not more than a limited appraisal, may be presented in a format that is less than a self-contained report, is prepared by a certified or licensed real estate appraiser or other lawfully authorized real estate professional, and includes an estimate of a property's market value, a certification and limiting conditions, and an analysis or the supporting information used in forming the estimate of value.

(20) Feasibility analysis - A study of the cost-benefit relationship of an economic endeavor.

(21) Federal financial institution regulatory agency - The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successors of any of those agencies.

(22) Federally related transaction - Any real estate-related transaction engaged in, contracted for, or regulated by a federal financial institution regulatory agency or the Resolution Trust Corporation that requires the services of an appraiser.

(23) Foundation - The Appraisal Foundation or its successor.

(24) Fundamental real estate appraisal course - Basic real estate appraisal courses which include the following topics, but are not limited to, principles of real estate appraisal, real estate appraisal practice, real estate appraisal procedures, highest and best use, report writing, rural appraisal, appraisal review, residential appraisal/valuation, agricultural property appraisal, sales comparison approach, cost approach, income capitalization, discounted cash flow analysis. real estate appraisal case studies, commercial appraisal, non-residential real estate appraisal, and other courses specifically determined by the board.

(25) Limited appraisal - An appraisal in which the departure rule [~~provision~~] is invoked.

(26) Non-residential course - A course with emphasis on the appraisal of non-residential real estate properties which include, but are not limited to, income capitalization, income property, commercial appraisal, rural appraisal, agricultural property appraisal, discounted cash flow analysis, subdivision analysis and valuation, or other courses specifically determined by the board.

(27) Nonresidential property - A property which does not conform to the definition of residential property.

(28) Person - An individual.

(29) Personal property - Identifiable portable and tangible objects which are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery and equipment.

(30) Provisional license - A license issued under the Texas Appraiser Licensing and Certification Act, §9A, and §153.16 of this title (relating to Provisional License), to individuals who have met the educational and examination requirements for licensing but who have not met the experience requirements.

(31) Real estate - An identified parcel or tract of land, including improvements, if any.

(32) Real estate-related financial transaction - Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of real property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

(33) Real property - The interests, benefits, and rights inherent in the ownership of real estate.

(34) Report - Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

(35) Residential property - Property that consists of at least one but not more than four residential units.

(36) Review - The act or process of critically studying a report prepared by another.

(37) Self-contained report - A report that includes sufficient information to indicate that the appraiser has complied with the requirements of Standards 1 and 2 of the Uniform Standards of Pro-

fessional Appraisal Practice and that describes all data necessary for the user of the appraisal to follow the conclusions of the appraisal without referring to additional materials.

(38) State certified real estate appraiser - A person certified under the Texas Appraiser Licensing and Certification Act.

(39) State licensed real estate appraiser - A person licensed under the Texas Appraiser Licensing and Certification Act.

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser or approved as an appraiser trainee or registered as a temporary non-resident appraiser shall file an application using forms prescribed by the board. The commissioner shall review the application and make a recommendation for final action to the board. The board may decline to accept for filing an application which is materially incomplete or which is not accompanied by the appropriate fee. Except as provided by the Act, the board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) pays the fees requested by the board;

(2) satisfies any experience and education requirements established by the Act or by these sections;

(3) successfully completes any qualifying examination prescribed by the board; and

(4) provides all supporting documentation or information requested by the board in connection with the application.

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) TALCB Form 1.5, Application for Appraiser Certification or Licensing;

(2) TALCB Form 2.2, Appraisal Experience Affidavit;

(3) TALCB Form 3.2, Appraisal Experience Log;

(4) TALCB Form 4.4, Application for Approval as an Appraiser Trainee;

(5) TALCB Form 5.0, Request for Course Approval and Renewal;

(6) TALCB Form 6.3, Temporary Non-Resident Appraiser Registration;

(7) TALCB Form 8.3, Change of Office Address;

(8) TALCB Form 9.1, Addition or Termination of Appraiser Trainee Sponsorship; and

(9) TALCB Form 10.0, Supplement to Application for Appraiser Certification or Licensing by Reciprocity.

(c) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the board makes written request for the information or documentation.

(d) A certification, license, or appraiser trainee approval is valid for the term for which it is issued by the board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval [~~Renewals and Continuing Education~~]).

(e) The board may deny certification, licensing, or approval as an appraiser trainee to an applicant who fails to satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

(f) An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the board, or within one year of the date of the applicant's last examination, whichever occurs later.

§153.10. Date of Licensure.

(a) Applicants are not certified, [~~or~~] licensed, or authorized, nor are their certifications, licenses or authorizations renewed, and may not hold themselves out as certified or licensed appraisers, or as appraiser trainees or as registered temporary non-resident appraisers, until the certificate, license, authorization or registration has been issued by the board.

(b) A certification, license, authorization or registration is issued when all requirements have been met and it is entered into the board's database and a certificate, [~~or~~] license, or authorization number has been assigned.

§153.13. Educational Requirements.

(a) General Real Estate Appraiser Certification.

(1) Applicants for General Real Estate Appraiser Certification must have successfully completed 180 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 180 classroom hours, at least 90 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application. At least 30 classroom hours of the fundamental real estate appraisal course requirements must be in courses with emphasis on the appraisal of non-residential properties.

(b) Residential Real Estate Appraiser Certification.

(1) Applicants for Residential Real Estate Appraiser Certification must have successfully completed 120 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 120 classroom hours, at least 60 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(c) Real Estate Appraiser License or Provisional License.

(1) Applicants for a Real Estate Appraiser License or Provisional License must have successfully completed 90 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these90 classroom hours, at least 40 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(d) The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(e) The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related; provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, §7(a)(1) and (2) [~~(1) (4), (6), (8) and (9)~~] shall be deemed appraisal-related;

(2) the course was offered by an accredited college or university, a school accredited by a real estate or appraiser certification or licensing agency of this or another state, a professional trade association, or a service-related school such as the United States Armed Forces Institute; or the course was offered or approved by a federal agency or commission or by an agency of this state;

(3) the applicant [~~either~~] obtained credit [~~by challenge examination as permitted by the Act, §24(d), or~~] received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (k) of this section (relating to distance education; and

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course.

(f) For the purposes of this section, a professional trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.

(g) The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(h) Course providers may obtain prior approval of a course by filing form TALCB 5.0, or its successor, and submitting the following items listed in paragraphs (1) - (3) of this subsection to the board:

(1) a copy of any textbook, course outline, syllabus, or other written material used in the course;

(2) a copy of the question and answers to the written final examination , with an answer key or the correct answers indicated; and

(3) such prior approval of courses will remain in effect for a period of two years after the date of approval.

(4) sample course completion certificate or other evidence of successful completion of the course.

(i) The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(j) Teachers of appraisal courses may receive credit for meeting the educational classroom hours requirement. Teaching of appraisal courses is not acceptable for meeting the experience requirement. Applicants must provide documentation as requested by the board to establish credit for teaching appraisal courses. Education credit for teaching a particular course may be claimed only once in each three year period.

(k) Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the board and meets one of the following conditions listed in paragraphs (1) - (3) of this subsection.

(1) the course must have been presented by an accredited college or university that offers distance education programs in other disciplines, and

(A) the person has successfully completed a written examination administered to the positively identified person at a location and by an official approved by the college or university; and

(B) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the Appraiser Qualifications Board of the Appraisal Foundation and is equivalent to a minimum of 15 classroom hours.

(2) The course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions (PONSI) approval for college credit, or has been approved under the AQB Course Approval program; and

(A) the person successfully completes a written examination proctored by an official approved by the presenting entity;

(B) the course meets the requirements for qualifying education established by the Appraiser Qualifications Board and is equivalent to the minimum of 15 classroom hours.

(3) A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(l) "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(m) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP) educational requirement, a course must:

(1) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of 15 classroom hours of instruction;

(2) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(3) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(4) utilize the "National Uniform Standards of Professional Appraisal Practice (USPAP) Course" promulgated by the Appraisal Foundation, including the Student Manual and Instructor Manual. [~~At a minimum be based on the topics covered by the Appraisal~~

Standards Board (ASB) Instructor's Manual. This section does not limit additional USPAP topics to be covered in the course].

(n) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, provided that the educational provider has notified the board of the AQB approval.

§153.15. Experience Required for Certification or Licensing.

(a) An applicant for general real estate appraiser certification must provide evidence satisfactory to the board that the applicant possesses the equivalent of [2,000 (] 3,000 [, effective January 1, 1998)] hours of appraisal experience over a minimum of [two calendar years (] 30 months [, effective January 1, 1998)]. At least [1,000 (] 1,500 [, effective January 1, 1998)] hours of experience must be in non-residential work. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(b) An applicant for residential real estate appraiser certification must provide evidence satisfactory to the board that the applicant possesses the equivalent of [2,000 (] 2,500 [, effective January 1, 1998)] hours of appraisal experience over a minimum of [two calendar years (] 24 months [, effective January 1, 1998)]. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(c) An applicant for a state real estate appraiser license must provide evidence satisfactory to the board that the applicant possesses at least 2,000 hours of appraisal experience.

(d) Experience credit shall be awarded by the board in accordance with current criteria established by the Appraiser Qualifications Board and in accordance with the provisions of the Act specifically relating to experience requirements. Experience as a real estate lending officer of a financial institution or as a real estate broker is acceptable experience if the experience includes the actual performance or professional review of real estate appraisals. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience must be based solely on actual hours of experience. Any one or any combination of the following categories may be acceptable for the completion of 1,000 hours of credit each year.

(1) Experience credit may be awarded for a fee or staff appraisal when it is performed in accordance with the provisions of the Uniform Standards of Professional Practice (USPAP) in effect at the time of the appraisal.

(2) Experience credit may be awarded for an ad valorem tax appraisal which:

(A) uses techniques to value properties similar to those used by appraisers; and

(B) effectively uses the appraisal process. The components of the mass appraisal process which may be awarded experience credit are the highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, are not eligible for experience credit. Mass appraisals must be performed in accordance with Standards Rule 6 of USPAP.

(3) Experience credit may be awarded for a review appraisal when the appraiser performs review(s) of appraisals prepared by either employees, associates or others, provided the appraisal report was not signed by the review appraiser. Review appraisal credit shall not be awarded when the report is signed as a review appraiser as this should appropriately be considered as appraisal experience. Review appraisals must be performed in accordance with Standards Rule 3 of USPAP.

(4) Experience credit may be awarded for appraisal analysis. A market analysis typically performed by a real estate broker or salesman may be awarded experience credit when the analysis is prepared in conformity with Standards Rules 1 and 2 of USPAP, and the individual can demonstrate that he or she is using similar techniques as appraisers to value properties and is effectively utilizing the appraisal process.

(5) Experience credit may be granted for real estate counseling (consulting) when it is appraisal related and performed in accordance with Standards Rules 4 and 5 of USPAP.

(6) Experience credit may be granted for highest and best use analysis.

(7) Experience credit may be awarded for a feasibility analysis or feasibility study when it is performed in accordance with Standards Rules 4 and 5 of USPAP.

(8) Experience credit may be awarded for teaching appraisal courses provided that an applicant may not receive more than 500 hours for teaching appraisal courses each year. Actual classroom time may be claimed, e.g. a three semester credit course equates to 45 hours of appraisal teaching experience; a 15 classroom hour course equates to 15 hours of teaching experience. [Teaching an appraisal course may be used either for experience credit or for education credit. Both experience credit and education credit may be granted for teaching multiple sections of the same course; that is, credit for teaching a particular section of a course may be applied toward education credit and teaching another section of the same course may be applied toward experience credit.] Documentation shall be required. [(Teaching appraisal courses will not be accepted for meeting the experience requirement effective January 1, 1998.)]

(e) Experience claimed by an applicant must be submitted on forms promulgated by the board.

(1) Experience claimed by an applicant shall be submitted upon an Appraisal Experience Affidavit, TALCB Form 2.2 or its successor.

(2) In exceptional situations, the board, at its discretion, may accept other evidence of experience claimed by the applicant.

(3) If a consumer complaint or peer complaint is brought against the applicant alleging fraud, incompetency, or malpractice and the board finds the complaint is reasonable or if the board determines other just cause exists for requiring further information, the board may obtain the additional information or documentation requested by:

(A) requiring the applicant to complete a form, prescribed by the board, that includes detailed listings of appraisal experience showing, for each appraisal claimed by the applicant, the city or county where the appraisal was performed, the type and description of the building or property appraised, the approaches to value utilized in the appraisal, the actual number of hours expended on the appraisal, name of client, and other information determined to be appropriate by the board; or

(B) engaging in other investigative research determined to be appropriate by the board.

(4) The board shall require verification of acceptable experience of no more than 5.0% of the applications selected by random sampling. The sampling shall be applied when a minimum of twenty approved applications are received. The verification may be obtained by:

(A) requiring the applicant to complete a form, prescribed by the board, that includes detailed listings of appraisal experience showing, for each appraisal claimed by the applicant, the city or county where the appraisal was performed, the type and description of the building or property appraised, the approaches to value utilized in the appraisal, the actual number of hours expended on the appraisal, name of client, and other information determined to be appropriate by the board;

(B) engaging in other investigative research determined to be appropriate by the board; and

(C) allowing a minimum of 60 days after the date of selection for the applicant to prepare any records.

(5) Failure to comply with a request for verification of experience is a violation of these rules and may result in denial of certification or licensure, and any disciplinary action up to and including revocation.

(f) An applicant may be granted experience credit only for appraisals which:

(1) comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal;

(2) are verifiable and supported by written reports or file memoranda; and

(3) were performed by the applicant at a time when the applicant had legal authority to perform real property appraisals.

§153.16. Provisional License.

(a) An applicant for appraiser trainee classification who can demonstrate to the board that the applicant has, after completing the appropriate educational requirements for a state licensed real estate appraiser under §153.13 of this title (relating to Educational Requirements), failed to secure sponsorship from at least two certified appraisers to obtain the 2,000 hours of acceptable experience required for licensing, the applicant may apply to the board to take the examination under the Act, §10.

(b) An applicant under this section must file an application for a provisional license using forms prescribed by the board and pay the same fees as required for a state licensed real estate appraiser under §153.5 of this title (relating to Fees).

(c) An applicant under this section must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of the state for at least 60 days immediately prior to filing an application; and satisfy the board as to the prospective provisional licensee's honesty, trustworthiness and integrity.

(d) [~~(c)~~] An applicant under this section who passes the state licensed real estate appraiser examination required under the Act, §10, and who meets all other requirements for licensing, except for the actual real estate appraisal experience requirement, shall be provisionally licensed by the board.

(e) [~~(d)~~] An applicant receiving a provisional license under subsection (d) [~~(c)~~] of this section must complete the actual real estate appraisal experience requirement not later than the 60th month after the date the license was issued. Failure to complete the appropriate real estate appraisal experience requirement by that date or failure to report completion of a portion of the person's real estate appraisal experience requirement each renewal period constitutes grounds for the automatic revocation of the provisional license.

(f) Persons practicing under this section must keep and maintain a current log of appraisal activities performed on a form prescribed by the board.

§153.17. Renewal of Certification, License or Trainee Approval.

(a) A license or certification issued by the board is valid for two years after the date of issuance. A certified or licensed appraiser or appraiser trainee may renew the certification, license, or trainee authorization [~~approval~~] by timely filing the prescribed application for renewal, paying the appropriate fee to the board and satisfying continuing education requirements as provided by §153.18 of this title (relating to Appraiser Continuing Education).

(b) The board shall mail the prescribed renewal application form to the appraiser or trainee's last known business address at least 90 days prior to the expiration of the certification, license or approval. It is the responsibility of the appraiser or trainee to apply for renewal in accordance with these sections, and failure to receive a renewal application from the board does not relieve the appraiser or trainee of the responsibility of applying for renewal.

(c) The board may not accept a renewal application filed after the expiration of the certification, license or appraiser trainee approval. An appraiser or trainee who does not timely file a renewal application must reapply for certification, license or approval as an appraiser trainee in accordance with the provisions of §153.9 of this title (relating to Applications). If the application is filed within one year of the expiration of a previous certification or license the applicant shall also provide satisfactory evidence of completion of any continuing education, as provided by §153.18 of this title (relating to Appraiser Continuing Education), that would have been required for a timely renewal of the previous certification or license. If the application for certification or license is filed more than one year after the expiration of the previous certification or license, the applicant must successfully complete the examination required by §153.11 of this title (relating to Examinations).

(d) A renewal application is acceptable for processing when it is received by the board, postmarked on or before the expiration date of the certification, license or authorization [~~is deemed filed when placed in the mails properly addressed to the board with appropriate postage paid~~].

(e) Provisional licensees and appraiser trainees must provide a copy of an appraisal log, on a form prescribed by the board, for the period of license or authorization being renewed.

(f) [~~(e)~~] Renewal of Licenses or Certification for Servicemen on Active Duty Outside the State.

(1) A person previously licensed or certified by the board under this Act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas may renew an expired license or certification without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(A) provides a copy of official orders or other documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period;

(B) applies for the renewal within 90 days after the person's active duty ends; and

(C) pays the renewal application fee in effect when the previous license or certification expired.

(2) Appraiser continuing education requirements as set out in §153.18 of this title, that would have been imposed for a timely

renewal shall be deferred under this section to the next renewal of a license or certification.

(g) [~~(f)~~] Denial of Licensing and Certification of Persons who are in Default on Texas Guaranteed Student Loan Corporation (TGSLC) Loans. Renewals of licenses and certifications issued by the board are subject to the policies established by the Texas Education Code, §57.491. Before the board declines to renew a license or certification due to default on a loan guaranteed by the TGSLC, a default on a repayment agreement with TGSLC, or a failure to enter a repayment agreement with TGSLC, the board shall give notice and provide an opportunity for a hearing in accordance with the provisions of the Texas Government Code, §2001.051 et seq. The board shall advise those licensed or certified in renewal notices and shall advise those who apply for licensure or certification in application forms that default on a loan guaranteed by TGSLC may prevent subsequent renewal of a license or certification or prevent the approval of an initial application for license or certification.

§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 Appraisal 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 the 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 15 classroom hours devoted to the USPAP which shall include the successful completion of an examination, in addition to [~~as part of the~~] 30 classroom hours of fundamental real estate appraisal courses specifically approved by the board. This 15 hour classroom requirement in addition to the 30 hours of fundamental real estate appraisal courses shall become effective January 1, 2000.

(c) The appraiser continuing education requirement as set forth in section 153.17 of this title (relating to Renewal of Certification,License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas are deferred until the next renewal of a license or certification provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period.

(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) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(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) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;

(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13(e)(2) of this title (relating to Educational Requirements), provided the course 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 the course is at least two hours in duration;

(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) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.

(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 Apprisal 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 accredition with demonstrated mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and

(iv) a minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(H) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of seven classroom hours of instruction;

(ii) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(iv) At a minimum be based on topics covered by the Appraisal Standards Board (ASB) Instructor's Manual. This section does not limit additional USPAP related topics to be covered in the course.

(I) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation are acceptable for meeting ACE requirements.

(J) As [~~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) Copies of transcripts or course completion certificates from the course provider must accompany the Application for Renewal form.

(L) Appraiser continuing education credit may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

§153.20. Guidelines for Revocation, Suspension or Denial of Licensure or Certification.

(a) The board may suspend or revoke a license, certification, authorization or registration issued under provisions of this Act or deny issuing a license, certification, authorization or registration to an applicant at any time when it has been determined that the person applying for or holding the license, certification, authorization, or registration:

(1) has been convicted of a felony;

(2) has disregarded or violated a provision of the Act or of the Rules of the Texas Appraiser Licensing and Certification Board;

(3) has acted or held himself or herself or any other person out as a licensed or certified real estate appraiser under the Act when not so licensed or certified;

(4) has accepted payment for appraiser services and has failed to deliver the agreed service in the agreed upon manner;

(5) has refused to refund payment received for appraiser services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(6) has accepted payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made;

(7) has offered to perform appraiser services or has agreed to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made;

(8) has made a material [~~willful or grossly negligent~~] misrepresentation or [~~any willful or grossly negligent~~] omission of material fact;

(9) has had a license or certification as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

(10) is confined in any county jail, post adjudication; is confined in any state or federal prison or mental institution; or through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity;

(11) has procured a license or certification pursuant to the Act by making false or fraudulent representation;

(12) has failed to actively, personally, and diligently supervise an appraiser trainee under his or her sponsorship or any person not licensed or certified under the Act who assists the licensee or certificate holder in performing real estate appraiser services;

(13) has had a final civil judgement entered against him or her on grounds of fraud or willful or grossly negligent misrepresentation in the making of real estate appraiser services;

(14) has failed to make good on a check issued to the board within thirty days after the board has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the board's records;

(15) has knowingly or wilfully [~~intentionally~~] engaged in false or misleading conduct or advertising with respect to client solicitation;

(16) has acted or held himself or any other person out as a licensed or certified real estate appraiser under this or another state's Act when not so licensed or certified;

(17) has engaged in any other act relating to the business or appraising that the board, in its discretion, believes warrants a suspension or revocation.

(18) has used any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to perform certified or licensed appraisal services.

(19) has failed to comply with a final order of the board.

(b) The board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section [~~with the following restrictions~~].

[~~(1) Penalty for an offense under subsection (a)(1) shall be immediate revocation of a license or certification pursuant to Vernon's Texas Civil Statutes, Article 6252-13c(4)(e).~~]

[~~(2) Penalty for an offense under subsection (a)(3) shall be suspension or withholding of license or certification for a period not to exceed two years.~~]

[~~(3) Penalty for a first violation under subsection (a)(4) shall be suspension of license or certification for a period not to exceed 60 days.~~]

[~~(4) Penalty for a second violation under subsection (a)(4) shall be suspension of license or certification for a period not to exceed one year.~~]

[~~(5) Penalty for a third violation under subsection (a)(4) shall be suspension of license or certification for a period not to exceed three years.~~]

[~~(6) Penalty for an offense of either subsection (a)(6) or subsection (7) shall be suspension of license or certification not to exceed a period of three years.~~]

(c) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the Act or under the laws of this State.

(d) The board may not investigate under this section a complaint submitted more than two years after the date of discovery of the incident involving the state licensed real estate appraiser, provisional licensed appraiser, state certified real estate appraiser, or appraiser trainee who is the subject of the complaint.

(e) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of the Act.

(f) All board members, officers, directors, and employees of this agency shall be held harmless with respect to any disclosures made to the board in connection with any complaints filed with the board.

(g) A license, certification, authorization or registration may be revoked or suspended by the Attorney General or other court of competent jurisdiction for failure to pay child support under provisions of Chapter 232 of the Texas Family Code.

(h) A certified or licensed appraiser who files a complaint against another certified or licensed appraiser that the board determines to be frivolous is liable for a civil penalty. At the request of the board, the attorney general or a district or county attorney may institute a civil action in district court to collect a penalty under this subsection. A civil penalty under this subsection may not be less than $500 or more than $10,000. A civil penalty recovered in a suit instituted under this subsection shall be deposited in the state treasury to the credit of the general revenue fund.

§153.21. Appraiser Trainees.

(a) A person desiring to be an appraiser-trainee under the sponsorship of one or more state certified appraisers may apply to the board on the application form prescribed by the board. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals or appraiser services only under the direction and direct supervision of a sponsoring certified appraiser unless one of the following events occurs:

(1) the appraiser trainee approval expires due to nonpayment of the annual renewal fee or the educational requirements for renewal have not been met;

(2) the sponsorship is terminated by either the sponsor or the trainee, leaving the appraiser trainee without a sponsoring certified appraiser; or

(3) the trainee's authority to act has been suspended or revoked by the board.

(b) The sponsoring certified appraiser shall immediately notify the board in writing of any termination of sponsorship of an appraiser trainee, on a form prescribed by the board and pay a fee set by the board not later than the 10th day after the date of such termination. The board will notify the trainee that the sponsorship has been terminated.

(c) If an appraiser trainee's approval has expired or been revoked by the board or the trainee is no longer under the sponsorship of a certified appraiser, the appraiser trainee may not perform the duties of an appraiser trainee until an application to sponsor the trainee has been filed together with the appropriate fee and approved by the board.

(d) Certified appraisers who sponsor appraiser trainees and who sign a report shall be responsible to the public and to the board for the conduct of the appraiser trainee under the Act. After notice and hearing, the board may reprimand a sponsoring appraiser or may suspend or revoke a sponsoring appraiser's certification based on conduct by the appraiser trainee constituting a violation of the Act or a rule of the board.

(e) A certified appraiser may be added as a sponsor during the term of an appraiser trainee's authorization, by completing a form prescribed by the board and paying a fee set by the board, and shall assume all the duties, responsibilities, and obligations of an appraiser trainee sponsor as specified in these rules.

[~~(f) An appraiser trainee sponsored by a state licensed appraiser on September 1, 1993, may continue to perform the duties of an appraiser trainee under the sponsorship and supervision of that state licensed appraiser until the first renewal after January 1, 1994,~~

~~after which time the appraiser trainee must become sponsored by a certified appraiser.~~]

§153.25. Temporary Non-Resident Registration.

(a) A person licensed or certified as an appraiser by another state, commonwealth, or territory may register with the board so as to qualify to appraise real property in this state without holding a license or certification issued under the Act if:

(1) the state, commonwealth or territory licensing and certification program under which the person holds a license or certification has not been disapproved by the Appraisal Subcommittee; and

(2) the appraiser's business in this state is of a temporary nature not to exceed 60 days.

(b) A person wishing to be registered under this subsection must submit a completed application form prescribed by the board.

(c) A person registered under this subsection must submit an irrevocable consent to service of process in this state on a form prescribed by the board [~~pursuant to §153.29 of this title (relating to Irrevocable Consent of Service of Process)~~].

(d) An appraiser registered under this subsection may apply for a 150 day extension to the original expiration date of the temporary non-resident registration, provided the appraiser:

(1) is performing an appraisal in a federally related transaction;

(2) is continuing the same appraisal assignment listed on the original Temporary Non-Resident Appraiser Registration application;

(3) requests an extension on a form prescribed by the board, postmarked prior to the expiration of the current temporary non-resident registration; and

(4) pays an additional fee equal to the amount prescribed for non-resident appraiser registration in §153.5(a)(6) of this title (relating to Fees).

§153.27. Certification and Licensure by Reciprocity.

(a) A person who is licensed or certified as an appraiser under the laws of a state having licensure or certification requirements that have not been disapproved by the Appraisal Subcommittee may apply for a license or certification under the Act by completing and submitting to the board the application for licensure or certification and paying to the board the fee, both of which are required by the state of the person's present certification. An applicant for certification or licensure by reciprocity also must complete and submit a Supplement to Application for Appraiser Certification or Licensing by Reciprocity (TALCB Form 10.0) or its successor.

(b) A person applying for a license or certification under this subsection must submit an irrevocable consent to service of process in this state on a form prescribed by the board [~~pursuant to §153.29 of this title (relating to Irrevocable Consent to Service of Process)~~].

(c) An application may not be accepted from a person from a state that refuses to offer reciprocal treatment to residents of this state who are certified or licensed real estate appraisers.

(d) The board shall seek verification from an applicant's home state that the applicant's license or certification is valid and in good standing. A reciprocal license or certificate may not be issued without the verification required by this subsection.

(e) A person holding a license or certification by reciprocity must pay the federal registry fee and other fees imposed by the board. The total application fees required for certification or licensure by reciprocity shall be equal to the amount of the application, processing, and issuance fees required for a Texas certified or licensed appraiser to become certified or licensed in the applicant's home state of present licensure or certification, prorated for one year, but not less than $100. In addition, a one-year federal registry fees shall be required.

(f) A reciprocal license or certification expires on the same date that the license or certification held by the applicant in the applicant's home state expires or on the first anniversary of the date the reciprocal license or certification was issued, whichever comes first.

(g) Renewal of a certification or license granted through reciprocity shall be in the same manner, with the same requirements, term, and fees as for the same classification of certified or licensed appraiser as provided in §153.17 of this title (relating to Renewal of Certification, License, or Trainee Approval [~~; Appraiser Continuing Education~~]).

(h) A person whose legal residency is in the State of Texas may not be licensed or certified through reciprocity.

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 August 16, 1999.

TRD-9905172
Renil C. Linér
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 465-3950

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TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

The Interagency Council on Early Childhood Intervention (ECI) proposes the repeal and replacement of §§621.121-621.128, concerning Case Management Services for Infants and Toddlers with Developmental Disabilities. Subchapter F will now be titled, "General Provisions for Case Management Services for Infants and Toddlers with Developmental Disabilities".

The purpose of the new sections is to establish the general provisions for case management services.

The ECI is contemporaneously proposing the review of Subchapter F, concerning Case Management Services for Infants and Toddlers with Developmental Disabilities (§§621.121-621.140) elsewhere in this issue of the *Texas Register*.

In conjunction with the repeal and replacement of §§621.121-621.128 and the review of Subchapter F, The Health and Human Services Commission is simultaneously proposing the repeal and replacement of §§355.9001-355.9010 and §§355.9012-355.9014, concerning Early Childhood Intervention: Case Management Services for Infants and Toddlers with Developmental Disabilities, elsewhere in this issue of the *Texas Register*.

Donna Samuelson, Deputy Executive Director, ECI, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Samuelson also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be greater understanding of the general provisions for case management services. The General Provisions for Case Management Services rules will not have any adverse effects on businesses of any size. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Questions about the content of this proposal may be directed to Glenn Hart in ECI's Division of Provider Funding, at (512) 424-6830. Written comments on the proposal may be submitted to Glenn Hart, Division of Provider Funding, Texas Interagency Council on Early Childhood Intervention, 4900 North Lamar, Austin, Texas, 78751-2399, within 30 days of publication in the *Texas Register*.

Subchapter F. Case Management Services for Infants and Toddlers with Developmental Disabilities

25 TAC §§621.121-621.128

(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 Interagency Council on Early Childhood Intervention or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Chapter 73 of the Human Resources Code, which provides the agency with the authority to administer public programs for developmentally delayed children, and under §531.021(a), Government Code, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

No other statutes, articles or codes are affected by the proposed repeals.

§621.121. Introduction.

§621.122. Definitions.

§621.123. Reimbursable Services.

§621.124. Recipient Eligibility for Early Childhood Intervention (ECI) Program Medicaid Case Management Services.

§621.125. Conditions for Medicaid Case Management Provider Participation.

§621.126. Qualified Personnel.

§621.127. Retention of Records.

§621.128. Provider Records.

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 August 16, 1999.

TRD-9905166
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 424-6750

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Subchapter F. General Provisions for Case Management Services for Infants and Toddlers with Developmental Disabilities

25 TAC §§621.121-621.128

The new sections are proposed under Chapter 73 of the Human Resources Code, which provides the agency with the authority to administer public programs for developmentally delayed children, and under §531.021(a), Government Code, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

No other statutes, articles or codes are affected by the proposed new sections.

§621.121. Introduction.

Case Management Services for Infants and Toddlers with Developmental Disabilities are included in the Texas Medical Assistance Program (Medicaid). The general operation of the Texas Early Childhood Intervention (ECI) program is governed by the Texas Interagency Council on Early Childhood Intervention Services.

§621.122. Definitions.

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

(1) Assessment–The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(A) the child's unique needs and strengths;

(B) the family's strengths and needs related to their child's development; and

(C) the nature and extent of intervention services needed by the child and the family in order to assess subparagraphs (A) and (B) of this paragraph.

(2) Board–The entity designated as the lead agency by the Governor under Public Law 102-119. The Board has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The Board has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(3) Caregiver–A person, such as a parent, foster parent, grandparent, child-care worker, who has responsibilities for the care of a child.

(4) Case management–Services provided to assist eligible individuals in gaining access to needed medical, social, educational, developmental, and other appropriate services.

(5) Case manager (service coordinator)–An Early Childhood Intervention (ECI) program staff person who is assigned to a child and/or family, who is the single contact point for families, and who is responsible for assisting and empowering families in accessing services and coordinating those services.

(6) Developmental delay–A significant variation in normal development in one or more of the following areas as measured

and determined by appropriate diagnostic instruments and procedures by an interdisciplinary team and by informed clinical opinion: cognitive development; physical development, including vision and hearing, gross and fine motor skills, and nutrition status; communication development; social and emotional development; and adaptive development or self-help skills.

(7) Developmental disability–Children from birth to age three who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(8) ECI–The Texas Early Childhood Intervention Program.

(9) Early Childhood Intervention (ECI) services–Individualized intervention services provided to children from birth to age three, and their families, as:

(A) determined by the interdisciplinary assessment and listed in the individualized family services plan; and

(B) provided in accordance with the rules of the Texas Interagency Council on Early Childhood Intervention Services in Chapter 621 of this title (relating to Early Childhood Intervention).

(10) Individualized family services plan (IFSP)–A written plan, developed by the interdisciplinary team, based on all assessment and evaluation information and including the family's description of their strengths and needs, which outlines the intervention services for the child and the child's family.

(11) Interdisciplinary team–The child's parent(s) and a minimum of two professionals from different disciplines who meet to share evaluation information, determine eligibility, assess needs, and develop the individualized family service plan (IFSP). The team must include the case manager (service coordinator) who has been working with the family since the initial referral, or the person responsible for implementing the IFSP, and a person directly involved in conducting the evaluations and assessments.

(12) Intake–Process that begins with telephone or face-to-face contacts with the child's family to provide information about early intervention and case management and to assist the child and family in gaining access to the evaluation and the assessment process. This process establishes potential eligibility for ECI services, provides a basic introduction to the program's philosophy and operating procedures, gathers information needed for enrollment, and schedules and helps the family prepare for a comprehensive interdisciplinary evaluation and assessment. Pre-Plan of Care service coordination is provided as needed.

(13) Monitoring–Periodic tracking, observation and follow up to ensure that services have been delivered, that services have been delivered on a timely basis, and that the services are addressing the clients' needs. Monitoring and follow up activities are conducted as needed and are documented in the child's case folder.

(14) Needs assessment–The needs assessment is conducted and documented by the case manager in conjunction with the Medicaid client's family. The documentation lists medical, social, nutritional, educational, developmental, and other appropriate needs of the Medicaid client. Individuals found not to be eligible for early intervention services, or whose families choose not to enroll in early intervention services are to be referred to any appropriate alternative care or services.

(15) Plan of care–Information gathered from the comprehensive needs assessment is incorporated into an individualized family services plan of care (IFSP). With family consent, family concerns, priorities and resources are identified and documented in the plan. The plan summarizes assessment results, includes the services necessary to enhance the development of the child and the capacity of the family to meet the child's unique needs, and must be coordinated with other service providers involved in delivery of services to the child and family.

(16) Reassessment and Transition Planning–A reassessment of the client's progress and needs is conducted at least every six months. The case manager documents the reassessment in the client's case folder. At reassessment the case manager will determine if modifications to the service plan are necessary and if the level of involvement by the case manager should be adjusted. When services are no longer needed, or the child no longer qualifies for services, the case manager facilitates the planning, coordination, and transition to other appropriate care.

(17) Service coordination–Through linkage, coordination, facilitation, assistance, anticipatory guidance, and the provision of information about the child's medical needs to other health care providers, the case manager ensures the recipient's access to the care, resources and services to meet the client's needs. The case manager may assist the family in making applications for services, confirm service delivery dates with ECI staff, providers and supports, and assist the family with scheduling needs. The case manager assists the family in taking responsibility for ensuring that services are performed, and works with medical providers, ECI staff, and other community resources to coordinate care.

(18) Texas Health Steps–The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. It includes the State's Comprehensive Care Program extension to EPSDT.

(19) Time and Financial Information (TAFI)–A combined cost report and time study report, collected quarterly from providers.

§621.123. Reimbursable Services.

(a) Case management services are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in §621.125 of this title (relating to Conditions for Case Management Provider Participation). Reimbursable case management services include face-to-face and telephone contacts with the child's caregiver on behalf of the child, or with other service providers or professionals on behalf of the child, for the purpose of assisting that child in gaining access to needed medical, social, educational, developmental, and other appropriate services. Case management providers are paid one flat monthly rate each month in which at least one reimbursable case management contact occurred.

(b) Case management services are not reimbursable as Medicaid services when another payor is liable for payment or if case management services are associated with the proper and efficient administration of the state plan. Case management services associated with the following are not payable as optional targeted case management services under Medicaid:

(1) Medicaid eligibility determinations and redeterminations;

(2) Medicaid eligibility intake processing;

(3) Medicaid preadmission screening;

(4) Prior authorization for Medicaid services;

(5) Required Medicaid utilization review;

(6) Texas Health Steps program administration;

(7) Medicaid "lock-in" provided for under the Social Security Act, §1915(a);

(8) Services that are an integral or inseparable part of another Medicaid service;

(9) Outreach activities that are designed to locate individuals who are potentially eligible for Medicaid; and

(10) Any medical evaluation, examination, or treatment billable as a distinct Medicaid-covered benefit. However, referral arrangements and staff consultation for such services are reimbursable as case management services.

§621.124. Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services.

In order to receive ECI services, the recipient must meet the following criteria:

(1) be eligible for Medicaid services during the month that the services are provided, and

(2) have a developmental disability, as defined in §621.122 of this title (relating to Definitions). ECI providers must determine developmental disability based on the criteria described below:

(A) Children are eligible who have a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay, including, but not limited to:

(i) Down Syndrome and other chromosomal abnormalities;

(ii) sensory impairments, including vision and hearing;

(iii) inborn errors of metabolism;

(iv) microcephaly;

(v) failure to thrive;

(vi) seizure disorders;

(vii) fetal alcohol syndrome or fetal alcohol effects;

(viii) testing positive for the Human Immunodeficiency Syndrome (HIV) virus after 15 months of age.

(B) Children are eligible who are delayed in one or more of the following areas of development: cognitive, motor, communication, social-emotional, or adaptive skills. Eligibility must be verified by the determination of the specific level of delay by a test performance on a validated comprehensive developmental inventory or standardized test.

(C) A qualified professional must observe and document atypical development during:

(i) Administration of an assessment device, or

(ii) Informal testing procedures in a variety of settings.

§621.125. Conditions for Case Management Provider Participation.

In order to be reimbursed for Early Childhood Intervention (ECI) services as specified in §621.123 of this title (relating to Reimbursable Services), a provider must:

(1) be certified by the Texas ECI program as meeting the standards for service providers established by the Texas Early Childhood Intervention Program Services, as specified in this chapter;

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) ensure that services are provided by appropriately qualified staff as specified in §621.126 of this title (relating to Qualified Personnel);

(4) be enrolled and approved for participation as a provider in the Texas Medical Assistance (Medicaid) Program;

(5) sign a written provider agreement with ECI or its designee;

(6) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by ECI or its designee; and

(7) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by ECI or its designee.

§621.126. Qualified Personnel.

Early Childhood Intervention (ECI) case management services must be provided by case managers who meet the educational and work experience requirements, commensurate with their job responsibilities, as specified in §621.24(c)(4) of this title (relating to Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services); Texas Early Childhood Intervention Staff Qualification Policies (ECI Policy III.8); and who have also completed the ECI Case Management Curriculum.

§621.127. Retention of Records.

Providers of Early Childhood Intervention (ECI) services must maintain and retain all necessary records and claims, as specified in §621.128 of this title (relating to Provider Records), to fully document the services and supplies provided to a Medicaid recipient. These records must be made available promptly upon request to the Texas Early Childhood Intervention Program (ECI), the Texas attorney general's office, ECI's designee, and representatives of the United States Department of Health and Human Services. Upon request, the provider must submit copies of their records, at no cost, to representatives of the agencies specified in this section.

§621.128. Provider Records.

(a) A provider must allow ECI and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client records, books, and supporting documents pertaining to Medicaid services provided. The provider and the subcontractors must make these documents available at reasonable times and for reasonable periods.

(b) The provider must keep financial and supporting documents, statistical records, and any other records pertinent to the Medicaid services for which a claim or TAFI report was submitted to ECI or its agent. The records and documents must be kept for a minimum of five years after the end of the contract period or for five years after the end of the federal fiscal year in which services were provided (if a provider agreement/contract has no specific termination date in effect). If any litigation, claim, or audit involving these records begins before the five year period expires, the provider must keep the records and documents for not less than five years or until all litigation, claims, or audit finds are resolved. The case is considered resolved when a final order is issued in litigation, or ECI and provider enter into a written agreement. In this section, contract period means the beginning date through the ending date specified in the original agreement/contract; extensions are considered separate contract periods.

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 August 16, 1999.

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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas

28 TAC §9.1

The Texas Department of Insurance proposes an amendment to §9.1 which concerns the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual).

The amendment is necessary to reflect changes to the Basic Manual which the amended section will adopt by reference. Adopting new rules and forms and modifying or replacing currently existing rules and forms in the Basic Manual are necessary to facilitate the administration and regulation of title insurance in this state. The amendments to the Basic Manual will produce clarification and standardization of rules and forms in the regulation of title insurance. The proposed amendments to the Basic Manual are identified by item number below. The items listed below are a republication of those items published for consideration at the 1998 Texas Title Insurance Biennial Hearing, Rulemaking Phase, held on August 10, 1999, for which the department received no opposition. Republication is necessary to incorporate these items into the Basic Manual, to give notice of the withdrawal of Items 98-12 and 98-13, and to give notice of the corrective and clarifying changes to Items 98-4, 98-10, and 98-15. A republication will occur at a later date concerning those items published for consideration at the 1998 Texas Title Insurance Biennial Hearing, Rulemaking Phase, for which the department received comments in opposition. The proposed items which are the subject of this proposal are as follows:

Item 98-1 Submission by Texas Land Title Association to amend the Facultative Reinsurance Agreement (Form T-18.1). This proposal updates the current reinsurance agreement form in three areas. It inserts clarifying language in paragraph 3 entitled "Direct Access" by expressly stating that a reinsurer has the burden to establish that it was prejudiced by the failure of the insured to give reinsurer notice of any claim in a reasonable time in order to use failure of notice as a defense. It adds new paragraph 10 entitled "Action by or on Behalf of Ceder" that applies when the reinsurer is not licensed or accredited in the state of domicile of the ceder and jurisdiction or service of process is at issue. In the event the reinsurer fails to perform its obligations under the terms of the facultative reinsurance agreement, the reinsurer agrees to submit to the jurisdiction of any court or alternative dispute resolution panel in the United States requested by the ceder. The reinsurer further agrees to designate the appropriate regulatory authority or an attorney in fact as its lawful agent for service of any lawful process. The third area is a severability clause in new paragraph 11. Stewart Title Guaranty Company (Stewart Title) and Texas Land Title Association (TLTA) spoke in support of this item at the 1998 Texas Title Insurance Biennial Hearing, Rulemaking Phase (rulemaking hearing), and TLTA submitted written testimony. No opposition was made to this item at the rulemaking hearing.

Item 98-2 Submission by Texas Land Title Association to repeal the existing Tertiary Facultative Reinsurance Agreement (Form T-21) and substitute a new Tertiary Facultative Reinsurance Agreement (Form T-21.1). This proposal replaces the current reinsurance agreement for secondary and tertiary losses entered into among title insurance companies. This new form, which is referred to as a Type I tertiary facultative reinsurance agreement, contains a severability clause and provides direct access to the reinsurer in the event of a claim that exceeds the ceder's primary loss risk. Stewart Title and TLTA spoke in support of this item at the rulemaking hearing, and TLTA submitted written testimony. No opposition was made to this item at the rulemaking hearing.

Item 98-3 Submission by Texas Land Title Association to adopt a new Tertiary Facultative Reinsurance Agreement - Type II (Form T-21.2). This proposal is a new reinsurance agreement whereby a reinsurer cedes its risk of loss to a third level of reinsurers. This new form, which is referred to as a Type II tertiary facultative reinsurance agreement, is designed for execution by a ceder that has assumed liability as a reinsurer pursuant to a separate reinsurance agreement. Under the new Type II agreement, the ceder retains a portion of the secondary loss risk pursuant to the separate reinsurance agreement and cedes or reinsures all or part of the secondary loss risk (also known as the tertiary loss risk) with tertiary reinsurers. The new Type II agreement contains a severability clause; provides for direct access between the reinsurer and the insured; contains a jurisdictional provision for reinsurers not licensed or accredited in the state of domicile of the ceder; and contains contractual provisions in the event the ceder is insolvent. Stewart Title and TLTA spoke in support of this item at the rulemaking hearing, and TLTA submitted written testimony. No opposition was made to this item at the rulemaking hearing.

Item 98-4 Submission by Texas Department of Insurance to amend Procedural Rule P-10 - Facultative Reinsurance, consistent with proposed new and revised reinsurance forms. The current procedural rule refers to the existing reinsurance agreement form; therefore, if the proposed amended and new reinsurance forms cited above are adopted, this procedural rule needs to be amended to refer to the newly adopted forms and updated to reflect the change from "Board" to "commissioner." The department has made corrective changes to the proposed item by underlining and striking through the new and deleted language. Stewart Title and TLTA spoke in support of this item at the rulemaking hearing, and TLTA submitted written testimony. No opposition was made to this item at the rulemaking hearing.

Item 98-8 Submission by Texas Department of Insurance to adopt new Procedural Rule P-48, to update the dates used in title insurance forms promulgated by the Commissioner of Insurance. This proposal updates promulgated title forms to reflect the correct calendar year. As noted in the text of the proposed procedural rule, "Any date in any promulgated form adopted as '19__' shall on and after January 1, 2000, be changed to reflect the correct calendar year." No opposition was made to this item at the rulemaking hearing.

Item 98-9 Submission by Texas Department of Insurance to amend Procedural Rule P-28, Continuing Education Requirements, to be consistent with rules previously adopted for staggered renewal dates of title agent, direct operation and escrow officer licenses. This proposal updates the continuing education requirements for title agents and escrow officers to conform to the now staggered license renewal system. No opposition was made to this item at the rulemaking hearing.

Item 98-10 Submission by Texas Department of Insurance to amend the Administrative Rules in Section VI of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas to reflect completion of staggering renewal dates for title agent, direct operation and escrow officer licenses. This proposal deletes references to the staggered renewal dates for licenses (the system is now fully implemented), and the Administrative Rules are updated to reflect new forms of entities such as limited liability companies. The department made a clarifying change in Section V. A. 7. of the Administrative Rules to describe more accurately a corporate ownership change when a person ceases to be a stockholder due to a transfer or sale of all of that person's shares of stock. No opposition was made to this item at the rulemaking hearing.

Item 98-12 Submission by Texas Department of Insurance as requested by the United States Department of Justice to repeal in its entirety Form T-11, Policy of Title Insurance (USA) and to adopt instead proposed Form T-11, United States of America Policy of Title Insurance. The proposed new policy form for insuring real estate titles to the United States of America and the United States Postal Service was requested by the Department of Justice to conform the Texas policy with other states. The Department of Justice has since requested that this item be withdrawn pending further study by the Department of Justice; therefore, the department withdrew this item at the rulemaking hearing, and it will receive no further consideration in this proposal.

Item 98-13 Submission by Texas Department of Insurance to amend Procedural Rule P-33, necessary to make this rule consistent with the proposed Form T-11, United States of America Policy of Title Insurance. An amended procedural rule would be necessary in the event a new USA policy is adopted; however, since the Department of Justice has requested that it be allowed further study of the proposed policy, the department withdrew this item at the rulemaking hearing, and it will receive no further consideration in this proposal.

Item 98-15 Submission by Texas Department of Insurance to repeal Form T-19, Company Report of Agents Audit Report. This proposal was initially to update the form for the title insurance company's analysis report of title agents' audit reports. Senate Bill 105, 76th legislature has eliminated this reporting duty of a title company; therefore, the Form T-19 is no longer necessary. TLTA submitted comments to this item suggesting the repeal of Form T-19. The department agrees and has amended this item as a proposal to repeal, rather than amend, Form T-19. No opposition was made to this item at the rulemaking hearing.

Item 98-19 Submission by Texas Department of Insurance to amend the Limited Pre-Foreclosure Policy (Form T-40) to correct a typographical error. This policy form is proposed to be corrected by adding a word that was inadvertently omitted from the promulgated form. No opposition was made to this item at the rulemaking hearing.

The department has filed a copy of each of the proposed items with the Secretary of State's Texas Register section. Persons desiring copies of the proposed items can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Angela Arizpe at (512) 322-4147.

Robert R. Carter, Jr., deputy commissioner for the title insurance division, has determined that, for each year of the first five years the amendment is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendment. Mr. Carter has also determined that there will be no effect on local employment or the local economy.

Mr. Carter has also determined that for each year of the first five years the proposed amendment is in effect there will be a number of public benefits anticipated as a result of the amendments to the manual rules and changes to the insuring forms. The updating of the reinsurance agreements and the promulgating of a new tertiary facultative reinsurance agreement will better facilitate insurance agreements between title companies. This will allow for more efficient closing of transactions in which a title insurance company must seek reinsurance pursuant to the provisions of Article 9.19 of the Insurance Code. The new procedural rule P-48 will allow a transition for all promulgated forms after the year 2000 whereby appropriate blanks are available for the correct calendar year. The updating of the continuing legal education requirements and the administrative rules allows for consistent administration with the staggered renewal process for license issuance and renewal thus facilitating the efficiency of this program for title agents and escrow officers. The updating also recognizes new entities such as limited liability companies which enables the administrative rules to be consistent with changing business practices. The elimination of Form T-19 regarding a title insurance company's annual report and analysis of audit reports of title agents which conforms to the new legislation passed through Senate Bill 105 in the 76th legislature and the correction of the typographical error in the limited pre-foreclosure policy, Form T-40, are housekeeping matters that will improve the practices of the title industry thus contributing to the ease of buying, selling, and refinancing real estate in Texas. There are no anticipated additional costs to persons required to comply with these manual rule changes. Most of the changes are housekeeping matters or updating of forms that will improve and facilitate the practices of the title industry. Substituting the updated promulgated forms will impose no additional regulatory costs on companies that decide to participate in the market, and the costs of reproducing such forms should be fully compensated by the existing premium schedule. Furthermore, the department anticipates that the existing premium schedule will fully compensate both small and large businesses, and therefore, expects no differential impact between small and large businesses that decide to participate in the market. Accordingly, there is no anticipated additional economic cost

to individuals or business entities who are required to comply with the section as amended.

Comments on the proposal to be considered by the department must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Robert R. Carter, Jr., Deputy Commissioner for the Title Insurance Division, Mail Code 106-2T, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

This amended section is proposed pursuant to the Insurance Code, Articles 9.07, 9.21, and 1.03A and in accord with the Government Code, §§2001.004-2001.038. Article 9.07 authorizes and requires the commissioner to hold a biennial hearing to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules and regulations prescribing underwriting standards and practices, and to promulgate and enforce all other rules and regulations necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Government Code, §§2001.004-2001.038 et seq. (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

The following statutes are affected by this proposal: Insurance Code, Articles 9.07 and 9.21.

§9.1. Basic Manual Of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended effective November 1, 1999 [~~October 1, 1998~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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 August 16, 1999.

TRD-9905121

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 26, 1999

For further information, please call: (512) 463–6327

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Part II. Texas Workers' Compensation Commission

Chapter 120. Employers

28 TAC §120.3

The Texas Workers' Compensation Commission (the Commission) proposes an amendment to §120.3 concerning Employer's Supplemental Report of Injury.

The amendment is proposed to address new legislation enacted by the 76th Texas Legislature. Specifically, House Bill 2842 amended the Texas Labor Code to clarify salary continuation. In addition, House Bill 2511 amended Texas Labor Code, §401.024, authorizing the Commission to adopt rules to require electronic transmission of information by means such as facsimile, email, and electronic data interchange. This authorization is utilized in the proposed amendments to achieve a legislative goal of reducing paper communication requirements in the workers' compensation system while ensuring timely and effective communication between system participants.

At the same time, amendments are proposed to include in the rule, some of the Commission's long standing policies and to address problems with the rule that were identified by the Claims Service Task Force (a group of representatives from the system appointed by the Commission to serve as a sounding board for ideas regarding rule development), other system participants, and Commission staff. Other changes include formatting and consistency issues designed to simplify and shorten rule construction. Finally, the structure of the rule was changed to be more prescriptive and to eliminate or significantly reduce ambiguity. The proposals are designed to more clearly lay out expectations so that all system participants will understand the requirements that the Act and rule place on them. It is expected that together, these changes will improve benefit delivery, reduce disputes, make dispute resolution easier, reduce violations, and make it easier to hold system participants accountable for their actions and inactions.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Amendment of §120.3 - Employer's Supplemental Report of Injury.

Amendments to subsection (a) are proposed to clarify that the requirements of the rule no longer apply once the employee reaches maximum medical improvement or is no longer employed by the employer.

Amendments to subsection (b) and (c) are proposed to move some of the specific filing requirements to subsection (d). In addition, proposed subsection (b) clarifies that existing requirements to report changes in post-injury earnings include reporting post-injury earnings such as salary continuation. Specific instructions will be added to the Supplemental Report of Injury to further clarify this issue.

Current language in subsection (d) is proposed to be deleted and replaced with new language relating to the means of filing the Supplemental Report of Injury. The new language emphasizes use of "instant" communication such as electronic transmission through fax or email to reduce the delay in providing critical information for benefit delivery and reduce the use of paper as required by House Bill 2511. The language is written to make use of traditional postal mail the last resort for filing the report. By using this language, as use of email and other forms of instant communication by employers and employees expands, the rules will reduce the reliance on mail.

Language currently in subsection (f) regarding enforcement and violations was removed because it is redundant to the statute. Removal of the enforcement language is not intended to limit the Commission's authority to take enforcement action for violations of this or any other rule. Rather, the existing language did not address all of the methods of enforcement that the Commission has at its disposal for these violations and could be interpreted as limiting the Commission's authority. The Commission's authority to enforce the statute and rules is granted in multiple provisions of the statute and duplicate language in rules is redundant and unnecessary.

Victor Rodriguez, Chief Finance Officer, has determined that for the first five-year period the proposed rules are in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rules. The Commission should ultimately see a reduction in costs due to reduced dispute resolution and information service expenses. Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rule will be:

Injured employees should benefit by an increase in the accuracy and timeliness of temporary income benefits payments.

Employers should benefit because the amended rule allows reporting of information to carriers by telephone which is currently a preferred but prohibited method.

Carriers should benefit from more timely provision of information necessary to ensure the timely and accurate delivery of benefits.

The Commission should see a number of benefits because of the changed rule. First, disputes may be reduced because the proposed amendments to this rule along with the proposed changes in Chapter 129 (relating to Income Benefits - Temporary Income Benefits) will provide a consistent methodology to deal with salary continuation. Also it will be easier to hold system participants accountable for their actions and inactions because the requirements of the law will be clarified.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the requirements to comply with the rules will have the following affects on costs of system participants:

Claimants will probably not see either an increase or decrease in costs.

Employers will probably not see either an increase or decrease in costs because the proposed amendments simply clarify current requirements. There is a potential that employer costs could decrease to the extent that timely reporting of information helps prevent overpayments and may positively influence premium amounts.

Health care providers are not likely to see either an increase or decrease in costs associated with this rule.

Carriers should see a reduction in costs associated with claims administration, overpayments, and may also experience a reduction in penalty exposure because of the clarification of the rule and the emphasis on "instant communication."

The requirements of these rules are not expected to affect costs for small businesses except that by helping to reduce overpayments by more timely reporting of information, the employer's premiums may be positively affected. There will be no difference in the cost of compliance for small businesses as compared to large businesses and there is no anticipated adverse economic impact on small businesses or micro-businesses because the proposed amendments to the rule primarily add options and clarify existing requirements.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

The proposed amendment is proposed under following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits or to pay salary continuation; Texas Labor Code, §§408.041, 408.042, 408.043, and 408.044, which address calculation of the average weekly wage for different types of employees; Texas Labor Code, §408.045, which ad-

dresses the effect of non-pecuniary wages on the calculation of Average Weekly Wage; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.105, as amended by the 76th Texas Legislature, which allows TIBs to be offset by salary continuation; Texas Labor Code, §409.005, which requires employer to file subsequent reports as provided by Commission rule; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; and Texas Labor Code, §409.023, which requires carriers to pay benefits as and when they accrue.

The proposed amendment affects the following statutes: Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits or to pay salary continuation; Texas Labor Code, §§408.041, 408.042, 408.043, and 408.044, which address calculation of the average weekly wage for different types of employees; Texas Labor Code, §408.045, which addresses the effect of non-pecuniary wages on the calculation of Average Weekly Wage; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.105, as amended by the 76th Texas Legislature, which allows TIBs to be offset by salary continuation; Texas Labor Code, §409.005, which requires employer to file subsequent reports as provided by Commission rule; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; and Texas Labor Code, §409.023, which requires carriers to pay benefits as and when they accrue.

§120.3. Employer's Supplemental Report of Injury.

(a) As used in this section, the term "employer" means the employer for whom the injured employee was working when injured and the filing requirements apply during the time the employee is entitled to temporary income benefits. The employer's duty to file reports required by subsections (b) and (c) of this section continues until the employee reaches maximum medical improvement or is no longer employed by the employer.

(b) As provided in §129.4 of this title (relating to Adjustment of Temporary Income Benefit Amount), the employer shall file the Supplemental Report of Injury, in the form, format and manner prescribed by the Commission. The report shall [~~may~~] be filed [~~in writing, by electronic data interchange, or facsimile (fax). The report shall be filed~~] with the employer's insurance carrier and provided to the employee within ten days after the end of each pay period in which the employee has a change in earnings as a result of the injury or within ten days after the employee resigns or is terminated. The requirement to report a change of earnings under this subsection includes reporting all post-injury earnings as that term is used in Chapter 129 of this title (relating to Temporary Income Benefits).

(c) For injuries requiring a first report of injury to be filed, the employer shall file the Supplemental Report of Injury with the employer's [~~insurance~~] carrier and provide a copy to the employee within three days after:

(1) the employee returns to work; or

(2) the employee, after returning to work, experiences an additional day(s) of disability as a result of the injury.

(d) The employer shall file the supplemental report of injury with the carrier by personal delivery, telephone, facsimile or electronic transmission. If the employee has returned to work, the employer shall provide a copy of the supplemental report of injury to the employee by personal delivery. If the employee has not returned to work, the employer shall provide the supplemental report of injury to the employee by facsimile or electronic transmission unless the employee does not have a means of receiving the transmission or the employer does not have a means of sending one, in which case the report shall be sent by mail. [~~For purposes of this section, a report is filed with the insurance carrier when personally delivered, mailed, reported via facsimile (fax), or electronically submitted. A report is provided to the employee when personally delivered or mailed.~~]

(e) The employer shall maintain a record of the date the supplemental report of injury is filed with the [~~insurance~~] carrier and provided to the employee. If a report required by this section has not been received by the [~~insurance~~] carrier, the employer has the burden of proving that the report was filed within the required time frame. The employer has the burden of proving that good cause exists if the employer failed to file the report.

[~~(f) Failure to comply with the requirements of this section, without good cause, is a Class D administrative violation, subject to a penalty not to exceed $500, pursuant to Texas Labor Code, §409.005, and may be subject to a penalty not to exceed $10,000 pursuant to Texas Labor Code, §415.021, for repeated violation.~~]

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 August 16, 1999.

TRD-9905177
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512)707-5829

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Chapter 126. General Provisions Applicable to All Benefits

28 TAC §§126.1, 126.4-126.7, 126.12, 126.13

The Texas Workers' Compensation Commission (the Commission) proposes amendments to §126.4 concerning Advance of Benefits Based on Financial Hardship; §126.5 concerning Procedure for Requesting Required Medical Examinations; and §126.6 concerning Order for Required Medical Examinations. In addition, the Commission proposes new §126.1 concerning Definitions Applicable to All Benefits; §126.7 concerning Effect of an Opinion by a Carrier Selected Required Medical Examination Doctor; §126.12 concerning Payment of Interest on Accrued but Unpaid Income Benefits; and §126.13 concerning Employer Initiation of Benefits and Reimbursement.

The amendments and additions are proposed to address new legislation enacted by the 76th Texas Legislature. At the same time, these actions are also proposed to include in the rules, some of the Commission's long standing policies and to address problems with the rules that were identified by the Claims Service Task Force (a group of representatives from the system appointed by the Commission to serve as a sounding board for ideas regarding rule development in the area of claims service), other system participants, and Commission staff. The proposed rules simplify and shorten the rule construction and are designed to be more prescriptive and to eliminate or significantly reduce ambiguity. The proposals are designed to more clearly lay out expectations so that all system participants will understand the requirements that the Act and rules place on them. It is expected that together, these changes will improve benefit delivery, reduce disputes, make dispute resolution easier, reduce violations, and make it easier to hold system participants accountable for their actions and inactions.

Specifically, House Bill 1826 limited the carrier's entitlement to require an injured employee to attend required medical examinations (RMEs) after the second year of entitlement to supplemental income benefits (SIBs); House Bill 2510 made other changes to address required medical examinations and payment of interest on accrued but unpaid benefits; House Bill 2513 required the Commission to promote communication to enhance return to work; and House Bill 2842 amended the Texas Labor Code to clarify salary continuation. In addition, House Bill 2511 amended Texas Labor Code, §401.024, authorizing the Commission to adopt rules to require electronic transmission of information by means such as facsimile, email, and electronic data interchange. This authorization is utilized in the proposed rules and amendments to achieve a legislative goal of reducing paper communication requirements in the workers' compensation system while ensuring timely and effective communication between system participants. The amendments and additions to Chapter 126 (relating to Benefits - General Provision Applicable to All Benefits) are intended to address this legislation as well as the other issues raised above.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

New §126.1 - Definitions Applicable to All Benefits

Current agency practice is to structure rule chapters and subchapters with a list of definitions as the first rule. Chapter 126 does not currently have a set of definitions and this rule is proposed to rectify that. The proposed rule contains four definitions. The first one helps to differentiate between salary continuation and employer initiation of benefits and helps implement legislation addressing salary continuation. The next two definitions address pecuniary and non-pecuniary wages. These definitions are important because statutorily they affect the calculation of the Average Weekly Wage (AWW) and the amount of income or death benefits to be paid but have never been adequately defined. The final definition addresses overpayments by defining unrecoupable overpayments.

Amendment of §126.4 - Advance of Benefits Based on Financial Hardship

Simple amendments are proposed for this rule to correct a citation to the Texas Labor Code rather than the uncodified workers' compensation act and to make formatting changes. In addition, an amendment is proposed for subsection (a) to delete language requiring injured employees seeking advances on income benefits while receiving impairment income benefits (IIBs) to first request an acceleration of those benefits prior to seeking the advance. Commission experience is that the amount of money that an acceleration provides to the employee is rarely enough to address the employee's financial hardship and simply represents another hurdle to financial relief.

Amendment of §126.5 - Procedure for Requesting Required Medical Examinations

Amendments to this rule are proposed to address legislative changes made by House Bill1826 relating to the carrier's entitlement to require an employee who has been receiving SIBs to attend an RME and to make formatting changes.

Amendments are proposed to subsection (f) to address the legislative change that reduces the carrier's ability to require an employee to attend a required medical examination to once per year if the employee has been entitled to supplemental income benefits (SIBs) for two years and has a medical condition which has not improved sufficiently in the prior year to allow employee to return to work.

Subsection (i) is proposed to be amended to have enforcement language removed because it is redundant to the statute. Removal of the enforcement language is not intended to limit the Commission's authority to take enforcement action for violations of this or any other rule. Rather, the existing language did not address all of the methods of enforcement that the Commission has at its disposal for these violations. The Commission's authority to enforce the statute and rules is granted in multiple provisions of the statute and duplicate language in rules is redundant. In its place, proposed amendments to subsection (i) would specify the method by which a request for a medical examination must be sent to the employee or the employee's representative to emphasize "instant communication" rather than traditional reliance on mail. In addition, new subsection (j) is proposed to be added to require the carrier to maintain a copy of the request for a medical examination order as well as documentation of its successful transmission.

Amendment of §126.6 - Order for Required Medical Examinations

Amendments to this rule are proposed to address legislative changes made by House Bill 2510 relating to failing to attend an RME and the effect of a carrier-selected RME doctor's opinion as well as to make formatting changes. Subsection (a) is proposed to be amended to ensure that an order to attend an RME contain language explaining that in addition to a penalty, failure to attend an RME without good cause could result in a loss of entitlement to temporary income benefits (TIBs) and that a missed appointment needs to be rescheduled.

Subsection (b) is proposed to be amended to clarify that the requirement to reschedule the examination "within seven days" means "within seven days of the date the exam was initially scheduled to occur." In addition it is proposed that the subsection be clarified to explain that the requirement for 10 days notice of an examination does not apply to the rescheduled appointment. In addition, subsection (c) is proposed to be amended to limit the treating doctor's attendance to examinations by carrier-selected doctors.

Subsection (f) is proposed to be amended to remove the current language regarding scheduling a benefit review conference

(BRC) within 30 days if the RME doctor believes that the employee can return to work and this language be replaced to require the RME doctor to file a report of his/her finding of an employee's ability to return to work with the treating doctor, carrier, and employee or employee's representative. The effect of this decision on the carrier's duty to pay TIBs is proposed to be addressed by the addition of a new §126.7 relating to Affect of an Opinion by a Carrier-Selected Required Medical Examination Doctor. Subsection (f) now specifies that the RME doctor must file a Work Status Report if the RME doctor believes that the employee can return to work. This is a new report which is being introduced simultaneously in Chapter 129 relating to Income Benefits - Temporary Income Benefits.

A new subsection (h) is proposed to be added to address when a carrier can suspend TIBs based upon the employee's failure to attend the RME as originally scheduled and failure to reschedule and attend that examination. The proposed language would require a carrier who has suspended TIBs based upon this section to reinitiate TIBs once the employee attends the examination.

Subsection (i) is proposed to be amended to clarify that if a carrier-selected RME doctor does not allow the employee's treating doctor into the examination and the employee fails to submit to the examination as a result, that this is not a violation and it is not grounds for suspending TIBs.

New §126.7 - Affect of an Opinion by a Carrier-Selected Required Medical Examination Doctor

Rule 126.7 is proposed to be added to address legislative changes made by House Bill2510 relating to suspension of TIBs based upon an carrier selected RME doctor's finding that an employee has reached MMI or is able to return to work. The development of this rule was based upon several premises. First was that intent of the legislation was to introduce balancing elements into a situation which previously did not allow for such balance. The issue relates to whether a carrier can suspend income benefits based upon a carrier-selected RME doctor's opinion. In the past, the Commission's position has been that the carrier can not do so prior to the Commission's approval. The new legislation sets up a process which allows the carrier to suspend if certain conditions are met but delays that suspension until after the Commission has the opportunity to review the case through a BRC. Depending on the results of a BRC, the Commission can order the carrier to continue paying TIBs or allow the carrier to suspend TIBs.

Central to this new process are two goals. The first is to minimize periods in which an employee does not receive income benefits that they will be ultimately found to be entitled. The second is to minimize carriers' payment of benefits which an employee will ultimately be found to not be entitled to because the carrier's doctor was correct. Further, if carriers do pay benefits that the employee is ultimately not entitled to, the goal is to allow carriers to receive reimbursement for unrecoupable overpayments from the Subsequent Injury Fund.

Given these premises, certain conclusions were drawn which were considered in the rule development process. First is that there is no need for the carrier to utilize the notice of intent to suspend TIBs process provided in the legislation if the amount of TIBs that would be paid by the carrier pending the resolution of a dispute of a RME doctor's certification of MMI would not exceed the amount of IIBs that would be paid based upon that certification or the carrier's reasonable assessment of impairment (e.g. if the assessment was 5.0%, then the employee would be entitled to 15 weeks of IIBs which would more than cover TIBs continued pending resolution of a dispute).

Resolution of a dispute of an RME doctor's certification of MMI and assignment of an impairment rating involves use of a designated doctor. For the purpose of this process it was assumed that it would take less than six weeks from the date a request for a designated doctor was received by the Commission to schedule and hold the examination and get the report. Therefore given that the intent of the legislation is to prevent carriers from making payments they cannot recoup, if by a carrier's own calculations, the amount that would be paid if TIBs were continued pending receipt of a designated doctor's report would not exceed the amount that the employee would be entitled to in IIBs, there is no reason to go through the new legislative process. By limiting access to the new process to those cases where it appears that continued payment of TIBs would cause an unrecoupable overpayment, the hope is that it will ensure that the Commission is able to provide quickly dispute resolution on those cases and not spend time on cases where neither the carrier nor the employee are in jeopardy of unrecoupable overpayments or suspension of income benefits respectively.

Subsection (a) is proposed to ensure that there is no confusion about what types of opinions that this rule governs which are carrier-selected RME doctors' opinions. In addition, the subsection gives a different name to the "notice of suspension" described in Texas Labor Code, §408.004(f), because traditionally in the workers' compensation system, a "notice of suspension" or termination is a notice that explains an action already taken while the notice being sent pursuant to the new legislation and this rule is more of a notice of intent to suspend benefits.

Subsection (b) is proposed to protect the right of the carrier to suspend or adjust TIBs based upon factors other than the RME doctor's opinion. For example if an RME doctor certifies MMI and then several weeks later the employee returns to work with no lost wages, the carrier would be able to suspend TIBs based upon the fact that there are no lost wages.

Subsection (c) requires the carrier to send the notice of intent to suspend to the treating doctor, the employee, and the employee's representative if the carrier intends to use the opinion of an RME doctor to suspend or reduce TIBs. It also instructs the carrier to not send it to the Commission except as provided in subsection (i). Subsection (d) is proposed to emphasize the importance of a treating doctor's agreement with the carrier-selected doctor's opinion in that the carrier is required to pay benefits in accordance with the treating doctor's opinion if the treating doctor indicates agreement with the RME doctor's opinion.

Subsection (e) provides that subsections (f), (g), and (h) only apply to an RME doctor opinion that the employee has reached MMI.

Recognizing that sometimes the treating doctor will fail to respond to the RME doctor's report or the carrier's notice or will respond but will disagree with the RME doctor's opinion, subsection (f) requires the carrier to evaluate the potential for an overpayment by reviewing the employee's current income benefit status, the RME doctor's opinion and determining whether continuing to pay TIBs for an additional eight weeks would cause an overpayment. Eight weeks was chosen as the

standard because it is believed that in nearly all cases it should take less than eight weeks to request, schedule, and hold a designated doctor appointment as well as to receive the report. Eight weeks allows for a "worst case scenario" of a delay in the carrier's sending the request for a designated doctor to the Commission, for a rescheduled appointment, for outside testing, for a late report, etc. Using eight weeks is expected to protect carriers from making unrecoupable overpayments since in most cases the report should be received in five to six weeks.

Subsection (g) provides that if the carrier does not believe that an overpayment is likely, the carrier is to request a designated doctor and continue paying TIBs pending the receipt of the report, or the treating doctor's agreement (if the treating doctor's agreement is received late), or until the employee fails to attend the designated doctor examination. The Commission has long considered a designated doctor examination to be a type of RME since employees are required to attend them and they are Commission requested/ordered examinations under §408.004, used for resolution of disputes on several types of issues. Therefore the legislative changes that allow for the termination of TIBs based upon failure to attend the RME apply to failure to attend designated doctor examinations as well. Further, allowing the carrier to suspend based upon a failure to attend the designated doctor's examination reduces the potential for unrecoupable overpayments by the carrier and serves as an incentive for the employee to attend examination as required.

Subsection (h) requires a carrier to notify the Commission if it has continued to pay TIBs and does not receive the report of a designated doctor by the 35th day after the day the carrier notified the Commission of the need for the assignment of a designated doctor. By the 35th day, the carrier should have paid five additional weeks of TIBs pursuant to subsection (g). Requiring the carrier to notify the Commission of the fact that the report has not been received will help ensure that the carrier does not make an unrecoupable overpayment and will allow the Commission to better monitor the designated doctor process to try to timely obtain the report in order to prevent the unrecoupable overpayment. Subsection (i) has similar features to prevent overpayments during the continuation of TIBs under subsection (g).

Subsection (i) specifies the circumstance in which a carrier is permitted to file the notice of intent to suspend with the Commission. Specifically the carrier is allowed to file the notice if the RME opinion was a release to return to work without restriction; if paying an additional eight weeks of TIBs would cause an overpayment; or if the carrier had continued to pay TIBs under subsection (g) and the carrier has not received the designated doctor's report by the 42nd day after the request for a designated doctor was made with to Commission. The intent of allowing the carrier to file the notice when the carrier has not received the report by the 42nd day is again intended to protect against unrecoupable overpayments since subsection (g) otherwise requires the carrier to continue TIBs until receipt of the designated doctor's report and assumably at this point the Commission will have been unable to obtain the report from the designated doctor pursuant to the carrier's reporting it on the 35th day. The ability of the carrier to file the notice with the Commission under these circumstances will allow the Commission to hold a BRC in order to possibly prevent an unrecoupable overpayment.

Subsection (j) provides that submission of the notice as permitted by subsection (i) will allow the carrier to reduce or suspend TIBs on the fourteenth day after the notice is filed with the Commission unless an interlocutory order is entered by the Commission. Subsection (k) requires the Commission to try to obtain the treating doctor's opinion regarding the RME doctor's opinion before rending a decision on whether to issue an interlocutory order through a BRC. The subsection also provides an exception to the requirement in §141.1 (relating to Requesting and Setting a Benefit Review Conference) to provide at least 10 days notice prior to holding a BRC since the legislative amendments to §408.004(f) require the Commission to hold the BRC within 10 days of receiving the notice of intent to suspend.

Subsection (l) provides that an interlocutory order that is "automatically entered" is dissolved upon receipt of the designated doctor's report, the holding of a BRC or the failure to the employee to attend or reschedule and attend the designated doctor examination.

Subsection (m) requires a carrier who suspends TIBs based upon an RME doctor's certification of MMI to initiate IIBs in accordance with the requirements of the statute and other rules. Subsection (n) specifies that a carrier is entitled to reimbursement from the Subsequent Injury Fund if the carrier makes an unrecoupable overpayment. The amount that can be recouped is only the amount that cannot be recouped from the employee's income benefits. Subsection (o) requires a carrier to maintain copies of the notice of intent to suspend and the RME doctor's report as well as documentation of their successful transmission as required by the rule.

New §126.12 - Payment of Interest on Accrued but Unpaid Income Benefits

House Bill 2510 amended the statute to require carriers to pay interest on accrued but unpaid income benefits. Section 126.12 is proposed to be added to define what "accrued but unpaid income benefits" are and to specify the means to calculate the amount of interest to pay. Subsection (a) defines accrued but unpaid income benefits in two ways: those that accrue but are not paid during the course of a dispute and late payments. Subsection (b) specifies that the "simple interest" method is to be used to calculate the amount of interest to pay. Subsection (c) explains that income benefits accrue in either weekly or monthly pay periods and interest is to be calculated separately for each pay period. The subsection also lays out how to calculate the number of days of interest that are due depending on how the benefits became accrued but unpaid. Subsection (d) references the source of the interest rate to use in this rule.

Subsection (e) addresses the variability in interest rates from quarter to quarter. Under Texas Labor Code, §401.023, the interest rate is calculated quarterly. Therefore, if a carrier owes benefits towards the end of one quarter but does not pay until the next quarter and if the interest rate changed from one quarter to the next, the amount of interest to pay must be calculated separately for each quarter. Simply picking one rate and using it for the whole interest rate calculation will result in over or underpayments in interest. Therefore, interest must be calculated by determining the number of days due for each quarter. Subsection (f) then lays out the "step-by-step" mechanism to be used to calculate the interest owed.

Calculation of interest is a relatively difficult task to accomplish by hand and use of spreadsheets or other computer programs will simplify the process of determining and accurately paying interest as required by the statute. Accurate payment of interest will require carriers to know exactly what day payments are

being made in order to determine the number of days of interest that are due. Carriers may want to accomplish this by building automation that automatically calculates and adds interest to a payment if it is late.

New §126.13 - Employer Initiation of Benefits and Reimbursable Employer Payments

This rule is proposed to be added to clarify the provisions of Texas Labor Code, §408.003 and §408.127, which allow an employer to initiate "benefits" during a period in which the carrier has not yet accepted a claim and to receive reimbursement from the carrier for those benefits which are initiated. This rule is a companion to other rules being amended or proposed simultaneously in Chapter 129 which address the salary continuation portions of §408.003 which were added by the legislature through House Bill 2842.

Subsection (a) specifies that an employer may initiate benefits to an employee during a period in which the carrier has not accepted liability for the claim. Subsection (b) specifies that an employer who initiates benefits under subsection (a) is entitled to reimbursement. Texas Labor Code, §408.003, requires an employer is to report any benefits it initiates to the carrier and subsection (c) specifies how this is to be done. The statute has always required employers to notify the carrier of what benefits the employer has initiated but the Commission has not previously adopted rules to address how or when the employer is to do this.

Subsection (d) specifies the time frames in which the carrier must reimburse the employer for the benefits the employer initiated. Subsection (e) explains how benefits that were not otherwise reimbursable under subsection (d) are to be reimbursed and subsection (f) prohibits an employer from seeking reimbursement from the employee for amounts paid the employer which are not otherwise reimbursable.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rules are in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rules. The Commission should see a number of benefits because of the changed rules after an introductory period. The changes in the rules that allow a carrier to suspend TIBs based upon the employee's failure to attend an RME or designated doctor appointment should reduce overpayments and provide incentives for the employee to attend examinations. In addition, the proposed rules will provide a "self-correcting" process that should lessen the need for the Commission to get involved when an injured employee fails to attend an examination. In addition, the new definitions for pecuniary and nonpecuniary wages should help reduce and resolve disputes. The changes to the advances process could reduce costs by simplifying the process. Also it will be easier to hold system participants accountable for their actions or inactions because the requirements of the law and rules will be clarified. The statutory changes relating to RME doctor's opinions and the additional BRCs that will be required may cause an increase in costs to the Commission. These anticipated fiscal implications cannot be quantified.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rule will be:

Injured employees should benefit by receiving interest on accrued but unpaid income benefits. They should also benefit by having a process that ensures that their treating doctor has the opportunity to review a carrier-selected doctor's opinion regarding MMI and return toward prior the carrier being allowed to suspend or reduce TIBs. In addition the new definitions for pecuniary and nonpecuniary wages should help ensure that employees receive the proper amount of income benefits. Employees should also benefit from the simplification in the process regarding advances. The clarification on employer reimbursement should benefit employees because it specifies that benefits to be reimbursed to the employer out of the employee's IIBs have to apportioned across all the benefits. The lack of specificity now can result in the carrier simply paying the money in a lump sum and not paying the employee IIBs until the lump sum is fully credited. The changes to the rules dealing with the affect of an RME doctor's opinion should keep employees better informed about potential changes in their benefits.

Employers should benefit from having clear guidance on how and when benefits that they paid to the employee are to be reimbursed because there are currently no rules on the subject. Also, to the extent that the these rules prevent unrecoupable overpayments, premiums may be positively impacted.

Health care providers should benefit from these rules because there will be more structure to the RME processes particularly how and when the RME doctors are to report their opinions regarding return to work and how the treating doctors are to respond to those opinions.

Carriers should benefit because many of the uncertainties about existing processes should be eliminated with the new rules. Carriers should also benefit by having a process that clarifies how an RME doctor's opinion affects benefit delivery and by having mechanisms in place to prevent unrecoupable overpayments. In addition the new definitions for pecuniary and nonpecuniary wages should help ensure that carriers pay the proper amount of income benefits. The simplification in the process regarding advances could also reduce the carrier's administrative burden by not requiring accelerations of IIBs prior to payments of advances. The changes in the rules that allow a carrier to suspend TIBs based upon the employee's failure to attend an RME or designated doctor appointment should also reduce overpayments and provide incentives for the employee to attend examinations that are required.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the requirements to comply with the rules will have the following affects on costs to system participants:

Claimants will probably not see either an increase or decrease in costs.

Some employers may experience a drop in costs to the extent that the rules prevent unrecoupable overpayments and that this allows carriers to reduce or slow the rise of insurance premiums because of the reduced costs of indemnity claims. Otherwise, employers will probably not see either an increase or decrease in costs.

Health care providers are not likely to see either an increase or decrease in costs associated with these rules as most of the

health care providers' requirements currently exist in one form or another.

Carriers should see a reduction in costs associated with the changes designed to eliminate unrecoupable overpayments caused by continuing to pay TIBs during pendency of a dispute on an RME doctor's opinion. However, the legislative changes that require carriers to pay interest on accrued but unpaid benefits will cause increases in costs.

The requirements of these rules should reduce costs for small businesses as described above. The cost of compliance for small businesses as compare to large businesses will be identical and there is no anticipated adverse economic impact on small businesses or micro-businesses.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

The amendments and new rules are proposed under following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits and receive reimbursement and requires the employer to report to the carrier any benefits it has initiated; Texas Labor Code, §408.004, which addresses required medical examinations and the affect of a carrier selected doctor's opinion of payment of TIBs; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.081, which provides that the carrier must pay interest on accrued but unpaid income benefits; Texas Labor Code, §408.101 and §408.102, which cut off entitlement to TIBs upon the employee reaching MMI; Texas Labor Code, §408.121, which states that entitlement to IIBs begins on the day after MMI; Texas Labor Code, §408.122, which establishes eligibility for IIBs and provides for use of designated doctors when a dispute exists regarding the certification of MMI; Texas Labor Code, §408.123, which requires a doctor certifying MMI to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor, to be sent to the treating doctor who must indicate either agreement of disagreement with the certification and evaluation; Texas Labor Code, §408.124, which prescribes the guides to be used for assigning impairment ratings; Texas Labor Code, §408.125, which addresses use of a designated doctor to resolve impairment rating disputes; and Texas Labor Code, §408.127, which provides for employer reimbursement out of IIBs of benefits initiated by the employer which are not reimbursable under Texas Labor Code, §408.003, and requires the Commission to adopt rules and forms to ensure full reporting and accuracy of reductions and reimbursements.

The proposed amendments and new rules affect the following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003 as amended by the 76th Texas Legislature, which allows an employer to initiate benefits and receive reimbursement and requires the employer to report to the carrier any benefits it has initiated; Texas Labor Code, §408.004, which addresses required medical examinations and the affect of a carrier selected doctor's opinion of payment of TIBs; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.081, which provides that the carrier must pay interest on accrued but unpaid income benefits; Texas Labor Code, §408.101 and §408.102, which cut off entitlement to TIBs upon the employee reaching MMI; Texas Labor Code §408.121, which states that entitlement to IIBs begins on the day after MMI; Texas Labor Code, §408.122, which establishes eligibility for IIBs and provides for use of designated doctors when a dispute exists regarding the certification of MMI; Texas Labor Code, §408.123, which requires a doctor certifying MMI to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor, to be sent to the treating doctor who must indicate either agreement of disagreement with the certification

and evaluation; Texas Labor Code, §408.124, which prescribes the guides to be used for assigning impairment ratings; Texas Labor Code, §408.125, which addresses use of a designated doctor to resolve impairment rating disputes; and Texas Labor Code, §408.127, which provides for employer reimbursement out of IIBs of benefits initiated by the employer which are not reimbursable under Texas Labor Code, §408.003, and requires the Commission to adopt rules and forms to ensure full reporting and accuracy of reductions and reimbursements.

§126.1. Definitions Applicable to All Benefits.

The following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) Employer Initiation of Benefits - Money paid by an employer to the employee to compensate the employee for lost wages or paid by the employer for medical expenses during a period in which the carrier has either:

(A) contested compensability of the injury;

(B) contested liability for the injury; or

(C) has not completed its initial investigation of the injury which is limited to seven days after the carrier receives first written notice of the injury as defined in §124.1 of this title (relating to Notice of Injury).

(2) Nonpecuniary Wages - Wages paid to an employee in a form other than money. Examples of nonpecuniary wages include but are not limited to:

(A) Health insurance premiums;

(B) Laundry/cleaning;

(C) Clothing/uniforms;

(D) Lodging/housing/rent;

(E) Payment of professional license fees;

(F) Food/Meals; and

(G) Provision of a vehicle/fuel.

(3) Pecuniary Wages - Wages paid to an employee in the form of money. Examples of pecuniary wages include, but are not limited to:

(A) Hourly, weekly, biweekly, monthly (etc.) wages;

(B) Salary;

(C) Piecework compensation;

(D) Any monetary allowance such as for health insurance premiums, vehicle/fuel, food/meals, clothing/uniforms, laundry/cleaning, or lodging/housing/rent;

(E) Monetary bonuses earned or accrued by the employee; and

(F) Commissions.

(4) Unrecoupable overpayment - The amount of benefits paid by the carrier to the claimant which were not owed and which were not recoverable or convertible from other income benefits.

§126.4. Advance of Benefits Based on Financial Hardship.

(a) An injured employee seeking an advance of income benefits based on financial hardship shall submit a written application in the form and manner prescribed by the Commission[. ~~Form TWCC-47~~]that states the basis for the hardship to the Commission [~~commission~~]. The application must state the employee understands that if an advance is granted the amount of future weekly benefit payments will be reduced. [~~An employee receiving impairment income benefits must request acceleration of those benefits under the Act, §4.321, before seeking an advance of benefits.~~]

(b) The Commission [~~commission~~] shall forward a copy of the employee's application to the insurance carrier and shall consider the employee's application and may order an advance if it determines that both a hardship exists for the employee and the employee is likely to be entitled to income benefits sufficient to cover the amount of the advance.

(c) An advance will not be granted to an employee who is receiving income benefits under this Act of at least 90% of the employee's net pre-injury wage. The net pre-injury wage of an employee is 85% of the average weekly wage, for this section.

(d) The Commission [~~commission~~] shall notify the [~~insurance~~] carrier and the [~~injured~~] employee in writing when an advance is ordered. The notice shall include the amount of the advance to be paid; this amount shall not exceed four times the maximum weekly benefit for temporary income benefits as computed under the Act, §408.061(a) [~~§4.11~~]. The [~~insurance~~] carrier shall pay an advance ordered by the Commission [~~commission~~] within seven days of the receipt of notice from the Commission [~~commission~~] by the carrier's Austin representative.

(e) After the carrier has paid an advance, it shall reduce the amount of the weekly income benefits in an amount set by the Commission [~~commission~~], which takes into account the amount advanced and the number of weeks that benefits are likely to be paid in the future. The weekly benefits may be paid in this reduced amount until the carrier has recouped the amount advanced.

(f) The total amount of benefits paid to the employee through weekly payments and advances based on hardship shall not exceed the amount the employee would have received under a normal payment schedule. No more than three advances shall be granted based on the same injury.

§126.5. Procedure for Requesting Required Medical Examinations.

(a) The Commission [~~commission~~] may authorize a required medical examination for any reason set forth in the Texas Workers' Compensation Act (the Act), Texas Labor Code, §408.004, whether the request for the examination is made by the insurance carrier or a division of the Commission [~~commission~~]. The request shall be made in the form and manner prescribed by the Commission

(b) The Commission [~~commission~~] shall not require an injured employee to submit to a medical examination at the [~~insurance~~] carrier's request until the [~~insurance~~] carrier has made an attempt to obtain the agreement of the [~~injured~~] employee for the examination. The [~~insurance~~] carrier shall notify the Commission [~~commission~~] in the form and manner prescribed by the Commission [~~commission~~] about any agreement or non-agreement of the [~~injured~~] employee regarding the requested examinations. If an agreement is secured for [~~an additional~~] RME [~~required medical examination~~] beyond that which the carrier is entitled to require the employee to attend as provided in [~~within a 180-day period pursuant to~~] subsections (c), (d), [~~and~~] (e), and (f) of this section, the written notification must also include an explanation of why good cause exists for the additional RME [~~required medical examination~~].

(c) A [~~An insurance~~] carrier's request for a medical examination order shall be delivered to the Commission [~~commission~~] office managing the claim, and be sent [~~by certified mail~~] to the [~~injured~~] employee, and [~~or~~] the employee's representative on the same day in the manner prescribed by subsection (j) of this section. A carrier is

entitled to only one RME [required medical examination], as allowed by the Act, §408.004, every 180 days, except as provided [permitted] in subsections [subsection] (d), [and] (e), and (g) of this section.

(d) For dates of injury on or after September 1, 1997, the Commission [commission] may approve additional RMEs [required medical examinations] at the [insurance] carrier's request before the expiration of 180 days in the event that a medical opinion is needed to determine if:

(1) there has been a change in the [injured] employee's condition;

(2) there is a need to change the [injured] employee's diagnosis;

(3) the treatment should be extended to another body part or system, or if the extent of injury has changed;

(4) the compensable injury is a producing cause of additional problems or conditions;

(5) disability exists, because of newly discovered information;

(6) proposed surgery, other than spinal surgery, is necessary to treat the compensable injury; or

(7) the [injured] employee has reached maximum medical improvement and to determine the impairment rating when the examination relates to a body part or system that is outside the expertise of the [insurance] carrier's required medical examination doctor selected under subsection (c) of this section.

(e) Except for the reason listed in subsection (d)(7) of this section, any request by a [an insurance] carrier for an additional RME [required medical examination shall] be submitted only after the [insurance] carrier has previously had an examination under subsection (c) of this section. Unless good cause exists, a request for an additional RME [required medical examination] under subsection (d) of this section will not be approved during a 180 day period for the same reason or rationale.

(f) Notwithstanding subsections (c) and (d) of this section, on or after the second anniversary of the date the Commission makes the initial award of supplemental income benefit, the carrier's entitlement to require an employee to submit to an RME is limited to one examination per year if after that date:

(1) the employee is receiving supplemental income benefits; and

(2) if, in the preceding year, the employee's medical condition resulting from the compensable injury had not improved sufficiently to allow the employee to return to work during that year. [The injured employee shall not be required to submit to more than three required medical examinations at the request of the insurance carrier under this section within any 180 consecutive day period.]

(g) The Commission [commission]shall monitor all [insurance] carrier requests for medical examinations that are requested before the expiration of the 180-day period under subsections (d) and (e) of this section through statistical analysis, audits, or other appropriate means.

(h) An unreasonable request for an additional medical examination under subsections (d), (e) and (g) [(f)] of this section includes:

(1) a request for an additional examination for a reason which does not comply with this section;

(2) a request for a different doctor without sufficient grounds;

(3) a request which would result in a violation of subsection (g) [(f)] of this section; and

(4) a request which provides false, incomplete, or misleading information.

(i) The carrier shall send a copy of the request for a medical examination order required by subsection (c) of this section to the employee and the employee's representative by facsimile or electronic transmission unless the employee or the employee's representative does not have a means of receiving the transmission, in which case the carrier shall send the request by certified mail. [An insurance carrier who unreasonably requests an additional required medical examination as defined in subsection (h) of this section, commits a Class B administrative violation. An insurance carrier who demonstrates a pattern of unreasonably requesting additional required medical examinations commits a Class A administrative violation.]

(j) The carrier shall maintain copies of the request for a medical examination order and shall also maintain verifiable proof of successful transmission of the information. For the purposes , verifiable proof includes, but is not limited to, a facsimile confirmation sheet, certified mail return receipt, or a copy of the electronic transmission.

§126.6. Order for Required Medical Examinations.

(a) When a request is made by the insurance carrier[,] or a division of the Commission [commission], for a medical examination, the Commission [commission] shall determine if an examination should be ordered. The Commission [commission]shall issue an order granting or denying the request within seven days of the date the request is received by the Commission [commission]. A copy of the order shall be sent to the injured employee, the employee's representative, and the [insurance] carrier[, by first class mail or personal delivery to the carrier]. The order shall explain the potential loss of benefits and penalty exposure for failing to attend the examination as well as the need to reschedule a missed examination [state the penalty cited in subsection (h) of this section]. An agreement between the parties for an examination under §126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) has the same effect as the Commission's [commission's] formal order.

(b) All examinations ordered must be scheduled as soon as possible, with at least 10 days notice to the [injured] employee and [or] the employee's representative. If a scheduling conflict exists, the [injured] employee shall [must] contact the doctor prior to the examination to re-schedule the examination to a time within seven days of the date the examination was originally scheduled to occur. In this event, the examining doctor shall notify the carrier and the 10 day notice requirement does not apply to a rescheduled examination.

(c) The [injured] employee's treating doctor, chosen under the Texas Workers' Compensation Act (the Act), Texas Labor Code, §408.022, may be present at an examination scheduled with a doctor selected by the carrier [according to subsection (b) of this section]. The [injured] employee's treating doctor may observe the conduct of the examination, and may consult with the examining doctor about the course of the [injured] employee's treatment. The [injured] employee's treating doctor shall not otherwise participate in, or impede, the examination.

(d) If the RME [required medical examination] doctor, selected by a [an insurance] carrier, refuses to allow the treating doctor to attend the examination, the [insurance] carrier shall cancel the ap-

pointment and request that another doctor be approved for the RME [~~required medical examination~~]. If reasonable notice is not provided to the [~~injured~~] employee and [~~or~~] the employee's representative, the [~~insurance~~] carrier shall be liable for any reasonable travel expenses incurred by the [~~injured~~] employee and for the payment for the treating doctor's attendance at a refused appointment. This subsection shall not apply to situations where the treating doctor is not able to attend the examination due to any form of scheduling conflict. The RME [~~required medical examination~~] is not required to be scheduled based on the availability of the treating doctor.

(e) A RME [~~An examining~~] doctor who determines the [~~injured~~] employee has reached maximum medical improvement or who assigns an impairment rating shall complete and file the report as required by §130.1 and §130.3 of this title (relating to Reports of Medical Evaluation; Maximum Medical Improvement and Certification of Maximum Medical Improvement by Doctor Other than Treating Doctor or Designated Doctor). Other reports shall be completed according to applicable rules for consultant medical reports as described in §133.104 of this title (relating to Consultant Medical Reports) and shall be sent to the carrier, [~~injured~~] employee, the treating doctor, and Commission [~~commission~~] no later than 10 days after the examination.

(f) An RME doctor who determines that the employee can return to work immediately is required to file a Work Status Report, as described in §129.5 of this title (relating to Work Status Report) within seven days of the date of the examination of the employee. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the RME doctor shall file the report with the employee and the employee's representative by facsimile or by electronic transmission unless the employee or the employee's representative does not have a means of receiving the transmission, in which case the RME doctor shall send the report by mail. [~~The commission shall, if disputed, hold a benefit review conference within 30 days after receiving notification that the examining doctor has released the injured employee to return to work, and the carrier shall continue benefits pending the benefit review conference.~~]

(g) A doctor who conducts an examination solely under the authority of an order issued according to this rule shall not be considered a designated doctor under the Act, §408.122 or §408.125. Examinations with a designated doctor or a second opinion spinal surgery doctor under the Act, §408.026, are not subject to any limitations under the provisions for required medical examinations.

(h) A carrier may suspend temporary income benefits on the eighth day after the date an examination was originally scheduled to be conducted if the employee failed to submit to examination and failed to reschedule as required by subsection (b) of this section and submit to the examination within seven days of the date the examination was originally scheduled to occur. An employee is not entitled to temporary income benefits for a period during which the carrier suspended benefits pursuant to this section unless the employee later submits to the examination and the Commission finds that the employee had good cause to fail to attend the appointment. If after the carrier suspends temporary income benefits, the employee submits to the required medical examination, the carrier shall reinitiate temporary income benefits as of the date the employee submitted to the examination.

(i) [~~(h)~~] An [~~injured~~] employee who, without good cause, fails or refuses to appear at the time scheduled for an examination authorized by this section may be assessed a Class D administrative penalty under the Act, §408.004(f). An [~~injured~~] employee who fails to submit to an examination at the [~~insurance~~] carrier's request when the carrier selected doctor refuses to allow the treating doctor to attend the examination [~~shall not be subject to this administrative violation~~] does not commit an administrative violation and shall not have benefits suspended for failing to attend [~~for~~] that particular appointment.

(j) [~~(i)~~] The Commission [~~commission~~] shall order examinations requiring travel of up to 75 miles from the [~~injured~~] employee's residence unless the treating doctor certifies that such travel may be harmful to the [~~injured~~] employee's recovery. The [~~insurance~~] carrier shall pay reasonable travel expenses incurred by the [~~injured~~] employee in submitting to any required medical examination, as specified by §134.6 of this title (relating to Travel Expenses).

§126.7. Effect of an Opinion by a Carrier-Selected Required Medical Examination Doctor.

(a) As used in this section, "required medical examination doctor" refers to an insurance carrier-selected RME doctor and "notice of intent to suspend" refers to the notice of suspension described in Texas Labor Code, §408.004(f).

(b) Nothing in this section prevents a carrier from suspending or reducing temporary income benefits if the injured employee no longer has disability based on factors or conditions other than the RME doctor's opinion regarding ability to return to work or maximum medical improvement. If a carrier suspends or reduces income benefits for reasons other than the RME doctor's opinion, this section does not apply.

(c) If a carrier intends to suspend or reduce TIBs based upon the opinion of an RME doctor that the employee is able to return to work without restriction immediately or has reached maximum medical improvement, the carrier shall send by facsimile or mutually agreed upon electronic transmission, a copy of the RME doctor's report to the treating doctor, the employee and the employee's representative (if any) along with a notice of intent to suspend and shall not file it with the Commission except as permitted in subsection (i) of this section. If the employee or the employee's representative does not have the means to receive the transmission, the report and notice shall be sent by certified mail. The notice will contain language prescribed by the Commission.

(d) If the treating doctor indicates agreement with the RME doctor's certification of maximum medical improvement and the impairment rating or with the RME doctor's release to return to work without restriction, the carrier shall maintain documentation of the treating doctor's agreement and shall pay income benefits in accordance with the treating doctor's opinion as provided in this title and the rest of this section does not apply.

(e) Subsections (f), (g), and (h) of this section only apply when the opinion of the RME doctor was that the employee reached MMI.

(f) If, on the eighth day after transmitting the notice and an RME doctor's certification of MMI to the treating doctor as required by subsection (c) of this section, the carrier has not received the treating doctor's agreement or disagreement with the RME doctor's opinion, or if the treating doctor has indicated disagreement with the certification of MMI, the carrier shall review the certification, impairment rating, and current income benefit status to see whether continuing to pay TIBs for eight additional weeks pending resolution of a dispute would result in an unrecoupable overpayment to the employee based upon the amount of impairment income benefits that the employee would be entitled to as a result of the RME doctor's or the carrier's reasonable assessment of impairment.

(g) If payment of an additional eight weeks of TIBs as described in subsection (f) of this section will not result in an unrecoupable overpayment, the carrier shall:

(1) not file a notice of intent to suspend with the Commission;

(2) shall instead notify the Commission of the existence of a dispute based upon the lack of a response from the treating doctor, the disagreement of the treating doctor, and/or the carrier's reasonable assessment of impairment; and

(3) shall continue to pay TIBs until:

(A) the carrier receives a report from the designated doctor;

(B) receipt of the treating doctor's agreement with the RME doctor's certification of MMI; or

(C) the eighth day after the date a designated doctor examination was originally scheduled to be conducted if the employee failed to submit to examination and failed to reschedule and submit to the examination within seven days of the date the examination was originally scheduled to occur.

(h) If a carrier continues TIBs as provided in subsection (g) of this section and does not receive the report of a designated doctor by the 35th day after notifying the Commission of the need to assign a designated doctor, the carrier shall contact the Commission to obtain help in receiving the report.

(i) The carrier shall only file the notice of intent to suspend if permitted by this section or in response to a request or order by the Commission. The carrier may file the notice of intent to suspend with the Commission if:

(1) payment of an additional eight weeks of TIBs pursuant to subsections (f) and (g) of this section would result in an unrecoupable overpayment;

(2) the RME doctor released the employee to return to work without restriction and the treating doctor either did not agree with the release or failed to respond to the carrier's notice under subsection (c) of this section; or

(3) the carrier continued to pay TIBs pursuant to subsection (g) of this section and had not received the designated doctor's report by the 42nd day after filing the request for a designated doctor with the Commission.

(j) The carrier may suspend or reduce TIBs in accordance with RME doctor's opinion on the 14th day after the day the carrier files the notice intent to suspend with the Commission as permitted by subsection (i) of this section unless an interlocutory order is entered in accordance with Chapter 140 of this title (relating to Dispute Resolution) or is automatically entered pursuant to subsection (l) of this section. For the purpose of this subsection, filed means received.

(k) Upon receipt of a notice of intent to suspend filed under subsections (i) and (j) of this section, the Commission shall:

(1) review the notice and its potential impact on the employee's income benefits;

(2) attempt to obtain the treating doctor's opinion regarding the required medical examination doctor's opinion;

(3) schedule the issue for an expedited benefit review conference within ten days notwithstanding the notification requirements provided by Chapter 140 of this title (relating to Dispute Resolution); and

(4) if the RME doctor indicated that the employee reached MMI and the employee or the treating doctor disagrees with this certification or the assigned impairment rating or the treating doctor fails to indicate agreement or disagreement, the Commission will consider a dispute to exist as provided by Texas Labor Code, Chapter 408, Subchapter G (Impairment Income Benefits), which may require the assignment of a designated doctor and resolution of the dispute by the Commission (unless an designated doctor was already assigned).

(l) If a carrier files with the Commission a notice of intent to suspend based upon an RME doctor's certification of MMI pursuant to subsections (i) and (j) of this section and a BRC is not held within 14 days of the Commission receiving the carrier's notice, an interlocutory order will be automatically entered which requires the carrier to continue to pay temporary income benefits and which expires upon the earlier of:

(1) the date the Commission holds a BRC;

(2) the date the carrier receives a report from the designated doctor, if a designated doctor was assigned;

(3) the eighth day after the date a designated doctor examination was originally scheduled to be conducted if the employee failed to submit to examination and failed to reschedule and submit to the examination within seven days of the date the examination was originally scheduled to occur; or

(4) the date otherwise indicated on the order.

(m) A carrier that suspends TIBs pursuant to this section based upon the RME doctor's certification of MMI, shall initiate impairment income benefits in accordance with the Act and this title.

(n) A carrier which makes an unrecoupable overpayment pursuant to an interlocutory order may be eligible for reimbursement from the subsequent injury fund. An unrecoupable overpayment for the purpose of reimbursement from the subsequent injury fund only includes those benefits that were overpaid by the carrier pursuant to an interlocutory order which were not owed to the employee and which were not recoverable or convertible to IIBs.

(o) The carrier shall maintain copies of the notice of intent and report sent to the treating doctor, employee, employee's representative, and Commission and shall also maintain verifiable proof of successful transmission of the information. For the purposes , verifiable proof includes, but is not limited to, a facsimile confirmation sheet, certified mail return receipt, or a copy of the electronic transmission.

§126.12. Payment of Interest on Accrued but Unpaid Income Benefits.

(a) Accrued but unpaid income benefits are those benefits which either:

(1) have accrued during a period of dispute over carrier liability for the claim or employee entitlement to the benefits; or

(2) have not been paid by the date the insurance carrier was required to pay them.

(b) Carriers shall include simple interest in all payments for accrued but unpaid income benefits.

(c) Income benefits accrue in either weekly or monthly pay periods, as otherwise provided by the Texas Workers' Compensation Act and this title, and interest shall be calculated separately for each pay period based upon the length of time the benefits for that pay period remained accrued and unpaid.

(1) For pay periods in which benefits accrued while in dispute as provided in subsection (a)(1) of this section, the carrier shall pay interest for number of days between the seventh day after the day the benefits accrued and the day the payment was made.

(2) For pay periods in which benefits accrued and were paid late by the carrier as provided in subsection (a)(2) of this section, the carrier shall pay interest for the number of days between the due date for the payment and the date the payment was made.

(d) The rate of interest to be paid on accrued but unpaid income benefits by insurance carriers will be set quarterly and will be calculated in accordance with the Texas Labor Code, §401.023.

(e) If the period for which a carrier is required to pay interest crosses more than one quarter and the interest rate changes from one quarter to the next, the carrier shall apportion the number of days of interest owed for each quarter and shall pay interest on those days in accordance with the interest rate for the respective quarter.

(f) The following method shall be used to calculate interest in a given quarter:

(1) multiply the rate of interest for the quarter by the amount in question (to create annual amount of interest);

(2) divide the annual amount of interest by 365 (to create daily interest amount); then

(3) multiply daily interest amount by the number of days of interest that is owed for the quarter.

§126.13. Employer Initiation of Benefits and Reimbursement.

(a) An employer may initiate benefits including medical benefits to compensate an employee during a period in which the insurance carrier has either:

(1) contested compensability of the injury;

(2) contested liability for the injury; or

(3) has not completed its initial investigation of the injury which is limited to seven days after the carrier receives first written notice of the injury as defined in §124.1 of this title (relating to Notice of Injury).

(b) An employer who initiates benefits as provided in subsection (a) of this section is entitled to reimbursement from the carrier for those benefits paid to the claimant which otherwise would have been paid by the carrier had the carrier immediately accepted compensability for the injury and began payment of income benefits.

(c) An employer who initiates benefits as provided in subsection (a) of this section shall report to the carrier the amount of any benefits provided to the employee in the form and manner prescribed by the Commission within seven days of initiating the benefits and every two weeks thereafter until:

(1) the date the claim is finally adjudicated as being compensable;

(2) the date the carrier is ordered to pay benefits;

(3) the date the carrier accepts liability for the claim; or

(4) the employer discontinues providing benefits to the employee under this section and has reported to the carrier all benefits provided.

(d) A carrier who is notified by an employer that the employer initiated compensation as described in subsection (c) of this section shall reimburse the employer the compensation that the carrier would have otherwise paid not later than the seventh day after the latter of:

(1) receipt of notice of the employer's payments; or

(2) the earliest of:

(A) the date the claim is finally adjudicated as being compensable;

(B) the date the carrier is order to pay benefits; or

(C) the date the carrier accepts liability for the claim.

(e) Any benefits which the employer initiated with the agreement of the claimant in accordance with subsection (a) of this section, which are not reimbursed or reimbursable under subsection (d) of this section shall be reimbursed to the employer by apportioning the amount owed to the employer equally from any weekly impairment income benefits that the employee becomes entitled to under Subchapter (A) of Chapter 130 of this title (relating to Impairment Income Benefits), if any. The carrier shall make the reimbursement to the employer in a lump sum not later than the seventh day after the later of:

(1) the date the carrier receives a certification of maximum medical improvement with an impairment rating of greater than 0%; or

(2) the date an impairment rating dispute is resolved by a designated doctor's opinion, agreement, or final adjudication.

(f) An employer is not entitled to and shall not seek reimbursement from the employee for any benefits initiated by the employer which are not reimbursed under subsections (d) or (e) of this section.

(g) If an employer pays money to a health care provider for medical service to an injured employee which is greater than the payment allowed by the statute and this title for such services, the employer is not entitled to and shall not seek reimbursement from the employee or the carrier.

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

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Chapter 129. Income Benefits-Temporary Income Benefits

The Texas Workers' Compensation Commission (the Commission) proposes new §129.1 concerning Definitions for Temporary Income Benefits, §129.2 concerning Entitlement to Temporary Income Benefits, §129.3 concerning Amount of Temporary Income Benefits, §129.5 concerning Work Status Reports, §129.6 concerning Bonafide Offers of Employment, and §129.7 concerning Non-Reimbursable Employer Payments. Simultaneously, the Commission proposes the repeal of current §129.1 concerning Definitions for Temporary Income Benefits Calculation, §129.2 concerning Calculation of Temporary Income Ben-

efit for Employees Who Earn Less Than $8.50 Per Hour, and §129.5 concerning Bona Fide Offers of Employment.

The additions and repeals are proposed to address new legislation enacted by the 76th Texas Legislature. At the same time, these actions are also proposed to include in the rules, some of the Commission's long standing policies and to address problems with the rules that were identified by the Claims Service Task Force (a group of representatives from the system appointed by the Commission to serve as a sounding board for ideas regarding rule development in the area of claims services), other system participants, and Commission staff. The proposed rules simplify and shorten rule construction and are designed to be more prescriptive and to eliminate or significantly reduce ambiguity in the rules. The proposals are designed to more clearly lay out expectations so that all system participants will understand the requirements the Act and rules place on them. It is expected that together, these changes will improve benefit delivery, reduce disputes, make dispute resolution easier, reduce violations, and make it easier to hold system participants accountable for their actions and inactions.

Specifically, House Bill 2510 made changes to address required medical examinations; House Bill 2513 required the Commission to promote communication to enhance return to work; and House Bill 2842 amended to the Texas Labor Code to clarify salary continuation. In addition, House Bill 2511 amended Texas Labor Code, §401.024 authorizing the Commission to adopt rules to require electronic transmission of information by means such as facsimile, email, and electronic data interchange. This authorization is utilized in the proposed rules and amendments to achieve a legislative goal of reducing paper communication requirements in the workers' compensation system while ensuring timely and effective communication between system participants. The amendments and additions to Chapter 129 (relating to Income Benefits - Temporary Income Benefits) are intended to address this legislation as well as the other issues raised above.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Repeal of §129.1 - Definitions for Temporary Income Benefits Calculation

Current agency practice is to structure rules chapters and subchapters with a list of definitions in the first rule of the chapter/subchapter. The existing rule does not follow this format well. The existing language is proposed to be either deleted and the concept moved to a more appropriate rule or revised. The concept currently contained in subsection (a) is proposed to be contained in the new §129.1 but rewritten to more closely resemble the general usage of the term and the concept is further detailed in the new §129.2. The existing language of subsection (b) is proposed to be deleted because it is not a definition and the concept was moved to the new §129.3.

New §129.1 - Definitions for Temporary Income Benefits

Definition of Weekly Earnings After the Injury has been rewritten to more closely resemble the general usage of the term and the concept is further detailed in the new §129.2. In addition, definitions for salary continuation and salary supplementation have been added.

Repeal of §129.2 - Calculation of Temporary Income Benefit for Employees Who Earn Less Than $8.50 Per Hour

This rule is proposed for repeal because it only covers employees who earn less than $8.50 per hour, it has been used to justify paying "windfalls" to injured workers (a windfall involves paying an injured employee the minimum compensation rate in temporary income benefits (TIBs) even if the employee's actual lost wages are minuscule), and it is generally not detailed enough to ensure that the proper amount of TIBs is paid to the injured employee. This is particularly true in cases where the employer pays salary continuation in an amount less that the employee's average weekly wage (AWW).

New §129.2 - Entitlement to Temporary Income Benefits

This rule is proposed to be added to provide a conceptual overview of entitlement to TIBs as well as to fully develop what is and is not considered post injury earnings (PIE) which is needed to calculate the lost wages and ensure the proper amount of TIBs is paid under the new §129.3. The requirements of this proposed rule are essentially the same methodology used by the Commission in enforcement actions for the past several years. The new legislation helped support this methodology and its enactment by rule should not significantly change the requirements although it should help reduce confusion that may have existed. The level of detail included in the proposed rule as well as the proposed rule §129.3 is intended to address several common misunderstandings relating to calculating the amount of TIBs to be paid and to ensure that the injured employee receives TIBs in the amount the employee is entitled to.

Subsections (a) and (b) outline entitlement to TIBs and that is based upon lost wages due to the compensable injury. Subsections (c) and (d) clearly indicate what is and is not considered post injury earnings.

New §129.3 - Amount of Temporary Income Benefits

This rule is proposed to be added to provide specific instruction on the methodology a carrier must use to calculate the amount of TIBs that is due. As with the proposed rule §129.2, the methodology is essentially the same methodology that has been used by the Commission in enforcement actions for the past several years and helps to resolve common misunderstandings by both carriers and employees regarding the calculation of TIBs. In addition, this proposed rule is written in a prescriptive format, laying out the requirements more clearly.

Subsection (a) is an overview on applicability which requires a carrier to pay an employee the amount of TIBs the employee is entitled to in accordance with this chapter. Subsection (b) contains the concept originally contained in the existing §129.1(b) which was the methodology to determine whether an employee earns less $8.50 per hour. The existing language ties the determination to the hourly wage that the employee was earning on the date of injury. Unfortunately this was almost impossible to determine on many cases since, many employees are paid overtime and so their hourly wage could be affected by whether they were working overtime that day. This in turn could mean that two employees who had the same job and the same injury could be entitled to different amounts of TIBs because one was injured while working overtime and the other was not. In addition, employers have not been required to report the hourly wage the employee was earning on the date of injury which has made this calculation more difficult still. The proposed language does two things. First, it ties hourly wage to the AWW. Since the statute ties income benefits to the AWW of the 13 consecutive weeks prior to the injury, the rule follows this lead and ties the determination of the hourly wage to the AWW. Secondly

it provides three different methods for making the determination depending on what information the carrier has available.

Although the calculation of the hourly wage is designed to be accomplished using the AWW and average hours worked during the 13 week period, an employer is not required to provide this information to the carrier until at least 30 days after the date of injury. Therefore, during this period prior to receiving the Wage Statement (TWCC-3), the carrier must rely on another method to make the calculation. The preferred method is to use the wage information on the Employer's First Report of Injury (TWCC-1). However, there are times that the employer does not timely or correctly provide the carrier this information and so, again, the carrier must rely on another method. In the case where the carrier has a wage statement, the carrier is instructed to use it. In the case where the carrier does not have a TWCC-3 but does have the TWCC-1, the carrier is instructed to use the TWCC-1. If the carrier does not have wage information available through the TWCC-3 or the TWCC-1, the carrier is instructed to obtain the information from the claimant and use it until the carrier is able to obtain it from the employer.

Subsection (c) requires the carrier to calculate the AWW in accordance with Chapter 128 (relating to Benefits - Calculation of Average Weekly Wage) and the PIE in accordance with §129.2. In addition, the carrier is required to use specific wage information in order to ensure that the proper amount of TIBs is paid. The Commission has found that often when an employer reports wage information in a generic manner such as stating , the employee returned to work "at full salary" or that the employer has a salary continuation program and is continuing "full salary," employees do not receive benefits they are entitled to. This is because for workers' compensation purposes, the statute considers "full salary" to be AWW which includes overtime if generally worked. Most employers consider full salary to be a 40 hour week. So if the employee AWW was equal to $550 based upon 40 hours of normal pay and 10 hours per week of overtime, and the employer continues "full salary" after the injury (which would be $400), the employee would be entitled to TIBs based upon the lost wages of $150. Yet, if the carrier simply takes the employer at its word that it is continuing "full salary" then the employee will not get TIBs. The requirement that the carrier base its calculations on the specific wage information, will help ensure that employees receive the income benefits they are entitled to; no more, no less. Amendments being simultaneously proposed to §120.3 (relating to Employer's Supplemental Report of Injury), are designed to clarify that employers must report post-injury earning information in the specific amounts being paid.

Subsection (d) requires the carrier to subtract the PIE from the AWW to determine the employee's lost wages. Subsection (e) specifies that if a PIE is greater than or equal to AWW then there are no lost wages and the carrier is not to pay TIBs. Since salary continuation is a form of PIE, these subsection establish that an employee will not receive TIBs if the amount of salary continuation equals or exceeds the AWW which clarifies one of the requirements of House Bill 2842, that salary continuation can be paid in lieu of TIBs. This methodology is identical to the methodology that the Commission has used in enforcement actions for the past several years.

Subsections (f) and (g) specify the percentage of lost wages that an employee is entitled to in TIBs. The entitlement is based upon the employee's hourly wage and whether the week of benefits being paid is one of the first 26 weeks. Subsection (h) lays provides that the amount of TIBs that an employee is entitled to is limited to the statutory maximum.

Subsection (i) represents a change from the existing rule. This subsection was added to address the "windfall" issue. As described above, a windfall occurs when an employee receives more money through TIBs than the employee actually lost as a result of the injury. This generally occurs when the employee has returned to work but attends doctor's appointments once or twice a week. The actual lost wages may be less than $30, but paying the minimum compensation rate would more than double that amount. As a result, the employee's income through wages and TIBs exceeds the AWW. This provides a disincentive to working towards a "full release."

When the legislature began to examine the issues associated with workers' compensation in Texas it formed the Joint Select Committee on Workers Compensation Insurance which presented a set of recommendations for workers' compensation reform to the 71st Texas Legislature. Included in these recommendations was that reform ensure that temporary benefits replace a high proportion of after-tax lost earnings. It is clear that the intent of TIBs is to replace a high proportion of employees' lost wages, not to "overcompensate" them. To apply the minimum compensation rate in cases such as this where the lost wages are relatively minor would defeat the purpose of TIBs. However, the Legislature also put a minimum compensation rate in the statute and said that it applied to TIBs. In trying to reconcile these seeming incompatible positions, it is believed that the Legislature intended the minimum compensation rate ensure that an employee whose AWW was extremely low, be given a "floor" below which the employee's TIBs would not fall, not to provide windfalls to employees whose earning capacity was barely affected by the injury. Therefore, subsection (i) specifies that if an employee's AWW is less than the weekly minimum and the amount of TIBs an employee is entitled to under subsections (f) or (g) is also less than the minimum, then the carrier will pay the minimum. Otherwise, the carrier will pay TIBs specifically based upon the lost wages. This will ensure the purpose of the statute is met without providing a disincentive to achieving a full release to return to work.

Repeal of §129.5 - Bona Fide Offers of Employment

Current §129.5 does not address the way the system functions and as a result is inadequate to govern behavior regarding modified duty offers. Often a treating doctor will release an employee to "light duty" with little specificity of what restrictions an employee is to operate under. Then the employer will send a letter to the employee similarly offering "light duty" and then tell the carrier that the employee never responded to the offer which the carrier then uses to suspend TIBs. Unfortunately, since the employer's letter does not have any detail regarding what the job entails and since the treating doctor did not specify the employee's limitations or abilities, determinations of what is a bonafide offer leads to disputes and inappropriate suspensions of benefits. Made more difficult in this is the fact that the existing rule does not require the carrier to have copies of the release or the offer. The existing rule seems to anticipate that the Commission will make the final decisions regarding bonafide offers but it does not provide guidance to any of the system participants as to what they should or should not do. The replacement of the rule is designed to recognize that the rule has to provide guidance in cases that do not go to dispute resolution which is the norm rather than the exception.

New §129.5 - Work Status Reports

This rule is intended to address the requirements of House Bill 2513 which requires the Commission to promote communication between employers and treating doctors regarding modified duty opportunities. The rule creates a new report to be filed by the treating doctor called the Work Status Report which will provide the carrier and the employer with information about the employee's ability to work to enable the employer to offer a modified duty position consistent with the employee's ability to work and restrictions. Filing a work status report is not the equivalent of a functional capacity evaluation (FCE). FCEs are not appropriate for all cases, but the Commission has authority to require one as appropriate.

Subsection (a) describes the report and requires it to indicate what job functions the employee can safely perform as well as any restrictions on the employee's activities. The intent is to encourage the safe return to work not to aggravate the employee's condition. Providing specific detail about the employee's limitations should help ensure that the employer is able to offer work which is truly consistent with treating doctor's assessment.

Subsection (b) lays out the timeframes for filing the report. The report must be filed with the carrier and the employer within three days which is similar to the employer's duty to file the supplemental report of injury with the carrier and the employee in three days. Since this report will also be used by carriers to make decisions regarding payment of TIBs, it is imperative that the information be provided to the carrier as early as possible. Currently benefit delivery is delayed in part because carriers are unable to timely obtain disability information. In addition, health care providers have long complained about the number of calls they receive from adjusters regarding disability status. With the provision of this information on a regular and timely basis through a required report, these calls should be significantly reduced. Although the report is required to be filed within three days, the treating doctor is expected to provide a copy to the employee at the time of the examination. This will facilitate employee understanding of the doctor's restrictions and give the employee the opportunity to ask questions. The planned report is expected to be very simple to fill out with a "check-box" approach that will make completion easy. Discussion with several health care providers and a review of sample reports that some providers are already using support this idea. The providers also pointed out that employers often need information following every appointment if for no other reason than to be able to know when the next appointment is scheduled in order to be able to anticipate when the employee will need time off for medical care.

Subsection (c) lays out two other conditions which require the treating doctor to file the Work Status Report. There may be cases where the treating doctor has not released the employee to return to work and the employer believes that it has a very good modified duty position which the employee would be able to work. In this situation, the employer is allowed to provide the treating doctor a set of functional job descriptions which list the physical and time demands of the position so that the treating doctor can evaluate the positions. If the treating doctor receives a set of functional job descriptions the employer will have to file a Work Status Report based upon the descriptions. In addition, the treating doctor will have to file the work status report if a required medical examination doctor believes that the employee can return to work.

Subsection (d) explains that filing the Work Status Report as required by subsection (c) does not require a separate examination of the employee. One can be filled out using chart notes from the last examination. Filing of a Work Status Report is not equivalent to certifying maximum medical improvement and/or permanent impairment which must be done through an examination of the employee.

Subsection (e) requires use of "instant" communication such as electronic transmission through facsimile or email to reduce the delay in providing critical information for benefit delivery and reduce the use of paper as required by House Bill 2511. The language is written to make use of traditional postal mail a last resort for filing the report. By using the proposed language, as use of email and other forms of instant communication by system participants expands, the rules will reduce the reliance on traditional paper mail that has often caused over, under, and delayed payments.

New §129.6 - Bonafide Offers of Employment This rule is intended to address the requirements of House Bill 2513 which requires the Commission to promote communication between employers and treating doctors regarding modified duty opportunities and to allow for the suspension of TIBs if a bonafide offer of modified duty is rejected. The rule is also designed to better specify the mechanism for modified duty offers to be made and the length of time the carrier has to wait until it can deem an offer to have been rejected by the employee. In addition, changes are being concurrently proposed in Subchapter B (relating to Required Reports) of Chapter 133 (relating to Benefits - Medical Benefits).

Subsection (a) is an overview statement which explains that modified duty offers may be made by an employer either in response to a treating doctor's release or by its own initiation. Subsection (b) requires an employer or carrier that to initiate a modified duty offer to provide to the treating doctor, a set of functional job descriptions of positions that the employer has available to offer the employee. By requiring the request to include functional job descriptions, the treating doctor has some specific information to make a judgement regarding ability to work. Subsection (c) requires an offer of modified duty to be on the form and in the manner prescribed by the Commission. Although nothing previously prohibited employers or carriers from trying to initiate the process, there was no requirement for the treating doctor to cooperate with the request nor was there any structure to how the request should be made. These subsections also tie it to changes concurrently being proposed to Chapter 133.

Subsection (d) sets out the conditions that an offer must meet before the carrier can deem it to be a bonafide offer of employment and requires the carrier to have written copies of the employer's offer and the treating doctor's Work Status Report. This represents a change from the prior rule which did not provide guidance to carriers regarding how to judge an offer of employment. It also represents a change in that it requires the carrier to have the offer and certification in order to deem an offer to be bonafide. As discussed above, these changes are necessary to address the reality of the system which is that carriers often make these decisions in the absence of dispute resolution and often without the benefit of all the facts. This subsection should ensure that carriers have the information necessary to determine whether an offer of employment is bonafide and can work with the employer to fix offers that are lacking.

Subsection (e) is virtually identical to the existing rule with the addition of a sentence designed to provide additional guidance on what a reasonable distance is. This addition is designed to provide some consistency to the review of offers but still allows either the carrier or the employee to dispute the offer if either believes that the standard is inappropriate in the immediate situation.

Subsection (f) provides guidance regarding how much time a carrier has to wait before deeming the wages offered as part of a modified duty offer to be Post-Injury Earnings because the employee rejected the modified duty position. This provision is a new concept that has been added to address two problems that have been found with the existing process. The first relates to how much time does an employee have to be given to decide whether to accept a modified duty offer. Given mail time and work schedules, this has proven difficult under the current system. The second problem is that sometimes an employer offers a modified duty position which turns out to have greater physical demands than the employer initially stated. In many of these cases the employee is familiar with the position because it is one that the employer regularly offers to employees. The seven day period allows the employee time to talk to the treating doctor to be sure that the position truly meets the employee's restrictions. Nothing in this subsection prevents a carrier from adjusting TIBs if the employee immediately accepts the offer and begins work since those wages would be actual Post-Injury Earnings and not "deemed" Post-Injury Earnings resulting from a rejected bonafide offer of employment.

New §129.7. - Non-Reimbursable Employer Payments

This rule is proposed to be added to address that while an employer can initiate "benefits" during a period in which the carrier has not yet accepted a claim which are reimbursable to the employer (as provided in Texas Labor Code, §408.003, and simultaneously proposed §126.13), payment of salary continuation or salary supplementation is not an employer initiation of "benefits." Salary continuation is a type of Post-Injury Earnings which reduces the amount TIBs the employee receives. If an employer pays salary continuation and then attempts to be reimbursed from the employee, the employee would not receive all the compensation the employee is entitled to.

Victor Rodriguez, Finance Manager, has determined that for the first five-year period the proposed rules are in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rules. The Commission should see a number of benefits, after an introductory period, if the proposed rules are adopted. Ultimately a reduction in costs due to reduced dispute resolution and information service expenses is expected. Disputes may be reduced because of the clarifications of the rules. Many of the issues being addressed in the new rules currently are resolved on a case by case basis through dispute resolution. Information services costs should be reduced because many of the confusing areas in the existing rules will be clarified. This clarification may reduce the number of calls from system participants with questions. Also, it will be easier to hold system participants accountable for their actions or inactions because the requirements of the law and rules will be clarified. The amount of these fiscal implications cannot be quantified.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rule will be:

Injured employees should benefit by an increase in the accuracy of TIBs payments and will be more assured of modified duty positions being consistent with their work abilities. Further, the additional clarification of the rules should make it easier for them to navigate the workers' compensation system.

Employers should benefit because the new rules should promote earlier returns to work and provide clearer guidance about what an employee is able to do while on modified duty. The earlier returns to work should also reduce the loss of productivity that an injury can cause. Employers may also benefit from additional information that will make it easier to schedule around employee medical appointments.

Health care providers should benefit from these rules because there will be more structure to the modified duty release/request process. Health care providers should also benefit from having to deal with fewer calls from carriers attempting to obtain disability status information.

Carriers should benefit because many of the uncertainties about existing processes should be eliminated with the new rules. As a result carriers should be much more able to accurately pay benefits and react to modified duty offers. In addition, the timely provision of disability information from the treating doctor should significantly improve the carrier's ability to monitor their claims and ensure that benefits are timely started and terminated.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the requirements to comply with the rules will have the following affects on costs of system participants:

Claimants will probably not see either an increase or decrease in costs.

Some employers may experience a drop in costs associated with the increased emphasis on early return to work. This reduction is anticipated because an early return to work of an employee should save the employer the cost of obtaining and training a temporary or permanent replacement for the injured employee or should save the cost of leaving the position vacant longer. In addition, to the extent that the time to return to work decreases, insurance premiums may be reduced because of the reduced costs of indemnity claims. Otherwise, employers will probably not see either an increase or decrease in costs.

Health care providers should see a reduction in costs associated with reduced calls from carriers attempting to obtain information regarding an employee's disability status and expected return to work.

Carriers should see a reduction in costs associated with the increased emphasis on return to work because an earlier return to work should reduce the number of weeks of income benefits that will be owed on many claims or otherwise reduce the weekly amount of those benefits which are owed. In addition, carriers may also experience a reduction in penalty exposure because of the clarification of the rules (particularly regarding issues associated with the compensation rate and wage continuation). This reduction in penalty exposure should also come from the increased quantity and quality of information that the carriers

are going to receive from providers which should improve the carrier's ability to timely initiate income benefits.

The requirements of these rules should reduce costs for small businesses as described above. The cost of compliance for small businesses as compare to large businesses will be identical and there is no anticipated adverse economic impact on small businesses or micro-businesses.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

28 TAC §§129.1, 129.2, 129.5

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

The repeals are proposed under following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits or to pay salary continuation; Texas Labor Code, §408.004, which addresses required medical examinations and the affect of a carrier selected doctor's opinion of payment of TIBs; Texas Labor Code, §§408.041, 408.042, 408.043, and 408.044, which address calculation of the AWW for different types of employees; Texas Labor Code, §408.045, which addresses the effect of non-pecuniary wages on the calculation of AWW; Texas Labor Code, §408.047, which defines the state average weekly wage which is used to calculate maximum and minimum weekly benefit rates; Texas Labor Code, §408.061, which addresses the maximum weekly benefit rate; Texas Labor Code, §408.062, which addresses the minimum weekly benefit rate; Texas Labor Code, §408.063, which requires the employer to provide a wage statement; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.101, which addresses entitlement to TIBs; Texas Labor Code, §408.103, which outlines how the amount of TIBs is to be calculated and addresses that the wages offered as part of a rejected bonafide offer of employment are considered post injury earnings; Texas Labor Code, §408.105, as amended by the 76th Texas Legislature, which allows TIBs to be offset by salary continuation; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; Texas Labor Code, §409.023, which requires carriers to pay benefits as and when they accrue; and Texas Labor Code, §413.018 as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

The proposed repeals affect the following statutes: Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits or to pay salary continuation; Texas Labor Code, §408.004, which addresses required medical examinations and the affect of a carrier selected doctor's opinion of payment of TIBs; Texas Labor Code, §§408.041, 408.042, 408.043, and 408.044, which address calculation of the AWW for different types of employees; Texas Labor Code, §408.045, which addresses the effect of non-pecuniary wages on the calculation of AWW; Texas Labor Code, §408.047, which defines the state average weekly wage which is used to calculate maximum and minimum weekly benefit rates; Texas Labor Code, §408.061, which addresses the maximum weekly benefit rate; Texas Labor Code, §408.062, which addresses the minimum weekly benefit rate; Texas Labor Code, §408.063, which requires the employer to provide a wage statement; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.082, which

addresses entitlement to income benefits; Texas Labor Code, §408.101, which addresses entitlement to TIBs; Texas Labor Code, §408.103, which outlines how the amount of TIBs is to be calculated and addresses that the wages offered as part of a rejected bonafide offer of employment are considered post injury earnings; Texas Labor Code, §408.105, as amended by the 76th Texas Legislature, which allows TIBs to be offset by salary continuation; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; Texas Labor Code, §409.023, which requires carriers to pay benefits as and when they accrue; and Texas Labor Code, §413.018, as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

§129.1. Definitions for Temporary Income Benefits Calculation.

§129.2. Calculation of Temporary Income Benefit for Employees Who Earn Less Than $8.50 per Hour.

§129.5. Bona Fide Offers of Employment.

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 August 16, 1999.

TRD-9905176

Susan Cory

Assistant General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: September 26, 1999

For further information, please call: (512)707-5829

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28 TAC §§129.1-129.3, 129.5-129.7

The proposed new rules are proposed under following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits or to pay salary continuation; Texas Labor Code, §408.004, which addresses required medical examinations and the affect of a carrier selected doctor's opinion of payment of TIBs; Texas Labor Code, §§408.041, 408.042, 408.043, and 408.044, which address calculation of the AWW for different types of employees; Texas Labor Code, §408.045, which addresses the effect of non-pecuniary wages on the calculation of AWW; Texas Labor Code, §408.047, which defines the state average weekly wage which is used to calculate maximum and minimum weekly benefit rates; Texas Labor Code, §408.061, which addresses the maximum weekly benefit rate; Texas Labor Code, §408.062, which addresses the minimum weekly benefit rate; Texas Labor Code, §408.063, which requires the employer to provide a wage statement; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.101, which addresses entitlement to TIBs; Texas Labor Code, §408.103, which outlines how the amount of TIBs is to be calculated and addresses that the wages offered as part of a rejected bonafide offer of employment are considered post injury earnings; Texas Labor Code, §408.105, as amended by the 76th Texas Legislature, which allows TIBs to be offset by salary continuation; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; Texas Labor Code, §409.023, which requires carriers to pay benefits as and when they accrue; and Texas Labor Code, §413.018 as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

These proposed new rules affect the following statutes: Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.003, as amended by the 76th Texas Legislature, which allows an employer to initiate benefits or to pay salary continuation; Texas Labor Code, §408.004, which addresses required medical examinations and the affect of a carrier selected doctor's opinion of payment of TIBs; Texas Labor Code, §§408.041, 408.042, 408.043, and 408.044, which address calculation of the AWW for different types of employees; Texas Labor Code, §408.045, which addresses the effect of non-pecuniary wages on the calculation of AWW; Texas Labor Code, §408.047, which defines the state average weekly wage which is used to calculate maximum and minimum weekly benefit rates; Texas Labor Code, §408.061, which addresses the maximum weekly benefit rate; Texas Labor Code, §408.062, which addresses the minimum weekly benefit rate; Texas Labor Code, §408.063, which requires the employer to provide a wage statement; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.101, which addresses entitlement to TIBs; Texas Labor Code, §408.103, which outlines how the amount of TIBs is to be calculated and addresses that the wages offered as part of a rejected bonafide offer of employment are considered post injury earnings; Texas Labor Code, §408.105, as amended by the 76th Texas Legislature, which allows TIBs to be offset by salary continuation; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; Texas Labor Code, §409.023, which requires carriers to pay benefits as and when they accrue; and Texas Labor Code, §413.018, as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

§129.1. Definitions for Temporary Income Benefits.

The following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) Salary Continuation (also Wage Continuation) - Monies paid by the employer to compensate the employee for wages lost as a result of a compensable injury. Salary continuation does not include moneys paid to an employee as compensation for work such as wages paid while an employee is on modified duty.

(2) Salary Supplementation (also Wage Supplementation)- Monies paid by the employer to supplement the amount of income benefits a carrier pays to an employee with a compensable injury.

(3) Weekly Earnings After the Injury - Post-Injury Earnings (PIE), further described in §129.2 of this title (relating to Entitlement to Temporary Income Benefits).

§129.2. Entitlement to Temporary Income Benefits.

(a) Once temporary income benefits accrue, an employee is entitled to TIBs to compensate the employee for lost wages due to the compensable injury during a period in which the employee has disability and has not reached maximum medical improvement.

(b) Lost wages are the difference between the employee's gross average weekly wage and the employee's gross Post-Injury Earnings. If the employee's PIE equals or exceeds the employee's AWW, the employee has no lost wages.

(c) PIE shall include, but not be limited to, the documented weekly amount of:

(1) all pecuniary wages paid to the employee after the date of injury including wages based upon work performed while on modified duty and pecuniary fringe benefits which are paid to the employee whether the employee has returned to work or not;

(2) any employee contribution to benefits such as health insurance that the employee normally pays but that employer agrees to pay for the employee in order to continue the benefits (which does not include the portion of the benefits that the employer normally pays for);

(3) the weekly amount of any wages offered as part of a bonafide job offer which is not accepted by the employee which the carrier is permitted to deem to be PIE under §129.5 of this title (relating to Bonafide Offers of Employment);

(4) any accrued sick leave or accrued annual leave that the employee has voluntarily elected to use after the date of injury; and

(5) any monies paid to the employee by the employer as salary continuation based upon:

(A) a contractual obligation between the employer and the employee including through a collective bargaining agreement;

(B) an employer policy; or

(C) a written agreement with the employee.

(d) PIE shall not include:

(1) any non-pecuniary wages paid to the employee by the employer after the injury;

(2) any accrued sick leave or accrued annual leave that the employee did not voluntarily elect to use;

(3) any wages paid by the employer as salary supplementation;

(4) any moneys paid by the employer which would otherwise be considered PIE under subsection (c) of this section but which the employer attempts or intends to seek reimbursement from the employee or insurance carrier; or

(5) any money paid to an employee under an indemnity disability program separate from workers' compensation.

§129.3. Amount of Temporary Income Benefits.

(a) The insurance carrier shall pay an employee the temporary income benefits (TIBs) the employee is entitled to in accordance with this chapter.

(b) The carrier shall determine whether the employee earns less than $8.50 per hour as follows:

(1) Once the carrier has received the Wage Statement required by this title, the carrier shall divide the average weekly wage (AWW) calculated from the Wage Statement by the average number of hours worked. The average hours worked is the total gross hours reported worked on the Wage Statement divided by the period in which the hours were worked;

(2) If the carrier has not received the Wage Statement, but has received the Employer's First Report of Injury, the carrier shall use the wage information provided by the employer through the report; or

(3) If the carrier has not received the information necessary to perform the calculations required by subsection (b)(1) or (2) of this section, the carrier shall use wage information provided by the claimant until the necessary information is obtained from the employer.

(c) The carrier shall calculate the AWW in accordance with Chapter 128 of this title (relating to Calculation of Average Weekly Wage) and shall calculate the Post-Injury Earnings in accordance with §129.2 of this title (relating to Entitlement to Temporary Income Benefits). In determining the PIE, the carrier shall base its calculations on specific wage information reported by the employer and/or the employee. A generic statement by the employer indicating the employer is "continuing full salary" or "the employee is earning full salary" is not adequate documentation to be considered PIE.

(d) The carrier shall calculate the employee's lost wages by subtracting the PIE from the AWW (or AWW - PIE).

(e) The amount of TIBs an employee is entitled to is based upon the lost wages. If the employee's PIE equals or exceeds the employee's AWW, the employee has no lost wages and the carrier shall not pay TIBs.

(f) An employee who earns less than $8.50 per hour is entitled to TIBs as follows:

(1) 75% of the lost wages for the first 26 weeks of TIBs due; and

(2) 70% of the lost wages for all TIBs payments thereafter.

(g) An employee who earns $8.50 per hour or more is entitled to TIBs in the amount of 70% of the lost wages.

(h) If the amount of TIBs the employee is entitled to as calculated in subsections (f) or (g) of this section is greater than the maximum weekly TIBs rate computed in accordance with Texas Labor Code, §408.061, the carrier shall pay the maximum weekly TIBs rate.

(i) If the amount of TIBs the employee is entitled to as calculated is subsections (f) or (g) of this section is less than the

minimum weekly TIBs rate computed in accordance with Texas Labor Code, §408.062 and the employee's AWW is equal to or less than the minimum weekly TIBs rate, the carrier shall pay the minimum weekly TIBs rate.

§129.5. Work Status Reports.

(a) The treating doctor shall file a Work Status Report in the form and manner prescribed by the Commission with the employer and the insurance carrier and provide a copy to the employee and the employee's representative. The Work Status Report shall indicate the job functions the employee is able to safely perform as well as any specific restrictions on the employee's activities, if any. If the doctor believes that the employee has restrictions on his or her ability to work as a result of the compensable injury, the Work Status Report shall include the date that the restrictions are expected to expire.

(b) The treating doctor shall file the Work Status Report within three days of the initial examination of the employee, regardless of the employee's work status and shall file a new one for every subsequent appointment, but no more than once every week, until the doctor releases the employee to return to work without restrictions. If, after releasing an employee to return to work the employee's unrestricted work status changes, the treating doctor shall begin and continue to file the Work Status Report again. Although the report is to be filed within three days of the exam, the treating doctor shall provide the employee with a copy of the report at the time of the examination.

(c) In addition, the treating doctor shall file the Work Status Report within seven days of the day of receipt of:

(1) functional job descriptions from the employer listing available modified duty positions that the employer is able to offer the employee as provided by §129.6(b) of this title (relating to Bonafide Offers of Employment); or

(2) a required medical examination doctor's report that the employee can return to work.

(d) Filing the Work Status Report as required by subsection (c) of this section does not require a new examination of the employee.

(e) The treating doctor shall file the Work Status Report with the employer, the carrier, and the employee's representative by facsimile or electronic transmission unless the recipient does not have a means of receiving the transmission in which case the reports shall be sent by personal delivery or mail.

§129.6. Bonafide Offers of Employment.

(a) An employer may offer an injured employee a modified duty position which has restricted duties which are within the employee's work abilities as determined by the employee's treating doctor. The offer of modified duty may be initiated by the employer as provided in subsection (b) of this section or in response to the treating doctor's certification of the employee's work abilities.

(b) An employer or insurance carrier may request the treating doctor provide a Work Status Report by providing the treating doctor a set of functional job descriptions which list modified duty positions which the employer has available for the employee to work. The functional job descriptions must include descriptions of the physical and time requirements of the positions.

(c) An employer's offer of modified duty shall be made to the employee on the form and in the manner prescribed by the Commission and include the information required by the form. Included with the offer must be a copy of the treating doctor's Work Status Report. The employer shall make the modified duty offer to the employee by facsimile or electronic transmission unless the employer does not have a means of sending by facsimile or electronic transmission or the employee does not have the means of receiving one, in which case the offer shall be made by personal delivery or mail. In addition, the employer shall provide a copy of the offer to the carrier by facsimile or electronic transmission unless the employer does not have a means to send by facsimile or electronic transmission, in which case the copy of the offer shall be sent by mail.

(d) A carrier may deem an offer of modified duty to be a bonafide offer of employment if:

(1) it has written copies of the Work Status Report and the offer; and

(2) the offer:

(A) is for a job at a location which is geographically accessible as provided in subsection (e) of this section;

(B) is consistent with the treating doctor's certification of the employee's work abilities; and

(C) was communicated to the employee in writing, on the form and in the manner prescribed by the Commission and included all required information.

(e) Employment is "geographically accessible" to the injured employee if it is within a reasonable distance from the employee's residence unless the employee establishes through medical evidence that the employee's physical condition precludes travel of that distance. An offer of employment is presumed to be within a reasonable distance if it is at the same location that the employee normally worked at the time of the injury. Other locations may also be considered within a reasonable distance.

(f) A carrier may deem the wages offered by an employer through a bonafide offer of employment under subsection (d) of this section to be Post-Injury Earnings, as outlined in §129.2 of this title (relating to Entitlement to Temporary Income Benefits), on the seventh day after the employee receives the offer of modified duty unless the employee's treating doctor notifies the carrier that the offer made by the employer is not consistent with the employee's work restrictions. For the purposes of this section, if the offer of modified duty was made by mail, an employee is deemed to have received the offer from the employer five days after it was mailed. The wages the carrier may deem to be PIE are those that would have been paid on or after the seventh day following the employee's receipt of the offer.

§129.7. Non-Reimbursable Employer Payments.

(a) An employer who pays an employee salary continuation is not entitled to and shall not seek reimbursement from the employee or the insurance carrier.

(b) An employer who pays an employee salary supplementation to supplement income benefits paid by the carrier is not entitled to and shall not seek reimbursement from the employee or the insurance carrier.

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 August 16, 1999.

TRD-9905175
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: September 26, 1999
For further information, please call: (512)707-5829

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28 TAC §129.11

The Texas Workers' Compensation Commission (the Commission) proposes new §129.11, concerning the monthly payment of temporary income benefits. The proposed rule establishes the requirements for agreements under which temporary income benefits may be paid monthly, to establish the due date of monthly benefit payments, and the method of calculation of the monthly amount. The new rule is being proposed in response to the amendments to §408.081(c) as passed by the 76th Legislature.

The Texas Register published text shows the complete text of the new rule, and should be read to determine all new language.

Proposed new subsection (a) allows the insurance carrier and the injured employee to enter into a written agreement to change the frequency of payments from the standard weekly period to a monthly period. This section also sets out the requirements for such an agreement. When less than the maximum weekly compensation rate in effect at the time of the injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the agreement. If the parties agree to the monthly payments issued by the insurance carrier, the monthly payments will begin the first day of the month following the date of the agreement. Filing an agreement with the Commission is not required except upon request of the Commission,

Proposed new subsection (b) establishes the method for calculating the amount of entitlement for the monthly payment of TIBs. The average weekly wage will be multiplied by 4.34821 to establish an average monthly wage. The actual amount earned during the calendar month will be subtracted from the average monthly wage. The amount of the wages lost during the month will then be calculated by 70% or 75%, as appropriate, to determine the actual amount of TIBs the injured employee is entitled to for the month.

Proposed new subsection (c) allows either party to the agreement to dispute the period, amount of or entitlement to temporary income benefits and that any disputes should be raised as they arise.

Proposed new subsection (d) establishes that the monthly payment of temporary income benefits will expire upon the suspension of TIBs based on a zero percent impairment rating or upon the change of benefit type to impairment income benefits, lifetime income benefits or death benefits. Agreements for the monthly payment of impairment income benefits, lifetime income benefits or death benefits each require a separate agreement

Proposed new subsection (e) allows an injured employee who has opted for monthly payment of TIBs to terminate the agreement and return to weekly payments. On the termination of the agreement, the insurance carrier will be responsible for all TIBs which have accrued and are due and will be required to continue making weekly payments as and when they accrue and are due.

New §129.11(f) states the rule will apply only to agreements entered into on or after September 1, 1999, for payment of TIBs under the provisions of the Act.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be:

Compliance with the requirement of the §408.081(c) as passed by the 76th legislature.

Regarding monthly payments of TIBs, the injured employee will receive the full monthly amount by the seventh day of each month. This can provide them opportunity for better money management and less paperwork.

Insurance carriers will benefit from reduced administrative costs associated with issuing and mailing weekly benefit checks and less likelihood of late payments since there will be fewer checks issued.

There will be no adverse economic impact on those required to comply with the rule as proposed or for small businesses or micro-businesses.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

The new rule is proposed under the following statutes: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041 which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.062, which establishes the minimum benefit payment amount; Texas Labor Code, §408.081, as amended by the 76th Legislature, which establishes the frequency of income benefits and requires the Commission to adopt rules which establish the criteria which must be included in an agreement for monthly payments; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.101, which addresses entitlement to TIBs; Texas Labor Code, §408.102, which establishes the duration of temporary income benefits; Texas Labor Code, §408.103, which sets out the method for calculating the amount of temporary income benefits; and Texas Labor Code, §409.023, which requires insurance carriers to pay benefits as and when they accrue.

The proposed new rule affects the following statutes: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.062, which establishes the minimum benefit payment amount; Texas Labor Code, §408.081, as amended by the 76th Legislature, which establishes the frequency of income benefits and requires the Commission to adopt rules which establish the criteria which must be included in an agreement for monthly payments; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.101, which addresses entitlement to TIBs; Texas Labor Code, §408.102, which establishes the duration of temporary income benefits; Texas Labor Code, §408.103, which sets out the method for calculating the amount of temporary income benefits; and Texas Labor Code, §409.023, which requires insurance carriers to pay benefits as and when they accrue.

§129.11. Agreement for Monthly Payment of Temporary Income Benefits.

(a) Upon the request of an injured employee, the insurance carrier and an injured employee entitled to temporary income benefits (TIBs) may agree to change the frequency of TIBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and is only required to be filed with the Commission if the Commission requests a copy. To relieve the insurance carrier of the responsibility to pay TIBs weekly, the written agreement must include:

(1) TIBs payments will be initiated with the first calendar day of the month following the month in which the written agreement was entered into by the insurance carrier and the injured employee;

(2) monthly TIBs payment will be issued on or before the seventh day of the month following the month for which benefits are due;

(3) weekly TIBs payments will continue through the end of the month in which the agreement was signed.;

(4) payment of the last week of TIBs to transition from weekly payment of TIBs to monthly payments will be to the end of the month to ensure the injured employee receives TIBs through the last day of the month; and

(5) if less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the written agreement.

(b) To calculate the amount of monthly TIBs to pay, the carrier shall determine the average monthly wage by multiplying the average weekly wage by 4.34821 and subtracting any Post-Injury Earnings the employee earned during the month for which the employee was entitled to TIBs to determine the lost wages. The carrier shall than pay the employee in monthly TIBs as follows:

(1) if the employee earns $8.50 per hour or more, the carrier shall pay 70% of the lost wages; or

(2) if the employee earns less than $8.50 per hour, the carrier shall pay:

(A) 75% of the lost wages for the first 26 weeks of TIBs due; and

(B) 70% of the lost wages for all TIBs payments thereafter.

(c) Entering into an agreement under this section does not prohibit any party to the claim from raising disputes over periods, amounts of, or entitlement to TIBs. Disputes must be raised as and when they arise, not when the monthly payment is being adjusted or suspended.

(d) The agreement for the monthly payment of TIBs will expire upon the suspension or termination of TIBs in accordance with the Act and Commission rules.

(e) At any time after signing the agreement for the monthly payment of TIBs, the injured employee may notify the insurance carrier that he/she no longer agrees to the monthly payment of TIBs. In this case, the insurance carrier shall pay all accrued but unpaid TIBs at the end of the current monthly cycle and will continue to pay TIBs weekly as and when they accrue and are due.

(f) This section applies only to agreements entered into on or after September 1, 1999, for payment of TIBs under the provisions of the Act.

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 August 16, 1999.

TRD-9905182
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512)707-5829

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Chapter 130. Impairment and Supplement Income Benefits

Subchapter A. Impairment Income Benefits

28 TAC §130.3

The Texas Workers' Compensation Commission (the Commission) proposes an amendment to §130.3 concerning Certification of Maximum Medical Improvement by a Doctor other than Treating Doctor (retitled Certification of Maximum Medical Improvement by a Doctor other than a Treating or Designated Doctor). The Commission is simultaneously withdrawing in this issue of the *Texas Register* the proposed amendment to §130.3 which appeared in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1134).

The amendment is proposed to address new legislation enacted by the 76th Texas Legislature, 1999. Specifically, House Bill 2510 made changes to address required medical examinations. In addition, House Bill 2511 amended Texas Labor Code, §401.024, authorizing the Commission to adopt rules to require electronic transmission of information by means such as facsimile, email, and electronic data interchange. This authorization is utilized in the proposed amendments to achieve a legislative goal of reducing paper communication requirements in the workers' compensation system while ensuring timely and effective communication between system participants.

At the same time, amendments are proposed to include in the rule, some of the Commission's long standing policies and to address problems with the rules that were identified by the Claims Service Task Force (a group of representatives from the system appointed by the Commission to serve as a sounding board for ideas regarding rule development in the area of claims service), other system participants, and Commission staff. The proposed amendment simplifies and shortens the rule construction and is designed to be more prescriptive and to eliminate or significantly reduce ambiguity in the rules. The proposal is designed to more clearly lay out expectations so that all system participants will understand the requirements the Act and rule place on them. It is expected that together, these changes will, improve benefit delivery, reduce disputes, make dispute resolution easier, reduce violations, and make it easier to hold system participants accountable for their actions and inactions.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Amendments to §130.3 - Certification of Maximum Medical Improvement by a Doctor other than a Treating or Designated Doctor.

Amendments to subsection (a) are proposed to clarify the requirements of the rule.

The existing language in subsection (b) is proposed to be deleted and replaced with language that better explains the requirements that the rule places on the treating doctor. Plain reading of the current language in the rule suggests that the treating doctor is required to agree with the required medical examination (RME) doctor's opinion regarding maximum medical improvement and impairment which is clearly inappropriate if the treating doctor does not agree with the RME doctor's certification.

The proposed subsection (c) is intended to clarify that a treating doctor's indication of agreement or disagreement with the RME doctor's opinion does not require a separate examination of the employee.

New subsection (d) adds language relating to the means of filing the reports required by the rule. The new language emphasizes use of "instant" communication such as electronic transmission through facsimile or email to reduce the delay in providing critical information for benefit delivery and reduce the use of paper as required by House Bill 2511. The language is written to make use of traditional postal mail the last resort for filing the report. By using this language, as use of email and other forms of instant communication by employees expands, the rules will reduce the reliance on mail that has often caused over, under, and delayed payments.

New subsection (e) is added to improve enforcement by requiring doctors to maintain documentation of how and when reports under the rule are filed and received. Currently, efforts to ensure the compliance with the existing rule are hampered by an inability to prove that reports were timely filed with all parties. For instance, in the case of the treating doctor responding to a report by the RME doctor, it is necessary to prove that the report was sent to the treating doctor and to prove when it was received by the treating doctor. With the addition of this subsection it should be easier to ensure compliance because there will be documentation of the treating doctor's receipt of the report which is currently not regularly maintained.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rules are in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rules. The Commission should ultimately see a reduction in costs if more treating doctors responding to RME doctor's reports. This is expected to increase the number of agreements and reduce disputes. Information service expenses should also be reduced. The anticipated reduction in costs cannot be quantified.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rule will be:

Injured employees should benefit by an increase in the timeliness of income benefit payments.

Employers should benefit because the new rule will help resolve disputes over MMI and impairment more quickly and, along with changes being proposed in Chapter 126 (relating to Benefits - General Provisions Applicable to All Benefits) and Chapter 129 (relating to Income Benefits - Temporary Income Benefits), should reduce overpayments within the system and thus potentially have a positive affect on premiums.

Health care providers are not likely to significantly benefit by the amendments to this rule.

Carriers should benefit from more timely provision of information and the ability to more quickly resolve disputes.

The Commission should find it easier to hold system participants accountable for their actions and inactions due to clearer requirements and there will be more documentation to review.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the requirements to comply with the rules will have the following affects on costs of system participants:

Claimants will probably not see either an increase or decrease in costs.

Employers may see reduced costs to the extent that timely provision of information helps reduce the time it takes disputes to be resolved through reduced premium amounts.

Health care providers are not likely to see a significant increase in costs associated with this rule since the most significant changes are to require use of facsimile or electronic transmission that most doctors already have an ability to use and maintenance of the documentation required by the rule can be accomplished by simply keeping a copy of the electronic transmission or facsimile confirmation sheet.

Carriers should see a reduction in costs associated because of the clarification of the rule and the emphasis on "instant communication."

The requirements of these rules are not expected to affect costs for small businesses except that by helping to reduce overpayments by more timely reporting of information, the employer's premiums may be positively affected. There will be no difference in cost of compliance for small businesses as compared to large businesses and there is no anticipated adverse economic impact on small businesses or micro-businesses because the proposed amendments to the rule primarily clarify existing requirements.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at *http://www.twcc.state.tx.us*.

The amendment is proposed under the following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.004, which addresses required medical examinations; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.101 and §408.102, which cut off entitlement to TIBs upon the employee reaching MMI; Texas Labor Code, §408.121, which states that entitlement to IIBs begins on the day after MMI; Texas Labor Code, §408.122, which establishes eligibility for IIBs and provides for use of designated doctors when a dispute exists regarding the certification of MMI; Texas Labor Code, §408.123, which requires a doctor certifying MMI to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor, to be sent to the treating doctor who must indicate either agreement or disagreement with the certification and evaluation; Texas Labor Code, §408.124, which prescribes the guides to be used for assigning impairment ratings; Texas Labor Code, §408.125, which addresses use of a designated doctor to resolve impairment rating disputes.

The proposed amendment affects the following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.004, which addresses required medical examinations; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.101 and §408.102, which cut off entitlement to TIBs upon the employee reaching MMI; Texas Labor Code, §408.121, which states that entitlement to IIBs begins on the day after MMI; Texas Labor Code, §408.122, which establishes eligibility for IIBs and provides for use of designated doctors when a dispute exists regarding the certification of MMI; Texas Labor Code, §408.123, which requires a doctor certifying MMI to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor, to be sent to the treating doctor who must indicate either agreement or disagreement with the certification and evaluation; Texas Labor Code, §408.124, which prescribes the guides to be used for assigning impairment ratings; Texas Labor Code, §408.125, which addresses use of a designated doctor to resolve impairment rating disputes.

§130.3. Certification of Maximum Medical Improvement by a Doctor other than <u>the</u> Treating <u>or Designated</u> Doctor.

(a) A doctor, other than a treating or designated doctor, who certifies that an employee has reached maximum medical improvement shall complete a medical evaluation report (the report) in accordance with [~~under~~] §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), and send [~~a copy of~~] the medical evaluation report, no later than seven days after the conclusion of the examination, to the treating doctor, [~~if the certifying doctor is not a designated doctor selected to resolve a dispute about maximum medical improvement. A copy of the report shall also be sent to~~] the Commission, the employee, and [~~or~~] the employee's representative (if any), and the insurance carrier [~~at the same time~~].

(b) Upon receipt of the report, the treating doctor shall: [~~A treating doctor who receives the report shall mail to the Commission within seven days:~~]

(1) indicate on the report either agreement or disagreement with the certification of maximum medical improvement and with the impairment rating assigned by the certifying doctor; and [~~a statement indicating the treating doctor's agreement with the certifying doctor's certification and impairment rating; and~~]

(2) within seven days of receipt, send a signed copy of the report indicating agreement or disagreement to the Commission, the employee and the employee's representative (if any), and the carrier. [~~the report required by §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), based on the most recent examination, if the treating doctor disagrees with either the finding that the employee has reached maximum medical improvement, or the impairment rating assigned by the certifying doctor.~~]

(c) A treating doctor's agreement or disagreement under subsection (b) of this section does not require a separate examination of the employee prior to the issuance of the opinion and shall not be considered a certification as that term is used in §130.1 of this title.

(d) The reports required under this section to be filed with a doctor and carrier shall be filed by facsimile or electronic transmission. In addition, the doctor shall file the report with the employee and the employee's representative by facsimile or electronic transmission unless the employee or the employee's representative does not have a means of receiving the transmission, in which case the report shall be sent by mail or personal delivery.

(e) A doctor shall maintain documentation of the date and means of delivery and receipt of reports under this section.

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

Filed with the Office of the Secretary of State, on August 16, 1999.

TRD-9905173
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707–5829

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28 TAC §130.11

The Texas Workers' Compensation Commission (the Commission) proposes new §130.11, concerning the monthly payment of impairment income benefits. The new rule establishes the criteria which must be contained in a written agreement to pay impairment income benefits monthly rather than weekly, to establish the due date of monthly impairment income benefit payments and the calculation of the monthly amount accrued and due. The new rule is being proposed in response the amendments to §408.081(c) as passed by the 76th Legislature, 1999.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Proposed new subsection (a) allows an insurance carrier and an injured employee to enter into a written agreement to change the frequency of payments from the standard weekly period to a monthly period. This section also sets out the requirements for such an agreement. The weekly compensation rate must be multiplied by 4.34821. When less than the maximum weekly compensation rate in effect at the time of the injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the agreement. If the parties agree to the monthly payments issued by the insurance carrier, the monthly payments will begin the first day of the month following the date of the agreement. The impairment rating upon which impairment income benefits are paid and the source of the impairment rating are required. Filing an agreement with the Commission is not required except upon request of the Commission.

Proposed new subsection (b) directs that the injured employee and the insurance carrier may not agree to the monthly payment of IIBs until there is an agreed impairment rating or the impairment rating has become final.

Proposed new subsection (c) establishes that the agreement for payment of IIBs shall expire upon the suspension of IIBs or the change of benefit type to supplemental income benefits or death benefits.

Proposed new §130.11(d) allows an injured employee who has opted for monthly payment of IIBs to terminate the agreement and return to weekly payments. Upon termination of the agreement, the insurance carrier will be responsible for all IIBs which have accrued and are due and will be required to continue to pay benefits weekly as and when they accrue and are due.

New §130.11(e) establishes that the requirements of this rule apply only to agreements for monthly payments of IIBs entered into on or after September 1, 1999.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be:

Compliance with the requirement of the §408.081(c) as passed by the 76th legislature.

Regarding monthly payments of IIBs, the injured employee will receive the full monthly amount by the seventh day of each

month. This can provide them opportunity for better money management and less paperwork.

Insurance carriers will benefit from reduced administrative costs associated with issuing and mailing weekly benefit checks and less likelihood of late payments since there will be fewer checks issued.

There will be no adverse economic impact on those required to comply with the rule as proposed or for small businesses or micro-businesses.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at *http://www.twcc.state.tx.us*.

New §130.11 is proposed under: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.062, which establishes the minimum benefit payment amount; Texas Labor Code, §408.081, which establishes the frequency of income benefits and requires the Commission to adopt rules which establish the criteria which must be included in an agreement for monthly payments; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.121, which addresses entitlement to and payment of IIBs; Texas Labor Code, §408.122, which establishes eligibility for IIBs; Texas Labor Code, §408.123, which addresses certification maximum medical impairment and the evaluation of impairment rating; Texas Labor Code, §408.125, which addresses disputes of impairment ratings; Texas Labor Code, §408.126, which establishes the amount of IIBs; Texas Labor Code, §408.127, which addresses reduction of IIBs; Texas Labor Code, §408.128, which addresses commutation of IIBs; Texas Labor Code, §408.129, which addresses acceleration of IIBs; and Texas Labor Code, §409.023, which requires insurance carriers to pay benefits as and when they accrue.

The proposed new rule affects the following statutes: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.062, which establishes the minimum benefit payment amount; Texas Labor Code, §408.081, which establishes the frequency of income benefits and requires the Commission to adopt rules which establish the criteria which must be included in an agreement for monthly payments; Texas Labor Code, §408.082, which addresses entitlement to income benefits; Texas Labor Code, §408.121, which addresses entitlement to and payment of IIBs; Texas Labor Code, §408.122, which establishes eligibility for IIBs; Texas Labor Code, §408.123, which addresses certification maximum medical impairment and the evaluation of impairment rating; Texas Labor Code, §408.125, which addresses disputes of impairment ratings; Texas Labor Code, §408.126, which establishes the amount of IIBs; Texas Labor Code, §408.127, which addresses reduction of IIBs; Texas Labor Code, §408.128, which addresses commutation of IIBs; Texas Labor Code, §408.129, which addresses acceleration of IIBs; and Texas Labor Code, §409.023, which requires insurance carriers to pay benefits as and when they accrue.

§130.11. Agreement for Monthly Payment of Impairment Income Benefits.

(a) Upon the request of the employee, the insurance carrier and an employee entitled to impairment income benefits (IIBs) may agree to change the frequency of IIBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and is only required to be filed with the Commission if the Commission requests a copy. To relieve the insurance carrier of the responsibility to pay IIBs weekly, the written agreement must include the following terms and conditions:

(1) IIBs payments will be initiated with the first calendar day of the month following the month in which the written agreement was entered into by the insurance carrier and the injured employee;

(2) monthly IIBs payment will be issued on or before the seventh day of the month for which benefits are due;

(3) weekly IIBs payments will continue through the end of the month in which the agreement was signed.;

(4) payment of the last week of IIBs to transition from weekly payment of IIBs to monthly payments will be prorated to the end of the month to ensure the injured employee receives IIBs through the last day of the month;

(5) if less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a

completed Employer's Wage Statement must be included with the injured employee's copy of the written agreement;

(6) the monthly benefit amount shall be equal to the weekly compensation rate for IIBs that the injured employee is entitled to multiplied by 4.34821; and

(7) the impairment rating and source of the impairment rating upon which payment of impairment income benefits is being based.

(b) An injured employee and insurance carrier may not agree to the monthly payment of IIBs until the impairment rating has been agreed to or has become final.

(c) The agreement for the monthly payment of impairment income benefits will expire upon the suspension or termination of IIBs in accordance with the Act and Commission rules.

(d) At any time after signing the agreement for the monthly payment of IIBs, the injured employee may notify the insurance carrier that he/she no longer agrees to the monthly payment of IIBs. In this case, the insurance carrier shall pay all accrued but unpaid IIBs at the end of the current monthly cycle and will continue paying IIBs weekly as and when they accrue and are due.

(e) Effective Date. This section applies only to agreements entered into on or after September 1, 1999, for payment of IIBs under the provisions of the Act.

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 August 16, 1999.

TRD-9905181

Susan Cory

Assistant General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: September 26, 1999

For further information, please call: (512) 707–5829

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Subchapter B. Supplemental Income Benefits

28 TAC §§130.101–130.103, 130.110

The Texas Workers' Compensation Commission (the Commission) proposes amendments to §130.101 concerning definitions, §130.102 concerning eligibility for supplemental income benefits (SIBs); §130.103 concerning determination of entitlement or non-entitlement for the first quarter of SIBs, and new §130.110 concerning return to work disputes during SIBs.

Amended §§130.101, 130.102 and 130.103 are being proposed in response to the amendments to Texas Labor Code, §408.150(a) and (b) and new §130.110 is being proposed in response to new Texas Labor Code, §408.151, as passed by the 76th Legislature. The amended rules are proposed to define vocational rehabilitation services and the requirements of a vocational rehabilitation program provided by a private provider of vocational rehabilitation services. The amendments to Texas Labor Code, §408.150 include cooperation with a private provider of vocational rehabilitation as a good faith effort to obtain employment commensurate with the injured employee's abilities and establishes that an insurance carrier may provide vocational rehabilitation services through a private provider of such services. These provisions have been incorporated into the proposed rules. In addition, the proposed rules define what constitutes a dispute regarding an injured employee's ability to return to work, and that a designated doctor will be assigned to resolve such a dispute.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Proposed §130.101.

Proposed amendments to §130.101 adds definitions of "vocational rehabilitation services" and "vocational rehabilitation program" as paragraphs (7) and (8) and deletes the definition of "vocational assistance". These definitions establish what constitutes vocational rehabilitation services and what must be included in a vocational rehabilitation program. The concept of vocational assistance is encompassed in these terms and therefore that definition is no longer needed.

Proposed §130.102.

Proposed §130.102(d)(3) adds to the list of actions which constitute a good faith effort to obtain employment being enrolled in, and satisfactorily participating in a full time vocational rehabilitation program provided by the insurance carrier through a private provider of vocational rehabilitation services.

Proposed amendments to §130.102(e) adds to its exceptions new subsection (d)(3) and adds to the list of items to be considered in determining good faith effort, cooperation with a private provider of vocational rehabilitation services.

Proposed §130.102(h) is amended to address vocational rehabilitation services provided by an insurance carrier through a private provider of such services, and that an injured employee who refuses services or refuses to cooperate with a private provider will lose entitlement to supplemental income benefits.

Proposed §130.103.

Proposed amendment to §103.103(d) clarifies what information must be included in a notice regarding referral to the Texas Rehabilitation Commission and adds the requirement that the Commission notify the insurance carrier in addition to the injured employee.

Proposed New §130.110.

Proposed new §130.110(a) establishes that if a dispute exists regarding return to work during supplemental income benefits, the Commission shall select a designated doctor to resolve the dispute and that the report of the designated doctor has presumptive weight.

Proposed new §130.110(b) defines what constitutes a dispute regarding an injured employee's ability to work.

Proposed new §130.110(c) establishes the timeframe for raising a dispute regarding an injured employee's ability to work.

Proposed new §130.110(d) provides that a request for a designated doctor to resolve a dispute regarding an injured employee's ability to work shall be requested in writing in the form, format and manner prescribed by the Commission. Subsection (d) also provides an exception to this general requirement for an injured employee who does not have a representative.

Proposed new §130.110(e) prohibits a designated doctor selected to resolve a dispute regarding maximum medical improvement and/or impairment rating from being appointed to resolve a dispute regarding ability of the same injured employee to return to work.

Proposed new §130.110(f) establishes that the Commission shall select a designated doctor from the Commission's designated doctor list that is, to the extent possible, the same type of doctor as the injured employee's current treating doctor. The rule also establishes that the designated doctor shall not have treated or examined the injured employee regarding the medical condition being examined, and that a designated doctor selected under this section shall act in that capacity for all disputes until unable or unwilling to do so.

Proposed new §130.110(g) addresses rescheduling of designated doctor appointments. This subsection provides that a designated doctor or injured employee with a scheduling conflict, within 24 hours of the appointment and that the rescheduled examination shall be set for a date within seven days of the originally scheduled examination. The rule also establishes that the designated doctor shall notify the insurance carrier and Commission of the date and time of the rescheduled examination.

Proposed new §130.110(h) establishes that both the injured employee's treating doctor and the insurance carrier are responsible for forwarding all the injured employee's medical records to the designated doctor and establishes the timeframe for receipt of those records by the designated doctor. The rule also establishes that the medical records may not contain any marks or highlights for the purpose of influencing the designated doctor.

Proposed new §130.110(i) provides that only the injured employee and appropriate Commission staff may communicate with the designated doctor about the case. This prohibition is contained in Texas Labor Code, §408.125.

Proposed new §130.110(j) requires the designated doctor to review all medical records provided and requires the designated doctor to conduct a functional capacity examination to determine the injured employee's ability to return to work. This subsection also allows the designated doctor to decline performance of functional capacity testing if the designated doctor determines it is not appropriate for a particular patient due to the patient's medical condition.

Proposed new §130.110(k) establishes that the designated doctor shall file a report with the Commission and send a copy to the injured employee, the employee's representative if any, and the insurance carrier not later than seven days after completing the examination. The report is to be sent to the injured employee, the injured employee's representative, and the insurance carrier via facsimile or electronic transmission unless the recipient does not have means of receiving the transmission, in which case, the report shall be sent by mail.

Proposed new §130.110(l) allows the designated doctor to perform additional testing or refer the injured employee to other health care providers when necessary to determine the injured employee's ability to work or return to work. The proposed new rule also provides that the additional testing does not require pre-authorization and must be performed within seven days of the designated doctor's physical examination of the injured employee.

Proposed new §130.110(m) lists the information the designated doctor must maintain in his/her records.

Proposed new §130.110(n) lists the actions the Commission may take to enforce this section.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rules as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rule will be:

Compliance with the requirements of Texas Labor Code, §408.150 and §408.151 as passed by the 76th legislature.

Injured employees, that may be eligible for supplemental income benefits, that cooperate with an insurance carrier sponsored private provider of vocational rehabilitation services will be assured that the provider has the training and experience to provide services and training that may assist the injured employee to be able to return to work. The injured employee will also have a plan for vocational rehabilitation that clearly spells out what is required of the injured employee to satisfactorily complete the program. Additionally, the injured employee will know that cooperation in a full time vocational rehabilitation program meets the good faith job search effort.

Injured employees will benefit from having the ability to dispute an insurance carrier's position regarding the injured employee's ability to return to work and have a designated doctor appointed to resolve the dispute. The designated doctor selected to resolve a return to work dispute will not have previously examined the injured employee regarding the medical condition and will be able to provide an objective, unbiased determination.

Insurance carriers will benefit from being able to offer vocational rehabilitation services to injured employees who are receiving supplemental income benefits that may assist the injured employee to be able to return to work. In addition, if the injured employee refuses the services or fails to cooperate with the services offered, the injured employee loses entitlement to supplemental income benefits.

Insurance carriers will benefit from having the ability to dispute an injured employee's position regarding the injured employee's ability to return to work and have a designated doctor appointed to resolve the dispute. The insurance carrier will not be able to immediately implement the designated doctor's determination but will be able to use it as information when making the entitlement determination during the subsequent quarter.

Employers will benefit from the injured employee being able to return to some type of employment, whether with the employer the injured employee was working for at the time of the injury or with another employer.

The proposed rules will add clarity regarding disputes which will benefit injured employees, insurance carriers, and injured employees.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. The decision to

provide or not to provide vocational rehabilitation services lies with the insurance carrier.

There will be no adverse economic impact on small businesses or micro-businesses.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at *http://www.twcc.state.tx.us*.

The proposed amendments to §§130.101, 130.102 and 130.103 and proposed new §130.110 are proposed under the Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, 1999, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.141, which addresses the award of supplemental income benefits; Texas Labor Code, §408.142, which sets out the requirements for an injured employee's eligibility to receive supplemental income benefits; Texas Labor Code, §408.143, which requires an injured employee to file with the insurance carrier a quarterly statement regarding employment after the Commission's initial determination of supplemental income benefits; Texas Labor Code, §408.147, which sets out the procedures for contest of supplemental income benefits by an insurance carrier and provides that the insurance carrier is liable for the attorney's fees of an injured employee who prevails in such a contest; Texas Labor Code, §408.150, as amended by the 76th Legislature, which provides for Commission referral to the Texas Rehabilitation Commission for vocational rehabilitation and training; Texas labor Code, §408.151, as added by the 76th Legislature, which requires the selection of a designated doctor to resolve a dispute regarding an injured employee's ability to return to work; and Chapter 410 of the Texas Labor Code, regarding adjudication of disputes.

The proposed amendments to §§130.101, 130.102 and 130.103 and proposed new §130.110 affect the following statutes: Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.141, which addresses the award of supplemental income benefits; Texas Labor Code, §408.142, which sets out the requirements for an injured employee's eligibility to receive supplemental income benefits; Texas Labor Code, §408.143, which requires an injured employee to file with the insurance carrier a quarterly statement regarding employment after the Commission's initial determination of supplemental income benefits; Texas Labor Code, §408.147, which sets out the procedures for contest of supplemental income benefits by an insurance carrier and provides that the insurance carrier is liable for the attorney's fees of an injured employee who prevails in such a contest; Texas Labor Code, §408.150, as amended by the 76th Legislature, which provides for Commission referral to the Texas Rehabilitation Commission for vocational rehabilitation and training; Texas labor Code, §408.151, as added by the 76th Legislature, which requires the selection of a designated doctor to resolve a dispute regarding an injured employee's ability to return to work; and Chapter 410 of the Texas Labor Code, regarding adjudication of disputes.

§130.101. Definitions.

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

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

(7) Vocational Rehabilitation Services - Services including, but not limited to, training, physical or mental restoration, or other services necessary to enable an injured employee to become employed in an occupation that is consistent with his or her strengths, abilities and interest. [~~Vocational assistance - Services to assist the injured employee in the identification of physical abilities, vocational abilities, and other activities to enhance the potential to return to work.~~]

(8) Vocational Rehabilitation Program - A program for the provision of vocational rehabilitation services designed to assist the injured employee to return to work. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

(9) Wages - All forms of remuneration payable for personal services rendered during the qualifying period as defined in Texas

Labor Code, §401.011(43), including the wages of a bona fide offer of employment which was not accepted.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

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

(d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

(1) has returned to work in a position which is relatively equal to the injured employee's ability to work;

(2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period;

(3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by an insurance carrier through a private provider of vocational rehabilitation services;

(4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or

(5) [~~(4)~~] has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

(e) Job Search Efforts and Evaluation of Good Faith Effort. Except as provided in subsections (d)(1), (2), [~~and~~] (3), and (4) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. In determining whether or not the injured employee has made a good faith effort to obtain employment under subsection (d)(5) [~~(4)~~] of this section, the reviewing authority shall consider the information from the injured employee, which may include, but is not limited to information regarding:

(1) number of jobs applied for throughout the qualifying period;

(2) type of jobs sought by the injured employee;

(3) applications or resumes which document the job search efforts;

(4) cooperation with the Texas Rehabilitation Commission;

(5) cooperation with a vocational rehabilitation program provided by an insurance carrier through a private provider of vocational rehabilitation services;

(6) [~~(5)~~] education and work experience of the injured employee;

(7) [~~(6)~~] amount of time spent in attempting to find employment;

(8) [~~(7)~~] any job search plan by the injured employee;

(9) [~~(8)~~] potential barriers to successful employment searches;

(10) [~~(9)~~] registration with the Texas Workforce Commission; or

(11) [~~(10)~~] any other relevant factor.

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

(h) Services Provided by a Carrier Through a Private Provider of [~~Carrier-Sponsored~~] Vocational Rehabilitation Services [~~Case Managers~~]. The insurance carrier may provide vocational rehabilitation services through a private provider of such services provided that the individual [~~a case manager to perform vocational assistance provided that the individual~~] is [~~a~~] registered as a private provider in accordance with §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services) and is credentialed as a Licensed Professional Counselor (LPC), Certified Case Manager (CCM), Certified Rehabilitation Counselor (CRC), Certified Vocational Evaluator (CVE), or Certified Disability Management Specialist (CDMS). Specific services may be performed by other persons provided that they have the appropriate background and the work is done by or at the direction of a person with the credentials required [~~outlined~~] in this subsection.

§130.103. Determination of Entitlement or Non-entitlement for the First Quarter.

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

(d) Referral to the Texas Rehabilitation Commission. For each injured employee who may be eligible to receive supplemental income benefits, the Commission shall send the injured employee and the insurance carrier [~~notice containing~~]:

(1) notice of the need for vocational rehabilitation or training services;

(2) a referral to the Texas Rehabilitation Commission for appropriate services; and

(3) [~~(2)~~] a warning to the injured employee that refusing such services, or refusing to cooperate with such services, will result in loss of entitlement to supplemental income benefits.

§130.110. Return to Work Disputes During Supplemental Income Benefits; Designated Doctor.

(a) If a dispute exists regarding an injured employee's ability to return to work during the supplemental income benefit period (day after expiration of impairment income benefits (IIBs) through the expiration of 401 weeks from the date of injury or permanent loss of entitlement to supplemental income benefits), the Commission shall appoint a designated doctor to resolve the dispute. The report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary.

(b) A dispute exists as to whether an injured employee is able to return to work if:

(1) a doctor chosen by the insurance carrier has determined that the injured employee can return to work, and the injured employee disagrees and has medical evidence to support that position;

(2) either the insurance carrier or the injured employee disagree with the opinion of a treating doctor concerning the ability of the injured employee to return to work and has medical or physical evidence to support the position;

(3) either the carrier or the injured employee disagree with the restrictions placed on the ability to return to work and has medical or physical evidence to support the position; or

(4) the injured employee returned to work but was unable to continue to work during the qualifying period because of the

injured employee's medical condition and the injured employee has medical evidence to support the inability to work.

(c) A party who wishes to seek the appointment of a designated doctor to resolve the dispute shall make a request to the Commission not later than 14 days following:

(1) the receipt of medical or physical evidence which supports the party's position; or

(2) the last day of work if the dispute is made under subsection (b)(4) of this section.

(d) The request for a designated doctor from an insurance carrier or an injured employee's representative, must be in writing and provided to the Commission in the form, format and manner prescribed by the Commission. A request for a designated doctor from an unrepresented injured employee may be submitted in any manner.

(e) If a designated doctor has been appointed to resolve a prior dispute regarding maximum medical improvement and/or impairment rating, that doctor may not be appointed to resolve the dispute(s) regarding the injured employee's ability to return to work.

(f) The Commission shall select the next available doctor from the Commission's designated doctor list, which is, to the extent possible, in the same discipline and licensed by the same board of examiners as the injured employee's treating doctor of choice at the time of the certification of ability to return to work and who has not previously treated or examined the injured employee with regard to the medical condition being evaluated by the designated doctor. A doctor selected under this section shall serve as the designated doctor for all dispute(s) raised under this section unless that doctor is unable or unwilling to act in that capacity.

(g) The designated doctor and the injured employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the injured employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24 hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within seven days of the originally scheduled examination unless an extension is granted by the field office managing the claim. Within 24 hours of rescheduling, the designated doctor shall contact the Commission field office and the insurance carrier with the time and date of the rescheduled examination.

(h) The treating doctor and insurance carrier shall send to the designated doctor without the requirement of a signed release from the injured employee, all the employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of the injured employee's ability to return to work. The medical records must not contain any marks, highlights, or other alterations placed on such records for the purpose of communicating with or influencing the designated doctor. The medical records must be received by the designated doctor at least three days prior to the date of the appointment as specified in the Commission order. If the medical records are marked, highlighted, altered, or unrelated to the medical condition to be evaluated by the designated doctor, the designated doctor shall notify the Commission and report the noncompliance of the treating doctor and/or insurance carrier. If the designated doctor has not received the medical records at least three days prior to the examination, the designated doctor's office shall notify the Commission at the appropriate field office and the appropriate Commission staff will send an order to the treating doctor and/or insurance carrier for the delivery of medical records.

(i) To avoid undue influence on a person selected as a designated doctor in accordance with Texas Labor Code, §408.125, only the injured employee or an appropriate member of the staff of the Commission may communicate with the designated doctor about the case regarding the employee's medical condition or history prior to the examination of the employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the a's medical condition or history may be made only through appropriate Commission staff members. An ombudsman is not considered appropriate staff to contact the designated doctor and should communicate with a designated doctor only through appropriate Commission personnel. The designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury.

(j) The designated doctor shall review all medical records provided by the insurance carrier and treating doctor and shall conduct a functional capacity examination to determine the injured employee's ability to work and whether the injured employee can return to work, unless the designated doctor determines the functional capacity examination is not an appropriate testing technique based on the injured employee's medical condition. Following the examination, the designated doctor will prepare a report of his/her findings in the form and manner prescribed by the Commission.

(k) The designated doctor shall file the report with the Commission so that it is received by the Commission not later than the seventh day after the completion of the examination of the injured employee. At the same time it is filed with the Commission, the designated doctor shall provide a copy of the report by facsimile or electronic transmission to the injured employee, the injured employee's representative, if any, and the insurance carrier, unless the recipient does not have a means of receiving the transmission, in which case the report shall be sent by mail.

(l) The designated doctor may perform additional testing or refer the injured employee to other health care providers when deemed necessary to determine the injured employee's ability to work and whether the injured employee can return to work. Necessary additional testing is not subject to the preauthorization requirements in the Texas Labor Code, §413.014 (relating to Preauthorization) and additional testing must be completed within seven days of the designated doctor's physical examination of the employee.

(m) The designated doctor shall maintain accurate records to reflect:

(1) the date and time of any designated doctor appointments scheduled with injured employees;

(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled;

(3) the date of the examination;

(4) the date medical records were received from the treating doctor or any other person or organization;

(5) the date the medical evaluation report was submitted to all parties in accordance with subsection (k) of this section; and

(6) the name of all referral health care providers, dates of appointments and reason(s) for referral by the designated doctor.

(n) The Commission may:

(1) issue an order requiring timely submission of medical evaluation reports or narrative reports;

(2) issue an order for refund to the insurance carrier of the examination payment if an improper or incomplete examination is performed or improper or incomplete report is submitted;

(3) take action to remove a doctor from the Designated Doctor List as described in accordance with §126.10 of this title (relating to Commission Approved List of Designated Doctors); and/or

(4) take action to remove a doctor from the Approved Doctor List in accordance with §126.8 of this title (relating to Commission Approved Doctor List).

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 August 16, 1999.

TRD-9905180

Susan Cory

Assistant General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: September 26, 1999

For further information, please call: (512) 707–5829

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Chapter 131. Benefits-Lifetime Income Benefits

28 TAC §131.4

The Texas Workers' Compensation Commission (the Commission) proposes new §131.4, concerning lifetime income benefits (LIBs), to establish requirements for agreements under which LIBs may be paid monthly. The new rule is proposed in response to the amendments to Texas Labor Code, §408.081 and §408.161, as passed by the 76th Legislature, 1999.

Proposed new subsection (a) allows the insurance carrier and the injured employee entitled to LIBs to enter into a written agreement to change the frequency of payments from the standard weekly period to a monthly period. This section also sets out the requirements for such an agreement. The weekly compensation rate must be multiplied by 4.34821. When less than the maximum weekly compensation rate in effect at the time of the injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the agreement. If the parties agree to monthly payments issued directly by the insurance carrier, the monthly payments will begin the first day of the month following the date of the agreement. The agreement must contain a clear statement regarding the due date of the annual three percent increase in LIBs. Filing an agreement with the Commission when the insurance carrier is directly issuing the monthly payments is not required except upon request.

Proposed new subsection (b) allows an injured employee who has opted for monthly payment of LIB to terminate the agreement and return to weekly payments. On the termination of the agreement, the insurance carrier will be responsible for payment of all LIBs which have accrued and are due and will be required to continue weekly payments as and when they accrue and are due.

Proposed new subsection (c) allows the insurance carrier and the injured employee to agree for the insurance carrier to fund LIBs through purchase of an annuity. This proposed subsection requires that when an annuity is purchased for the payment of monthly LIBs, the insurance carrier and the injured employee are required to submit an application in the manner required by the Commission for approval of the annuity.

Proposed new subsection (d) sets out the required for such an annuity If the payments are issued by an annuity company, the payments will begin the first day of the month following the Commission's approval for the carrier to purchase an annuity. Licensing and financial standards for an annuity company are set out in the proposed rule. The workers' compensation carrier is required to guarantee the payments provided by an annuity company in case of default. The annuity contract must include funds for payment of the annual three percent increase in LIBs required by the Act. When the injured employee dies, the remaining funds in the annuity will be returned to the insurance carrier that purchased the annuity. The injured employee, or guardian if applicable, will not be allowed to transfer the right to receive LIBs from an annuity. The workers' compensation carrier cannot purchase an annuity to fund payment of medical costs incurred by an injured employee entitled to LIBs. The purchase of an annuity does not relieve the carrier of its responsibility under the statute and rules. The annuity represents a mechanism for delivering benefits, not a transfer of the responsibility from the carrier to the annuity company.

Proposed new subsection (e) states the rule will apply only to agreements entered into on or after September 1, 1999, for payment of LIBs under the provisions of the Act.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rule is in effect, there will no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Rodriguez has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule are the following:

Injured Employees entitled to LIBs will receive the full monthly payment by the seventh day of each month. This can provide the opportunity for better money management and less paperwork.

Insurance Carriers will benefit from lowered administrative costs associated with issuing and mailing weekly lifetime income benefit checks when an agreement is entered into by the carrier and the injured employee or when an application to pay through the purchase of an annuity is approved by the Commission. Additionally, a carrier will receive a substantial discount by purchasing an annuity at present value for a long-term payout.

There will be no adverse economic impact on those required to comply with the rules as proposed or on small businesses or micro-businesses. Both the injured employee and the insurance carrier must agree before any change in payment method or frequency takes place.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing

your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at *http://www.twcc.state.tx.us*.

The new section is proposed under: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, and the Texas Labor Code; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.062, which establishes the minimum benefit payment amount; Texas Labor Code, §408.161, as amended by the 76th Legislature, which establishes the criteria for entitlement to LIBs; Texas Labor Code, §408.081, as amended by the 76th Legislature, which establishes eligibility for income benefits; and Texas Labor Code, §408.162, which deals with the payment of LIBs from the subsequent injury fund.

The proposed new §131.4 affects: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, and the Texas Labor Code; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code §408.062 which establishes the minimum benefit payment amount; Texas Labor Code, §408.161, as amended by the 76th Legislature, which establishes the criteria for entitlement to LIBs; Texas Labor Code, §408.081, as amended by the 76th Legislature, which establishes eligibility for income benefits; and Texas Labor Code, §408.162, which deals with the payment of LIBs from the subsequent injury fund.

§131.4. Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits.

(a) Upon the request of an injured employee entitled to lifetime income benefits (LIBs) as defined in the Act, the insurance carrier and an injured employee may agree to change the frequency of LIBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and is only required to be filed with the Commission if the Commission requests a copy. To relieve the insurance carrier of the responsibility to pay LIBs weekly the written agreement must include the following terms and conditions:

(1) LIBs payments will be initiated with the first calendar day of the month following the month in which the written agreement was entered into by the insurance carrier and the injured employee;

(2) Monthly LIBs will be issued on or before the seventh day of the month for which benefits are due;

(3) Weekly LIBs payments will continue through the end of the month in which the agreement was signed;

(4) Payment of the last week of LIBs to transition from weekly payment of LIBs to monthly payments will be to the end of the month to ensure the injured employee receives LIBs through the last day of the month;

(5) The monthly compensation rate will be calculated by multiplying the weekly compensation rate by 4.34821;

(6) If less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the written agreement; and

(7) A clear statement regarding the due date of the annual three percent increase in LIBs must be included.

(b) At any time after signing the agreement for the monthly payment of LIBs, the injured employee may notify the insurance carrier that he/she no longer agrees to the monthly payment of LIBs. In this case, the insurance carrier shall pay all accrued but unpaid LIBs at the end of the current monthly cycle and will continue to pay LIBs weekly as and when they accrue and are due.

(c) The insurance carrier and the injured employee entitled to LIBs may agree that the carrier will purchase an annuity for payment of LIBs. An application for payment of LIBs by annuity must be submitted to the Commission for approval in the form, format, and manner required by the Commission. If less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a complete Employer's Wage Statement must be included with the application.

(d) An annuity for the payment of LIBs shall meet the following terms and conditions.

(1) LIBs payments will be initiated with the first calendar day of the month following the month in which the written agreement was approved by the Commission.

(2) The company providing an annuity for the payment of LIBs must be licensed to do business in Texas and must have a current A. M. Best rating of B+ or better or have a Standard and Poor's rating of claims paying ability of A or better.

(3) The workers' compensation insurance carrier must guarantee the payments provided by the annuity company in the event of default.

(4) The annuity contract must include funds for payment of the annual three percent increase in LIBs required by the Act.

(5) When the injured employee dies, the remaining funds, if any, in the annuity will be returned to the insurance carrier that purchased the annuity.

(6) The injured employee, or guardian if applicable, shall not be allowed to transfer the right to receive LIBs from an annuity.

(7) An annuity cannot be purchased to fund the payment of medical costs incurred by an injured employee entitled to LIBs.

(8) The annuity company shall pay LIBs either weekly or monthly as indicated in the application for payment of LIBs by annuity. This payment frequency cannot be changed during the term of the annuity.

(9) If monthly payments are agreed to by the insurance carrier and the injured employee, the transition from weekly to monthly benefits paid by annuity shall be the same as that for LIBs paid by the responsible insurance carrier set out in subsection (a) of this section.

(e) This section applies only to agreements entered into on or after September 1, 1999, for payment of LIBs under the provisions of the Act.

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 August 16, 1999.

TRD-9905183

Susan Cory

Assistant General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: September 26, 1999

For further information, please call: (512) 707–5829

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Chapter 132. Death Benefits-Death and Burial Benefits

28 TAC §132.13, §132.16

The Texas Workers' Compensation Commission (the Commission) proposes an amendment to §132.13 concerning burial benefits and proposes new §132.16 concerning the change in payment period and the purchase of annuities for payment of death benefits. The proposed rule establishes requirements for agreements under which death benefits may be paid monthly. The amended rule and the new rule are proposed in response to amendments to Texas Labor Code, §408.186 and §408.181 as passed by the 76th Legislature, 1999.

Proposed Amendment to §132.13.

The recent amendment to Texas Labor Code, §408.186(a)(2) increases the maximum burial benefit an insurance carrier is required to pay for a death which results from a compensable workers' compensation injury from $2,500 to $6,000. The increased amount is applicable only to a claim for burial benefits based on a compensable injury that occurs on or after September 1, 1999. The proposed amendment to §132.13 reflects this change in burial benefit amount.

Proposed New §132.16.

Texas Labor Code, §408.181, was amended by the 76th Legislature to add subsection (c) and (d) allowing the monthly payment of death benefits upon request by the legal beneficiary(ies) and allowing the payment of death benefits through the purchase of an annuity. New §132.16 is proposed as a result of these statutory changes. Because the Commission has noted cases in which death benefits were not being properly paid, the proposed rules require Commission approval of both agreements to pay death benefits monthly and agreements to pay death benefits through an annuity. This Commission approval will provide an opportunity to review the accuracy of the death benefits being paid to beneficiaries who are less likely than an injured employee to question the benefits they are receiving.

Proposed new §132.16(a) requires the insurance carrier and the eligible beneficiaries to apply to the Commission for approval to change from weekly to monthly payments by filing a written agreement in the manner prescribed by the Commission. The proposed rule requires separate agreements to be filed for each beneficiary. The insurance carrier is required to file an Employer's Wage Statement to support the payment of any weekly rate paid at less than the maximum rate in effect on the date of the compensable fatal injury. The weekly compensation rate must be multiplied by 4.34821. When less than the maximum weekly compensation rate in effect at the time of the injury is being paid, a completed Employer's Wage Statement must be included with the agreement. If the parties agree to monthly payments issued directly by the insurance carrier, the monthly payments will begin the first day of the month following the date of the agreement.

Proposed new §132.16(b) allows a beneficiary who has opted for monthly payment of death benefits to terminate the agreement and return to weekly payments. On the termination of the agreement, the insurance carrier will be responsible for payment of all death benefits which have accrued and are due and will be required to continue weekly payments as and when they accrue and are due.

Proposed new §132.16(c) allows the insurance carrier and an eligible beneficiary to agree that the insurance carrier will purchase an annuity to fund the beneficiary's death benefits. To be allowed to fund death benefits through an annuity, subsection (c) requires that an application for payment of death benefits by annuity be submitted to the Commission.

Proposed new §132.16(d) sets out the required terms and conditions for such an annuity. Licensing and financial standards for an annuity company are set out and the insurance carrier is required to guarantee the payments provided by an annuity company in case of default of the annuity company. The annuity contract must address the redistribution of benefits to remaining eligible beneficiaries, if any, when a beneficiary becomes ineligible. The Subsequent Injury Fund will receive remaining benefits if all beneficiaries become ineligible before 364 weeks of death benefits have been paid. If more than 364 weeks of benefits have been paid when all beneficiaries become ineligible, the remaining funds in the annuity will be returned to the workers' compensation insurance carrier that purchased the annuity. A beneficiary, or guardian if applicable, will not be allowed to transfer the right to receive death benefits from an annuity. The purchase of an annuity does not relieve the carrier of its responsibility under the statute and rules. The annuity represents a mechanism for delivering benefits, not a transfer of the responsibility from the carrier to the annuity company.

Proposed new §132.16(e) establishes that the requirements of this rule would apply only to agreements entered into on or after September 1, 1999.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the amended rule and the proposed rule are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rules as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rules are the following:

Beneficiaries will benefit from the increased burial benefit.

Regarding monthly payments of death benefits, the beneficiary will receive the full monthly payment by the seventh day of each month. This can provide the opportunity for better money management and less paperwork.

Insurance Carriers will have increased costs for burial benefits imposed by statute. Insurance Carriers will benefit from reduced administrative costs associated with issuing and mailing weekly death benefit checks when an application to pay monthly benefits is approved by the Commission. An insurance carrier will have reduced costs by purchasing an annuity at present value for a long-term payout.

There will be no adverse economic impact on those required to comply with the rules as proposed or for small businesses or micro-businesses, except for the increased burial benefit amount imposed by statute.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at *http://www.twcc.state.tx.us*.

The proposed amendment to §132.13 and new §132.16 are proposed under: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.181, as amended by the 76th Legislature, which requires payment of death benefits to legal beneficiary(ies) and establishes that death benefits are paid at 75% of the employee's average weekly wage; Texas Labor Code, §408.182, which establishes the distribution of death benefits; Texas Labor Code, §408.183, which establishes the duration of death benefits; Texas Labor Code, §408.184, which establishes the redistribution of death benefits when a beneficiary becomes ineligible; Texas Labor Code, §408.185, which addresses beneficiary disputes; Texas Labor Code, §408.186, as amended by the 76th Legislature which addresses burial benefits; and Texas Labor Code, §408.187, which addresses autopsies.

The proposed amendment to §132.13 and new §132.16 affects: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.041, which sets out the method for calculating average weekly wage; Texas Labor Code, §408.061, which establishes the maximum benefit amount; Texas Labor Code, §408.181, as amended by the 76th Legislature, which requires payment of death benefits to legal beneficiary(ies) and establishes that death benefits are paid at 75% of the employee's average weekly wage; Texas Labor Code, §408.182, which establishes the distribution of death benefits; Texas Labor Code, §408.183, which establishes the duration of death benefits; Texas Labor Code, §408.184, which establishes the redistribution of death benefits when a beneficiary becomes ineligible; Texas Labor Code, §408.185, which addresses beneficiary disputes; Texas Labor Code, §408.186, as amended by the 76th Legislature which addresses burial benefits; and Texas Labor Code, §408.187, which addresses autopsies.

§132.13. Burial Benefits.

(a) When an employee has died as the result of a compensable injury, a person claiming burial benefits shall file a request for payment of burial benefits and the bills showing the amount of burial and transportation costs incurred. The request and the documentation shall be filed with the insurance carrier within 12 months of the date of death of the employee.

(b) The person who incurred liability for the costs of burial is entitled to receive the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500 - if burial benefits are paid based on a compensable injury that occurs before September 1, 1999; or[.]

(3) $6,000 - if burial benefits are paid based on a compensable injury that occurs on or after September 1, 1999.

(c) The person who incurred liability for the costs of transporting the body of the employee is entitled to be reimbursed for the reasonable cost of transportation if the employee died away from the usual place of employment. The insurance carrier's liability for transportation costs under this subsection shall not exceed the cost equivalent to transporting the body from the place the employee died to the employee's usual place of employment.

(d) The insurance carrier shall review each claim for burial benefits. The insurance carrier must either pay or deny the claim within seven days of the date the claim was received by the carrier. If the claim is denied, the insurance carrier must notify the person claiming burial benefits and the Commission in writing of its denial and the facts supporting the denial.

§132.16. Change in Payment Periods; Purchase of Annuity for Death Benefits.

(a) Upon the request of the eligible beneficiaries, the insurance carrier and eligible beneficiaries entitled to death benefits may agree to change the frequency of death benefits payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing. To relieve the insurance carrier of the responsibility to pay death benefits weekly:

(1) An application to change the frequency of payments must be submitted to the Commission with the written agreement for approval in the form, format and manner required by the Commission

(2) A separate application must be submitted to the Commission for each eligible beneficiary, and the application must state that a payment adjustment will be made when there is a change in the individual beneficiary's eligibility status in accordance with the provisions of the Act.

(3) If less than the maximum weekly death benefit in effect at the time of death is being paid, a completed Employer's Wage Statement (Form TWCC-3) must be filed with the application to change the payment period.

(4) The written agreement for monthly payment of death benefits must include:

(A) initiation of monthly death benefit payments starting with the first calendar day of the month following the month in which the written agreement was approved by the Commission;

(B) payment of monthly death benefits on or before the seventh day of the month for which benefits are due.

(C) continuation of weekly death benefits payments through the end of the month in which the agreement was approved;

(D) payment of the last week of death benefits to transition from weekly payment of death benefits to monthly payments prorated to the end of the month to ensure the eligible beneficiaries receives death benefits through the last day of the month; and

(E) calculation of the monthly compensation rate by multiplying the weekly compensation rate by 4.34821.

(5) The Commission must approve the application to change the frequency of death benefit payments.

(b) At any time after signing the agreement for the monthly payment of death benefits, the eligible beneficiary may notify the insurance carrier the that he/she no longer agrees to the monthly payment of death benefits. In this case, the insurance carrier shall pay all accrued but unpaid death benefits at the end of the current monthly cycle and shall resume paying death benefits weekly as and when they accrue and are due.

(c) The insurance carrier and an eligible beneficiary may enter into a written agreement that the carrier will purchase an annuity for that beneficiary for weekly or monthly payment of death benefits. An application for payment of death benefits by annuity must be submitted to the Commission for approval in the form, format and manner required by the Commission. If less than the maximum weekly death benefit in effect at the time of death is being paid, a completed Employer's Wage Statement (Form TWCC-3) must be filed with the application for payment by annuity.

(d) An annuity for the payment of death benefits shall meet the following terms and conditions.

(1) Monthly death benefit payments will be initiated with the first calendar day of the month following the month in which the written agreement was approved by the Commission.

(2) The company providing an annuity for the payment of death benefits must be licensed to do business in the State of Texas and must have a current A. M. Best rating of B+ or better or have a Standard and Poor's rating of claims paying ability of A or better.

(3) The workers' compensation insurance carrier must guarantee the payments provided by the annuity company in the event of default.

(4) When benefits are paid to an eligible spouse of the deceased employee and the spouse subsequently remarries, the annuity contract must address the payment of a lump sum payment equal to 104 weeks of benefits to the eligible spouse and the redistribution of benefits at the end of 104 weeks to the remaining eligible beneficiaries, if any.

(5) If all beneficiaries become ineligible to receive death benefits and an amount equal to 364 weeks of death benefits has not been paid, the remaining benefits shall be paid by the annuity company without an order from the Commission to the Subsequent Injury Fund not later than 30 days after all beneficiaries' eligibility ends.

(6) If all beneficiaries become ineligible to receive death benefits after 364 weeks of death benefits have been paid, the remaining funds in the annuity will be returned to the insurance carrier that purchased the annuity. For purposes of this subsection, the insurance carrier is not a beneficiary.

(7) A beneficiary, or the beneficiary's guardian if applicable, shall not be allowed to transfer the right to receive death benefits from an annuity.

(8) The annuity company shall pay death benefits either weekly or monthly as elected by the beneficiary in the application for payment of death benefits by annuity. This election cannot be changed during the term of the annuity.

(9) If monthly payments are elected by the beneficiary, the transition from weekly to monthly benefits paid by annuity shall be the same as that for death benefits paid by the responsible insurance carrier set out in subsection (a) of this section.

(e) This section applies only to agreements entered into on or after September 1, 1999, for payment of death benefits under the provisions of the Act.

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 August 16, 1999.

TRD-9905184
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707–5829

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Chapter 133. General Medical Provisions

Subchapter B. Required Reports

The Texas Workers' Compensation Commission (the Commission) proposes an amendment to §133.100 concerning Required Medical Reports. Simultaneously the Commission proposes the repeal of §133.101 concerning Initial Medical Report; §133.102 concerning Subsequent Medical Report; and §133.103 concerning Specific Medical Reports.

The amendments and repeals are proposed to address new legislation enacted by the 76th Legislature. Specifically, House Bill 2513 required the Commission to promote communication to enhance return to work. In addition, House Bill 2511 amended Texas Labor Code, §401.024, authorizing the Commission to adopt rules to require electronic transmission of information by means such as facsimile, email, and electronic data interchange. This authorization is utilized in the proposed rules to achieve a legislative goal of reducing paper communication requirements in the workers' compensation system while ensuring timely and effective communication between system participants. With the development of rules to encourage the return to work, the Commission examined health care provider reports in general and found that several of the existing reports do not serve the purpose for which they were intended and will be partially redundant to new rules being simultaneously proposed in Chapter 129 (Income Benefits-Temporary Income Benefits) as part of the return to work communication effort.

At the same time, amendments are proposed to include in the rules, some of the Commission's long standing policies and to address problems with the rules that were identified by the Claims Service Task Force (a group of representatives from the system appointed by the Commission to serve as a sounding board for ideas regarding rule development in the area of claims services), other system participants, and Commission staff. The proposed rule simplifies and shortens the rule construction, and is designed to be more prescriptive and to eliminate or significantly reduce ambiguity in the rules. The proposals are designed to more clearly lay out expectations so that all system participants will understand the requirements the Act and rule place on them. It is expected that together, these changes will improve benefit delivery, simplify reporting requirements, reduce disputes, make dispute resolution easier, reduce violations, and make it easier to hold system participants accountable for their actions and inactions.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Amendment of §133.100-Required Medical Reports.

The existing language in subsection (b) is proposed to be deleted. The existing language lists a set of reports which are identified as required medical reports. This list is noninclusive and is not necessary since each report a provider is required to file is specifically required by a rule.

New language is proposed for subsection (b) that emphasizes use of "instant" communication such as electronic transmission through facsimile or email to reduce the delay in providing critical information for benefit delivery and reduce the use of paper as required by House Bill 2511. The language is written to make use of traditional postal mail, a last resort for filing the report. By using the proposed language, as use of email and other forms of instant communication by system participants expands, the rules will reduce the reliance on traditional paper mail that has often caused over, under, and delayed payments. Subsection (c) regarding enforcement and violations was removed because it is redundant to the statute. Removal of the enforcement language is not intended to limit the Commission's authority to take enforcement action for violations of this or any other rule. Rather, the existing language does not address all of the methods of enforcement that the Commission has at its disposal for these violations and could be interpreted as limiting the Commission's authority. The Commission's authority to enforce the statute and rules is granted in multiple provisions of the statute and duplicate language in rules is redundant and unnecessary.

Repeal of §133.101-Initial Medical Report.

Section 133.101 is proposed for repeal because discussions with members of the carrier and health care provider communities have suggested that the Initial Medical Report is not currently serving the purpose for which it was intended. Carriers primarily obtain information about an employee's medical condition through documentation submitted with medical bills. It is very common, in fact, for providers to merely fill out the identifying information at the top of the required form and then attach their office notes to the report. The current rule requires providers to fill out extra paperwork that does not serve the carrier's needs and that represents a practice that they are not accustomed to outside of workers' compensation.

Repeal of §133.102-Subsequent Medical Report.

As with the proposed the repeal of §133.101, the repeal of §133.102 is proposed because discussions with members of the carrier and health care provider communities have suggested that the Subsequent Medical Report is not currently serving the purpose for which it was intended. Carriers primarily obtain information about an employee's medical condition through documentation submitted with medical bills. It is very common, in fact, for providers to merely fill out the identifying information at the top of the required form and then attach their office notes to the report. The current rule requires providers to fill out extra paperwork that does not serve the carrier's needs and that represents a practice that they are not accustomed to outside of workers' compensation.

Repeal of §133.103-Specific Medical Reports.

As with the proposed repeal of §133.101 and §133.102, the repeal of §133.103 is proposed because discussions with members of the carrier and health care provider communities have suggested that the Specific Medical Report is not currently serving the purpose for which it was intended. Carriers primarily obtain information about an employee's medical condition through documentation submitted with medical bills. It is very common, in fact, for providers to merely fill out the identifying information at the top of the required form and then attach their office notes to the report. The current rule requires providers to fill out extra paperwork that does not serve the carrier's needs and that represents a practice that they are not accustomed to outside of workers' compensation.

Victor Rodriguez, Chief Finance Officer, has determined that for the first five-year period the proposed rules are in effect there maybe some reduction in costs for state or local governments as a result of enforcing or administering the rules. TWCC should ultimately see a reduction in costs due to reduced dispute resolution and information service expenses. Reductions in costs could occur if the proposed rule results in a reduction of paperwork, but this reduction cannot be quantified. Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rule will be:

Injured employees should benefit by an increase in the timeliness of benefit deliver caused by the faster filing of medical reports.

Health care providers should benefit from these rules because they will no longer have to file as many reports that are specific to the workers' compensation system and will be able to provide the same information in a manner that is more consistent with their general practices.

Carriers should benefit from more timely provision of information needed to ensure timely and appropriate delivery of benefits.

Mr. Rodriguez has also determined that for each year of the first five years the rules as proposed are in effect, the requirements to comply with the rules will have the following affects on costs of system participants:

Claimants should not see either an increase or decrease in costs.

Employers will probably not see either an increase or decrease in costs.

Health care providers are not likely to see a significant increase in costs associated with this rule since the most significant changes are to require use of facsimile or electronic transmission that most doctors already have. Providers may experience positive cost benefits as a result of the proposals because of the reduced paperwork.

Carriers should see a reduction in costs associated because of the emphasis on "instant communication" and because they will not be paying providers for reports that do not serve the carrier's needs.

The requirements of these rules are not expected to affect costs for small businesses except that by helping to reduce overpayments by more timely reporting of information, the employer's premiums may be positively affected. There will be no difference in the cost of compliance for small businesses as compared to large businesses and there is no anticipated adverse economic impact on small businesses or micro-businesses because the proposed amendments to the rule primarily clarify existing requirements.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas, 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

28 TAC §133.100

The proposed amendment is proposed under following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; and Texas Labor Code, §413.018 as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

These proposed amendment affects the following statutes: Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; and Texas Labor Code, §413.018, as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

§133.100. Required Medical Reports.

(a) Medical reports shall be in a form and manner prescribed by the Commission. Additional information may be attached.

(b) A health care provider shall file required medical reports by facsimile or electronic transmission unless the recipient does not have a means of receiving the transmission in which case the reports shall be sent by personal delivery or mail. [~~Following is a list of medical reports required by Commission §§133.101-133.105 of this title (relating to Initial Medical Report; Subsequent Medical Report; Specific Medical Reports; Consultant Medical Reports; and Physical or Occupational Therapy Report:~~]

[~~(1) initial medical report; ~~]

[~~(2) subsequent medical reports;~~]

[~~(3) specific medical reports;~~]

[~~(4) consultant medical reports and~~]

[~~(5) physical and occupational therapy report(s).~~]

[~~(c) The willful or intentional failure to file a required report is an administrative violation under the Act, §10.07 (c)(3) and may result in assessment of penalties listed in the Act, §10.07 (d).~~]

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 August 16, 1999.

TRD-9905178
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707-5829

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28 TAC §§133.101-133.103

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

The repeals are proposed under following statutes: Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; and Texas Labor Code, §413.018 as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

The proposed repeals affect the following statutes: Texas Labor Code, §401.024 as amended by the 76th Texas Legislature, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; and Texas Labor Code, §413.018, as amended by the 76th Texas Legislature, which requires the Commission develop a program to encourage employers and treating doctors to communicate about modified duty offers.

§133.101. Initial Medical Report.

§133.102. Subsequent Medical Report.

§133.103. Specific Medical Reports.

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

Filed with the Office of the Secretary of State, on August 16, 1999.

TRD-9905179
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707-5829

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Chapter 134. Benefits–Guidelines for Medical Services, Charges, and Payments

Subchapter G. Treatments and Services Requiring Pre-Authorization

28 TAC §134.600

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

The Texas Workers' Compensation Commission (the Commission) proposes new §§134.601-134.607, concerning treatments and services requiring preauthorization and the simultaneous repeal of §134.600 concerning the same subject. These new rules are proposed to comply with a statutory mandate in the Texas Labor Code, §413.014, that requires the Commission to specify by rule which health care treatments and services require express preauthorization by the insurance carrier, except for treatments and services for a medical emergency. This statute also states the insurance carrier is not liable for the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained from the carrier or ordered by the Commission. Proposed new §§134.601-134.607 are considered claims service rules as contemplated by Texas Labor Code, §406.010.

These proposed new rules address a number of issues encountered under the current rule by providing clarification of the preauthorization process for all parties. The new rules are proposed to separate components of the current rule into seven individual rules. The proposed new rules: clarify areas through incorporation of definitions; describe carrier liability; establish applicability; efficiently organize the preauthorization process by identifying responsibilities and establishing accountability of requestor and respondent; provide a process for the reconsideration of a denial; require specific record-keeping parameters; and, revise the list to include those medical services and treatments for which preauthorization is required. In addition, the proposed new rules are drafted to work in conjunction with the workers' compensation utilization review rules adopted by the Texas Department of Insurance (TDI) (28 TAC §§19.2001-19.2021), to provide consistency for utilization review processes within the workers' compensation system.

In drafting the proposed new rules §§134.601-134.607, the Commission has received input from a wide variety of sources including employees, health care providers, insurance carriers, TWCC Claims Services Task Force, TWCC Medical Advisory Committee, Research & Oversight Council on Workers' Compensation, other payor systems, and other states' workers' compensation systems. This input was crucial in ensuring a broad-based set of rules that achieve the joint purposes of timely delivery of appropriate medical care and effective cost containment.

The *Texas Register* published text shows the proposed new language and should be read to determine all proposed changes.

§134.601. Definitions.

Proposed new §134.601 defines terms used in the preauthorization rules. The current rule does not include definitions of terms. This has allowed wide latitude in interpretation leading to delays and disputes. Under the proposed new rules, definitions of terms, such as complete request, emergency, requestor, respondent, screening criteria, and denial rationale, are provided for clarity. For example, the current rule does not define a complete request or an incomplete request, which makes it difficult for requestors to know when the processing timeframes begin. This has caused denials of preauthorization based on incomplete information, thereby delaying treatment to the injured employee. The proposed new §134.601 provides specificity regarding information to be included in a complete request for preauthorization and requires that a single Commission-approved form be used for requests, responses, and reconsideration requests. This form will provide a standardized format and assure that the information being required by carriers is uniform. In addition, the use of this standardized form for responses will ensure that carriers are providing required information in response to requests. The implementation of this form is expected to decrease the number of disagreements regarding completeness of requests and should increase the efficiency of the preauthorization process to the system. Another example is the definition of respondent that was added to clarify who is the appropriate party to process and respond to a preauthorization request. A respondent is defined as the insurance carrier, the carrier's agent or any entity contracted or subcontracted with by the insurance carrier, to provide preauthorization utilization review. For consistency with TDI utilization review rules for workers' compensation, the definition requires a respondent to be an insurance company licensed by TDI or a utilization review agent certified by TDI. The 15 definitions proposed in new §134.601 provide clarity to terminology otherwise open to interpretation.

§134.602. Carrier Liability.

Proposed new §134.602 describes when the insurance carrier is liable for the cost of services that are required to be preauthorized. The proposed new rule establishes three situations that result in insurance carrier liability when: (1) the respondent approves the preauthorization request; (2) the respondent fails to respond within the 3-day time frame; or (3) payment is ordered by the Commission. The current rule does not address nonresponse by the insurance carrier, that may result in delays in the delivery of health care to injured employees. The proposed new §134.602 provides that a preauthorization request will be deemed approved if there is no timely response by the respondent. This will require greater accountability on the part of the respondent, as well as reduce delays in obtaining treatment for the injured employee. The current rule regulates carrier liability pursuant to a Commission order; however, it does not address recoupment of payment by the insurance carrier to the health care provider in the event reimbursement has been ordered by the Commission during the pendency of a dispute regarding liability, compensability, or extent of injury. Whereas, the proposed new §134.602 relieves the insurance carrier of liability if the outcome of a dispute on compensability, carrier liability, or extent of injury is finally adjudicated and resolved in the carrier's favor. In this circumstance, if the insurance carrier has already paid for medical services as a result of a Commission order, reimbursement may be sought from a responsible party according to the law and Commission rules.

§134.603. Applicability.

Proposed new §134.603 establishes the applicability for these proposed new rules. Proposed new subsection (a) addresses the effective date of the new preauthorization rules. Requests for preauthorization transmitted by the requestor on or after the effective date of the proposed new rules will be governed by the new rules; requests transmitted prior to that date will be governed by the current rule. Although the current rule addresses three exclusions (the first three identified below), the proposed new subsection (b) identifies five instances in which preauthorization is not required. The proposed new preauthorization rules do not apply to (1) emergency care, (2) second opinions for spinal surgery, (3) treatment(s) and/or

service(s) not specifically identified in proposed new §134.606, (4) required diagnostic testing ordered by a designated doctor to complete an impairment rating examination, or (5) diagnostic testing being performed by the treating doctor in response to an insurance carrier's dispute of compensability or extent of injury. The exclusion of not requiring preauthorization for required impairment rating testing is limited to the designated doctor, as this doctor's opinion carries presumptive weight, and the exclusion for testing in response to an insurance carrier's dispute of compensability or extent of injury is limited to the treating doctor who is primarily responsible for the delivery of health care to the injured employee.

§134.604. The Processes.

Proposed new §134.604 details the processes to be followed by requestors and respondents. The processes enhance accountability by requiring: paper or electronic documentation of the request, response and reconsideration; acknowledgment of receipt of the request and assignment of a preauthorization reference number; and, documentation of reasons for denials. In addition, the proposed new processes reduce confusion by clarifying when time frames begin, when a preauthorization request is complete and when preauthorization has been approved or denied. The addition of a reconsideration process and requirements for the respondent to contact the requestor prior to issuing a denial is anticipated to save time and reduce the number of medical disputes appealed to the Commission. Requiring that all steps in the preauthorization process be in writing provides documentation of each action being taken and ensures that both the requestor and respondent are aware of the status of the preauthorization request.

Proposed new subsection (a) addresses general provisions that: (1) require the submission of the request by facsimile or mutually agreed-upon electronic transmission (not telephonic transmission); (2) establish the response "due-date" as 5:00 P.M. central standard time, on the third working day after receipt of a complete preauthorization request; (3) clarify that neither approval nor denial is required when incomplete requests or requests for treatment(s) and/or service(s) not identified on the list are returned to the requestor; (4) delineate the responsibilities of requestor to include the provision of accessible facsimile numbers, designation of contact personnel for preauthorization inquiries, initiation of approved treatment(s) and/or service(s) within 30-days of receipt of approval, and to request preauthorization for only those treatment(s) and/or service(s) identified on the list; and (5) define the responsibilities of the respondent to include the provision of accessible facsimile numbers, toll-free telephone numbers during normal business hours on working days, acquiring and documenting consent from the requestor prior to altering any request for preauthorization, not requiring copies of previously submitted medical information, and requiring the transfer of all records and necessary information to any utilization review agent processing the requests. The current rule is unclear regarding when the time starts for the preauthorization process and this can unnecessarily delay the delivery of treatment and/or services to the injured worker when the process timeframes are extended due to confusion. The proposed new rules provide detail regarding time frames for taking certain actions and when those time frames begin. The time allowed in the proposed new rules for responding to a request for preauthorization is three working days from receipt of a complete request, just as in the current rule. However, the proposed new §134.604 also provides that the respondent's failure to timely respond constitutes an approval of preauthorization. This inclusion will create an incentive for respondents to comply with the three-day time limit.

Proposed new subsection (b) outlines the request process for preauthorization. All requests for preauthorization are required to be made on a Commission prescribed form with all required data fields completed. Supporting medical documentation must accompany the form if not previously submitted. If a requestor elects to re-initiate the preauthorization process following the return of an incomplete request, a new form must be submitted. The processing timeframe begins only with the receipt of a complete request.

Proposed new subsection (c) details the respondents' responsibilities in reviewing the preauthorization request for completeness. The respondent is required to mark an incomplete request for preauthorization, "INCOMPLETE" and a request for treatments that are not specifically identified as requiring preauthorization, "PREAUTHORIZATION NOT REQUIRED" and return these requests to the requestor no later than the end of the next working day. Return of a request in this fashion would end the respondent's obligations regarding such preauthorization requests. Proposed new subsection (c) further outlines the respondent's responsibility to acknowledge the receipt of a complete preauthorization request by writing the due date and the preauthorization reference number on the form, and returning the form to the requestor no later than the end of the next working day. The respondent would also be required to determine medical necessity of the treatment(s) and/or service(s) requested, regardless of any pending dispute(s) regarding compensability, liability for the claim, or extent of injury. This provision is included in the proposed new rule to avoid a delay in the provision of medically necessary treatment to the injured employee pending resolution of such disputes. Proposed new subsection (d) explains the actual processing by the respondent of a complete request for preauthorization. Respondents are required to apply preauthorization screening criteria so approvals are based on criteria developed by persons with medical expertise that should be consistent for all requests. The proposed new §134.604(d) requires the respondent to employ the screening criteria for approvals of preauthorization requests and to refer possible denials to an appropriate doctor or an appropriate health care provider for review and decision. Currently, §134.600 does not establish requirements regarding the review of requests for preauthorization to determine if the request is for reasonable and necessary treatment. Proposed new subsection (d) requires that screening criteria, as defined in §134.603, be used to review for appropriateness. Prior to a denial of the request for preauthorization, the requestor must be contacted and given the opportunity to talk to the reviewer making the decision. This is consistent with the TDI utilization review rules for workers' compensation. In the event of a denial of a request, the current rule requires only that the respondent provide documentation identifying the reasons for the denial. The proposed new subsection includes the specific components that must be included in a denial notification, to include the denial rationale, as defined in §134.603, identification of the health care provider making the determination, and a reasonable list of documents needed for a reconsideration appeal. The current §134.600 is silent regarding situations in which preauthorization may not be denied. Proposed new §134.604 (d) identifies 5 situations in which a respondent may not totally or partially deny requests for preauthorization. The reasons include: the claimant has reached MMI; compensability in dispute; extent of

injury in dispute; carrier liability in dispute; and, no further entitlement to medical benefits. Each of these is currently being used by system participants to deny preauthorization requests and postpone treatment for injured employees. The proposed new §§134.601-134.607 focuses the preauthorization decision on medical necessity of the specified treatment and/or service and, therefore, these 5 denial reasons would be inappropriate as they do not related to medical necessity.

Reconsideration of a denied request for preauthorization is addressed in the proposed new subsection (e). The current rule directs the appeal of a denial of preauthorization to Medical Dispute Resolution. Proposed §134.604(e) requires a requestor to seek reconsideration of the preauthorization denial by submitting new and/or additional documentation to the respondent prior to allowing the requestor to submit a request for Medical Dispute Resolution. The proposed new subsection establishes a 30-day period for requesting reconsideration. The reconsideration process will follow the same processing timeframes and guidelines contained in proposed new §134.604(b). The proposed new rule requires the review of a reconsideration request be performed by a doctor who is qualified and permitted by licensure to provide the requested treatment(s) and/or service(s), and establishes that the reconsideration doctor cannot be the same doctor who performed the initial review and denial. This process will ensure appropriate review of denials for preauthorization by a doctor having expertise in the treatment or service being reviewed. The proposed reconsideration process will ensure that injured employees receive the health care reasonably required by the nature of their injury as and when needed. This proposed new process is also expected to reduce the number of disputes resulting from denial of preauthorization and thereby decrease the cost of the preauthorization process to the system. The requirement for review of the denial of preauthorization by a doctor who is qualified and permitted by licensure to provide the requested treatment(s) and/or service(s) should simplify dispute resolution by also requiring this doctor to provide a detailed explanation and reasons for denial of the preauthorization request.

Proposed new subsection (f) addresses the requestor's submission of a subsequent request for preauthorization and requires a documentation of a substantial change in the injured employee's medical condition, a new request form, and the previous preauthorization reference number. The current rule does not address the submission of a subsequent request. As a result, health care providers often submit a second or subsequent request for preauthorization for the identical services. Proposed new subsection (f) is expected to reduce unnecessary processing of identical requests for preauthorization.

§134.605. Record Keeping.

Proposed new §134.605 addresses record keeping and requires both the requestor and respondent to maintain the records listed in the rule for a period of two years from the date of each preauthorization request. The current rule does not clearly require participants in the preauthorization process to maintain sufficient documentation to allow the Commission to readily determine compliance with the rule and especially with the three-day response requirement. The proposed new §134.605 directs specific record-keeping requirements and will encourage compliance with preauthorization requirements and simplify dispute resolution. Proposed new §134.605 further requires the respondent to maintain information in a consolidated electronic format and produce aggregate statistical summaries of this required information to the Commission, upon request. An annual summary report to the Commission of the total numbers of preauthorization requests, reconsiderations, approvals, and denials grouped by preauthorization list item is required of each insurance carrier together with the insurance carrier's average processing cost. The intent of these new record-keeping requirements is to ensure accountability of both health care providers and insurance carriers and to track essential information on preauthorization requests that would otherwise be unavailable to the Commission for the future review and revision of these preauthorization rules for determining the cost effectiveness and system costs associated with preauthorization. The proposed new record-keeping requirements also will provide the Commission with the information necessary to monitor participants in the preauthorization process.

§134.606. The List.

Proposed new §134.606 lists the types of treatment(s) and/or service(s) that require preauthorization as mandated by the Texas Labor Code, §413.014. The current §134.600 lists 16 categories of treatments and services that require preauthorization. Proposed new §134.606 (a) lists five specific categories of treatments and/or services that must be approved by the respondent prior to being provided. In addition, proposed §134.606(b) allows an option for a requestor to request preauthorization for an individualized plan of treatment. Should a request be submitted for an individualized plan of treatment, the proposed new rule requires the respondent to process and respond to the request in accordance with the processes established in these proposed new rules.

The specific categories requiring preauthorization in the proposed §134.606(a) were developed based on analysis of Commission data and input from system participants. The Commission data was derived from the following Commission data bases: the medical billing data base, the medical dispute resolution data base and the SOAH appeals data base. From the medical billing database, the Commission compiled a list of the top 1000 American Medical Association Current Procedural Terminology codes (AMA CPT codes) billed in the workers' compensation system in 1997. Detailed information concerning each of these top 1000 CPT codes was compiled regarding the total amount billed, total amount reimbursed, and the frequency of services. Information was also reviewed relating to the mean, median and mode of charges and payments, as well as information on the number of providers billing each code and the number of injured employees receiving the treatment(s) and/or service(s) represented by the codes. In addition, the 1997 data was evaluated to determine the volume of treatments and services billed and reimbursed which under the current rule should have required preauthorization. The Commission analyzed Phase I and Phase II of a medical cost driver study that had been developed by TWCC using the medical billing data within the Texas Workers' Compensation system. The studies analyzed changes in medical costs from 1995 to 1997. In addition, the frequency and type of preauthorization denials and disputes was evaluated using the Commission's medical dispute resolution and SOAH appeals data bases.

The following specific treatment(s) and/or service(s) are being proposed for inclusion on the list for preauthorization:

1. Inpatient and outpatient admissions to any hospital or ambulatory surgical center: Based on the analysis of the Commission study titled *Texas Workers' Compensation Medical Trend*

Analysis, 1995-1997, there has been a net increase in the per claim medical payment between 1995 and 1997 of $860 per claim and 65% of the increase is due to hospital inpatient and hospital outpatient costs. The current rule requires preauthorization for all non-emergency hospitalizations, ambulatory surgical center care, and transfers between facilities. The proposed new rule eliminates the requirement for preauthorization of transfers between facilities due to the noted low frequency of this service, and includes the requirement for preauthorization of all outpatient admissions. Outpatient hospital admission has been added to the list due to a continuous increase in the amount paid per claim from 1995 to 1997 for these services as portrayed in the *Texas Workers' Compensation Medical Trend Analysis*. Additionally, proposed new §134.606(a)(1) clarifies that the admission request includes notification by the requestor of the treatment(s) and/or service(s) to be performed during the admission. The proposed subsection further specifies that approval of the admission by the respondent shall not include length of stay, and that any disputes regarding length of stay shall be reviewed retrospectively. The current preauthorization rule does not address these issues and the proposed clarifications are expected to reduce unnecessary disputes and unnecessary additional preauthorization requests during an admission for length of stay extensions.

2. Physical medicine (as defined by the Medical Fee Guideline), work hardening, work conditioning, and/or manipulations beyond eight (8) weeks from the date of injury: The current rule requires preauthorization for physical or occupation therapy beyond eight weeks of treatment, work hardening in excess of six weeks and work conditioning in excess of four weeks with both the work conditioning and work hardening limited to a one-time two week extension. The proposed new rule allows the provision of any and all of these treatments and/or services within eight (8) weeks of the date of injury without the necessity of obtaining preauthorization. Therefore, any sequence or combination of physical medicine, work hardening, work conditioning and/or manipulations must be preauthorized after eight weeks from the date of injury. As identified in the *Texas Workers' Compensation Medical Trend Analysis*, back injuries comprise the largest group of injuries and make up the most costly category of health care in the workers' compensation system. The normal recovery period for most injuries is 4-6 weeks in general, and in the development of the Spine Treatment Guideline, research of the literature has shown that approximately 75% of all injured employees with a back injury return to work within four weeks of the date of injury with an additional nine percent returning to work within eight weeks of the date of injury. In addition, the duration of patient contact hours for the primary level of care was set at 50 hours of treatment. This amount of time, when distributed among the services normally provided during the primary level of care, including office visits, physical medicine, and diagnostic studies, totals to approximately eight weeks of care. Because physical medicine comprises the second highest group of charges for services (second to hospital and attendant professional charges), this service and the programs of work hardening and work conditioning are included as one item for time calculation from the date of injury. Additionally, the proposed new rule includes manipulations, that had previously been excluded from preauthorization by Commission Advisory. As manipulations are an integral component of physical medicine treatment, manipulations are being included in the treatment(s) and/or service(s) that require preauthorization after 8 weeks from the date of injury.

3. Electro diagnostic testing (includes all sensory, motor, and reflex studies, including but not limited to, electromyogram (EMG), surface electromyogram (SEMG), somatosensory evoked potential (SSEP), dermatomal sensory evoked potentials (DSEP), nerve conduction velocity (NCV), and H reflex and F reflex studies): The current preauthorization rule includes only non-emergency SEMG studies in the list of services requiring preauthorization. In the development of the proposed new §134.606, the analysis of information compiled from the medical billing and dispute resolution data bases for CPT codes for electro diagnostic testing revealed high frequency of usage and billing, as well as a high incidence of requests for dispute resolution of denials of payment for these diagnostic services. One of the purposes of the preauthorization mandate is to prevent injured employees from subjection to overutilization of treatment(s) and/or service(s) and at the same time to provide both timely and appropriate diagnostics and treatment. To ensure that injured employees don't find themselves in a situation where diagnostic testing that is necessary to establish compensability or extent of injury cannot be obtained due to lack of preauthorization for those tests, proposed new §134.603 provides that preauthorization is not required for diagnostic testing by the treating doctor in response to an insurance carrier's dispute of compensability or extent of injury.

4. A repeat individual radiology/nuclear medicine procedure with a whole procedure maximum allowable reimbursement (MAR) or DOP charged at greater than $350 as specified by the Medical Fee Guideline: The current rule requires preauthorization for all repeat individual diagnostic studies with an established reimbursement in the Medical Fee Guideline of greater than $350 or with the requirement to submit Documentation of the Procedure (DOP) with the billing. The proposed new rule limits the requirement for preauthorization to the repeat procedures in the areas of radiology/nuclear medicine. The inclusion of repeat radiology/nuclear medicine procedures greater than $350, will require preauthorization for the majority of magnetic resonance imaging and computerized axial tomography procedures performed more than once. The inclusion of the term "repeat" stays consistent with the current rule and is logical because the initial use of radiology/nuclear medicine procedures as initial diagnostic tools is necessary, yet subsequent procedures (repeats) should be evaluated for medical necessity prior to performing the procedure. Again, to ensure that injured employees don't find themselves in a situation where diagnostic testing necessary to establish compensability or extent of injury cannot be obtained due to lack of preauthorization for those tests, proposed new §134.603 provides that preauthorization is not required for diagnostic testing by the treating doctor in response to an insurance carrier's dispute of compensability or extent of injury.

5. Durable medical equipment with charges exceeding $500 per item (either purchase or cumulative rental), and purchase or rental of all transcutaneous and/or neuromuscular electrical nerve stimulators (TENS and NENS), as specified by the Medical Fee Guideline: The current preauthorization rule includes all durable medical equipment in excess of $500 per item and all TENS units. The proposed new rule clarifies that rental of any durable medical equipment will require preauthorization if the cumulative rental billing exceeds $500. The DME Ground Rules contained in the current Medical Fee Guideline state that rental fees are applicable for short-term utilization up to 60 days, unless the doctor provides medical justification for an extension beyond that 60 days. When the rental for an item will exceed

the $500 threshold, the requestor would be required to seek preauthorization for the continued use of the item. Additionally, neuromuscular electrical nerve stimulators (NENS) were added to the list due to the analysis of the costs within the system having shown that NENS units make up a significant amount of DME costs. The NENS units are billed and reimbursed at a much greater cost than TENS units, while both TENS and NENS are being similarly applied for pain management. The preauthorization requirement extends to both the purchase and rental of all TENS and NENS.

§134.607. Severability. Proposed new §134.607 incorporates the issue of severability of the individual rules. The effect of severability is to ensure that should any one or more rules be found inconsistent with any applicable law, the remaining rules, terms and provisions of the subchapter will remain in effect.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed new rules are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules. The added clarification provided by these rules could result in a reduction of disputes, thereby decreasing the cost of enforcement or administration. Any reduction in costs to the Commission cannot be quantified.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rules, as proposed, are in effect, the public benefits anticipated as a result of enforcing the rules will be an improved system for preauthorization, of payment for medical treatment(s) and/or service(s) that will provide positive benefits to all participants in the system. The participants in the system are: injured employees, employers, insurance carriers and health care providers.

Preauthorization is prospective utilization review. The benefit of the new rules is to outline the responsibilities of all parties in the preauthorization process. Injured employees will benefit from the clarification of responsibilities and the use of a prescribed form that identifies the required information because these changes will result in timely response to the preauthorization request and, therefore, more timely provision of the preauthorized medical services. The injured employee will also benefit from the requirement in the new rules that the requestor be afforded the opportunity to discuss the requested treatments, with the appropriate doctor or health care provider performing the review. This allows the injured employee's medical needs to be discussed by medically competent professionals. In addition, the requirement that reconsideration of a denial of preauthorization be performed by a doctor in the same or similar speciality as the requestor, and the prohibition against the reconsideration doctor being the same doctor who performed the initial review, benefits the injured employee by providing a second opinion regarding the denial.

The benefits of the proposed new rules to health care providers in the workers' compensation system include a determination of insurance carrier liability for the treatment(s) and/or service(s) that are preauthorized as medically reasonable and necessary, clarification and streamlining of the preauthorization request process, and the addition of a clearly defined reconsideration process. The opportunity to discuss the request with a doctor or appropriate health care provider prior to a denial, will result in improved communication between the participants in the preauthorization process and should reduce disputes and improve delivery of care to injured employees as and when needed.

The benefits of the proposed new rules to insurance carriers and their utilization review agents include the opportunity for prospective review of specifically identified treatment(s) and/or service(s) prior to their delivery. The use of a single form with specific required information to be submitted by the health care providers allows the respondent to more efficiently review a request for completeness. In addition, the proposed new rules allow the respondent to return the form if not complete and know that their obligations are ended for that incomplete request. The rule establishes the processing timeframes and defines when the clock starts processing a request for preauthorization. The rules clarify that health care providers should not request preauthorization for services which are not contained in the list. This provision should reduce the number of unnecessary requests that must be processed by respondent. A clearly defined reconsideration process may result in a decrease of disputes filed with the Commission, thereby saving the insurance carrier the time and expense associated with defending those decisions. Any additional costs to respondent that may result from the requirements of the reconsideration process are already required by the TDI utilization review rules (28 TAC §§19.2001-19.2021). Any additional costs that may be incurred by the respondent to receive, review and acknowledge incoming fax requests are expected to be offset by savings resulting from an overall more efficient preauthorization process and the anticipation of a reduction in disputes.

The benefits of the proposed new rules to employers is the assurance that their injured employees are receiving appropriate and medically necessary treatment in a timely manner for their compensable injury in anticipation of an early return-to-work. In addition, savings that may result from a more efficient preauthorization process should ultimately be reflected in the cost to provide workers' compensation coverage to employees.

There will be minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

There will be no economic impact on small businesses or on microbusinesses as a result of the proposed new rules. There will be no difference in the cost of compliance for small businesses and microbusinesses as compared to large businesses because the same basic processes and procedures apply to all entities regardless of size.

Health care providers and insurance carriers who do not currently have the capability of facsimile transmission will be required to obtain equipment that can perform such transmissions or arrange for the use of such equipment. Due to the prevalence of facsimile transmission in the health care business and insurance environment, the vast majority of health care providers and insurance carriers currently have facsimile capability and those that do not will be required by the nature of the insurance industry to obtain such capability regardless of these proposed new rules. Therefore, it is not anticipated that this requirement will have an adverse impact on health care providers or insurance carriers. Likewise, costs to the insurance carriers associated with being required to provide toll free telephone numbers should be minimal as most currently provide them. Insurance

carriers that do not already provide toll free numbers will see an increase in costs associated with this requirement.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

The repeal is proposed under the following statutes: Texas Labor Code, §401.024, that provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the Commission; §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, the Texas Labor Code, §406.010 that authorizes the Commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; §408.021(a) that states 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; §408.025 that requires the Commission to specify by rule what reports a health care provider is required to file; §408.026 that establishes when a carrier is liable for costs relating to spinal surgery and mandates the Commission to adopt rules necessary to effectuate the statute; §409.021, that requires insurance carriers to timely initiate or dispute compensation; §409.022, that requires a notice of refusal to specify the insurance carrier's grounds for disputing a claim and requires the reason to be reasonable; §413.002 that requires the Commission to monitor health care providers and insurance carriers to ensure compliance with Commission rules relating to health care including medical policies and fee guidelines; §413.011 that requires the Commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; §413.012 that requires the Commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; §413.013 (1), (2), and (3) that require the Commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the 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 the medical policies and guidelines are not exceeded; and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the Commission; §413.014 that requires the Commission to specify by rule which health care treatments and services require express preauthorization by the insurance carrier, except for treatments and services for a medical emergency. This statute also states the insurance carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the Commission; §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the insurance carrier; §413.031 that entitles a party, including a health care provider, to a review of a medical service for which authorization for payment has been denied; §415.002 that establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a Commission rule or to fail to comply with the Act; §415.003 that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a Commission rule, or to fail to comply with the act; and the Texas Labor Code, §415.0035 that establishes an administrative violation for an insurance carrier to deny preauthorization in a manner that is not in accordance with Commission rules.

The proposed repeal affects the following statutes: Texas Labor Code, §401.024, that provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the Commission; §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, the Texas Labor Code, §406.010, that authorizes the Commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; §408.021(a) that states 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; §408.025 that requires the Commission to specify by rule what reports a health care provider is required to file; §408.026 that establishes when a carrier is liable for costs

relating to spinal surgery and mandates the Commission to adopt rules necessary to effectuate the statute; §409.021, that requires insurance carriers to timely initiate or dispute compensation; §409.022, that requires a notice of refusal to specify the insurance carrier's grounds for disputing a claim and requires the reason to be reasonable; §413.002 that requires the Commission to monitor health care providers and insurance carriers to ensure compliance with Commission rules relating to health care including medical policies and fee guidelines; §413.011 that requires the Commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; §413.012 that requires the Commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; §413.013 (1), (2), and (3) that require the Commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the 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 the medical policies and guidelines are not exceeded; and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the Commission; §413.014 that requires the Commission to specify by rule which health care treatments and services require express preauthorization by the insurance carrier, except for treatments and services for a medical emergency. This statute also states the insurance carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the Commission; §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the insurance carrier; §413.031 that entitles a party, including a health care provider, to a review of a medical service for which authorization for payment has been denied; §415.002 that establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a Commission rule or to fail to comply with the Act; §415.003 that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a Commission rule, or to fail to comply with the act; and the Texas Labor Code, §415.0035 that establishes an administrative violation for an insurance carrier to deny preauthorization in a manner that is not in accordance with Commission rules.

§134.600. Procedure for Requesting Pre-Authorization of Specific Treatments and Services.

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 August 16, 1999.

TRD-9905186
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707-5829

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28 TAC §§134.601-134.607

The new rules are proposed under the following statutes: Texas Labor Code, §401.024, that provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the Commission; §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, the Texas Labor Code, §406.010 that authorizes the Commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; §408.021(a) that states 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; §408.025 that requires the Commission to specify by rule what reports a health care provider is required to file; §408.026 that establishes when a carrier is liable for costs relating to spinal surgery and mandates the Commission to adopt rules necessary to effectuate the statute; §409.021, that requires insurance carriers to timely initiate or dispute compensation; §409.022, that requires a notice of refusal to specify the insurance carrier's grounds for disputing a claim and requires the reason to be reasonable; §413.002 that requires the Commission to monitor health care providers and insurance carriers to ensure compliance with Commission rules relating to health care including medical policies and fee guidelines; §413.011 that requires the Commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; §413.012 that requires the Commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; §413.013 (1), (2), and (3) that require the Commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the 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 the medical policies and guidelines are not exceeded; and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the Commission; §413.014 that requires the Commission to specify by rule which health care treatments and services require express preauthorization by the insurance carrier, except for treatments and services for a medical emergency. This statute also states the insurance carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the Commission; §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the insurance carrier; §413.031 that entitles a party, including a health care provider, to a re-

view of a medical service for which authorization for payment has been denied; §415.002 that establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a Commission rule or to fail to comply with the Act; §415.003 that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a Commission rule, or to fail to comply with the act; and the Texas Labor Code, §415.0035 that establishes an administrative violation for an insurance carrier to deny preauthorization in a manner that is not in accordance with Commission rules.

The proposed new rules affect the following statutes: Texas Labor Code, §401.024, that provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the Commission; §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, the Texas Labor Code, §406.010, that authorizes the Commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; §408.021(a) that states 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; §408.025 that requires the Commission to specify by rule what reports a health care provider is required to file; §408.026 that establishes when a carrier is liable for costs relating to spinal surgery and mandates the Commission to adopt rules necessary to effectuate the statute; §409.021, that requires insurance carriers to timely initiate or dispute compensation; §409.022, that requires a notice of refusal to specify the insurance carrier's grounds for disputing a claim and requires the reason to be reasonable; §413.002 that requires the Commission to monitor health care providers and insurance carriers to ensure compliance with Commission rules relating to health care including medical policies and fee guidelines; §413.011 that requires the Commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; §413.012 that requires the Commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; §413.013 (1), (2), and (3) that require the Commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the 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 the medical policies and guidelines are not exceeded; and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the Commission; §413.014 that requires the Commission to specify by rule which health care treatments and services require express preauthorization by the insurance carrier, except for treatments and services for a medical emergency. This statute also states the insurance carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the Commission; §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the insurance carrier; §413.031 that entitles a party, including a health care provider, to a review of a medical service for which authorization for payment has been denied; §415.002 that establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a Commission rule or to fail to comply with the Act; §415.003 that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a Commission rule, or to fail to comply with the act; and the Texas Labor Code, §415.0035 that establishes an administrative violation for an insurance carrier to deny preauthorization in a manner that is not in accordance with Commission rules.

§134.601. Definitions.

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

(1) Accessible facsimile number(s)–Telephone number(s) designated in sufficient quantity to handle the volume of requests and responses for preauthorization by facsimile during routine working hours on normal business days.

(2) Approval–a determination by the respondent, as defined in this subchapter, that the health care proposed to be furnished to an injured employee is medically reasonable and necessary

(3) Claim file information–information relating to an injured employee's workers compensation claim, including but not limited to, medical reports/records, test results, treatment histories, and other medical documents.

(4) Complete Request–A request for preauthorization that is on the Commission prescribed form with all required fields completed in the manner prescribed by the Commission. Additional information that a requestor elects to submit, or a respondent solicits, is not required for a request to be considered complete.

(5) Denial–a determination by the respondent, that the health care proposed to be furnished to an injured employee is not medically reasonable and necessary. Failure to completely approve a request for preauthorization is a partial denial.

(6) Denial Rationale–the notice providing a full and complete statement describing the respondent's reason(s) and clinical basis for denial. The statement must contain claim specific substantive information to enable the requestor to understand the respondent's reasons for denying the request for preauthorization. A generic statement such as "not medically necessary", "denied based on peer review", "does not meet screening criteria" or other similar phrases with no further description of the factual basis for the denial does not constitute denial rationale.

(7) Emergency–means either a medical or mental health emergency as outlined below:

(A) a medical emergency consists of the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health or bodily functions in jeopardy, or dysfunction of any body organ or part; or,

(B) a mental health emergency is a documented condition which presents danger to self or others.

(8) Extent of injury–the effects naturally resulting from the compensable injury including body areas and systems affected.

(9) Incomplete Request–a preauthorization request that is not on the Commission prescribed form or a request on the Commission prescribed form that does not contain information in all required data fields. A request is not considered incomplete if the requestor does not provide additional information requested by the respondent or documentation that was previously provided to the respondent.

(10) Preauthorization–the process by which a health care provider requests to provide specific treatment(s) and/or service(s) prior to rendering the treatment(s) and/or service(s), and that results in carrier liability if approval or partial approval is obtained. This process affords the insurance carrier the opportunity for prospective utilization review to determine the medical reasonableness or necessity of proposed treatment(s) and/or service(s) prior to their being performed.

(11) Reference number–Specific identifying number assigned by the respondent to a complete request to track the status, progress, and decision of a request. The provision of a reference number does not signify approval or denial of the request for preauthorization.

(12) Requestor–Treating doctor or referred health care provider as described in the Texas Labor Code, §401.011 (42), or (22), and §133.4 of this title (relating to Consultant and Referral Doctors), their office staff, or agent who requests preauthorization for services. An injured employee may only serve as requestor through the treating doctor.

(13) Respondent–An insurance carrier, carrier agent, and/or any entity contracted or subcontracted to provide preauthorization utilization review for the insurance carrier. Respondents must be an insurance company licensed by the Texas Department of Insurance (TDI) or a utilization review agent certified by TDI.

(14) Response–Reply by the respondent submitted by facsimile or electronic mail to the requestor, approving or denying the request for preauthorization.

(15) Screening criteria–The written policies, decision rules, medical protocols, Commission fee and treatment guidelines, and Commission rules and advisories used by the carrier or its agent as part of the preauthorization process (e.g., appropriateness evaluation protocol (AEP), and intensity of service, severity of illness, discharge, and appropriateness screens (ISD-A).)

§134.602. Carrier Liability.

(a) The insurance carrier is liable for the reasonable and necessary costs of the treatment(s) and/or service(s) listed in §134.606 of this title (relating to The List) in accordance with the Commission fee guidelines and may not dispute their medical reasonableness or necessity if the respondent:

(1) approves preauthorization of treatment(s) and/or service(s) pursuant to this chapter;

(2) fails to respond to a complete request for preauthorization within the timeframe required under §134.604(a)(2) of this title (relating to The Processes); or,

(3) is ordered by the Commission.

(b) An approval of preauthorization does not affect a carrier's right to contest liability for a claim, compensability of the injury, or extent of injury for a claim. If the carrier successfully contests one of these issues through final adjudication and, the carrier had paid for the preauthorized treatment(s) and/or service(s) prior to resolution of the dispute, the carrier can seek reimbursement as allowed by law and Commission rules.

§134.603. Applicability.

(a) The requirement for preauthorization of health care treatment(s) and/or service(s) shall be determined in accordance with the rules in effect on the date a request for preauthorization is transmitted by the requestor.

(b) Preauthorization is not required for:

(1) treatment(s) and/or service(s) provided to an injured employee for an emergency;

(2) second opinions for spinal surgery and all medically reasonable and necessary costs of spinal surgery to include services of the surgeons and ancillary providers during the hospital admission, and the hospital services as addressed in Chapter 133, Subchapter C of this title (relating to Second Opinions for Spinal Surgery);

(3) treatment(s) and/or service(s) not identified in §134.606 (a) or (b) of this title (relating to The List);

(4) diagnostic testing ordered by a designated doctor performing an impairment rating, when the testing is required by the mandated version of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* to complete an impairment rating evaluation; or

(5) diagnostic testing being performed or requested by the treating doctor in response to an insurance carrier's dispute of compensability or extent of injury.

§134.604. The Processes.

(a) General Provisions - This section outlines the processes that requestors must follow to request preauthorization and that respondents must follow when they receive requests under this subchapter.

(1) Requests for preauthorization and responses to preauthorization requests shall be submitted by facsimile transmission or, upon mutual agreement of the requestor and respondent, by electronic transmission. A preauthorization request may only be withdrawn by the requestor, and the withdrawal must be in writing to the respondent.

(2) The due date for the respondent to provide the requestor a response regarding a request for preauthorization is 5 p.m., central standard time, three working days after receipt of a complete request as defined in §134.601 of this title (relating to Definitions).

(3) The return of a request identified by the respondent as "INCOMPLETE" or "PREAUTHORIZATION NOT REQUIRED" as required by subsection (c) of this section does not constitute an approval or a denial.

(4) The requestor shall:

(A) provide accessible facsimile numbers;

(B) designate one or more individuals as the contact person(s) for preauthorization inquiries from the respondent. In no event will the designation of a contact person(s) preclude a respondent from contacting another party in the requestor's office when a review might be delayed due to the contact person's unavailability or inability to provide the necessary information or data requested;

(C) initiate approved treatment(s) and/or service(s) within 30 days of receipt of the approval or the approval shall expire, thereby releasing the respondent from liability for payment. If an approval expires and the requestor still wants to provide the treatment(s) and/or service(s), the requestor must submit a new request and seek approval; and,

(D) only request preauthorization for treatment(s) and/or service(s) specified in §134.606 (a) and (b) of this title (relating to The List).

(5) The respondent shall:

(A) provide accessible facsimile numbers;

(B) provide toll-free telephone numbers for discussing preauthorization requests with requestors during normal business hours on working days as defined in §102.3 of this title (relating to Computation of Time);

(C) acquire prior consent from the requestor to alter any request for preauthorization, and document the communication as required by §134.605 of this title (relating to Record Keeping).

(D) not require a requestor to submit copies of previously submitted medical reports or records; and

(E) transfer all relevant claim file information and medical records to any entity or agent processing preauthorization requests on the respondent's behalf. The transfer of information shall not extend the due date for responding to the request.

(b) The Request for Preauthorization.

(1) A request for preauthorization shall be transmitted to the respondent by the requestor on the Commission prescribed form with all required fields completed in the manner prescribed by the Commission.

(2) When an incomplete request is returned to the requestor, the requestor may re-initiate the preauthorization process by completing and submitting a new form as specified in this section. The respondent's timeframe for approving or denying the preauthorization request will only start with receipt of a complete request.

(c) Reviewing the Request for Completeness.

(1) Upon receipt of a written request on the Commission prescribed form, the respondent shall review the form for completion of all required data fields and determine whether the request is for treatments or services that are not covered by this subchapter as defined in §134.603 and §134.606 of this title (relating to Limitations on Applicability and The List).

(2) If the request form is missing information in any required data fields, the form will be deemed incomplete. The respondent shall mark the request "INCOMPLETE", identify the missing data fields on the form, and return the request by facsimile or agreed electronic transmission to the requestor by the end of the next working day following the date of receipt of the incomplete request. The proper return of an incomplete request by the respondent ends the respondent's obligations with regard to the incomplete request. Respondents shall not return a request as incomplete except as provided by this section.

(3) If the preauthorization request is not for treatment(s) and/or service(s) identified in §134.606 of this title, the respondent shall mark the request "PREAUTHORIZATION NOT REQUIRED" and return the form by facsimile or agreed electronic transmission by the end of the next working day following the date of receipt of the request. The return of such a request by the respondent ends the carrier's obligations with regard to the request. Respondents shall not return a request as "PREAUTHORIZATION NOT REQUIRED" except as provided by this section.

(4) If the request is complete, the respondent shall:

(A) acknowledge receipt of the completed request by writing the due date and preauthorization reference number on the request form and returning the request form by facsimile or agreed electronic transmission to the requestor, by the end of the next working day after the complete request was received; and

(B) process the request to determine the medical reasonableness or necessity of the requested treatment(s) and/or service(s), regardless of whether the carrier is disputing liability for the claim, compensability of the injury, or extent of injury.

(d) Processing the Complete Request for Approval or Denial.

(1) Screening criteria must be used to review the requested treatment(s) and/or service(s).

(2) If the entire request is approved, the preauthorization form with the response section completed, shall be transmitted by facsimile or agreed electronic transmission to the requestor by the due date. The response must include a statement notifying the requestor that approved services must be initiated within 30 days from the date of the approval by the respondent. The response shall not include any end dates or cut-off dates for the requested treatment(s) and/or service(s) nor otherwise specify the date the treatment(s) and/or service(s) are to be initiated.

(3) If, based on the screening criteria, the entire request cannot be approved the following shall occur:

(A) The respondent shall refer the request to an appropriate doctor or other appropriate health care provider, either of whom is qualified and permitted by licensure to provide the requested treatment(s) and/or service(s), to determine whether the requested treatment(s) and/or service(s) or individualized plan of treatment are medically reasonable and necessary.

(B) If the appropriate doctor or other appropriate health care provider performing the review believes that the request should be denied, whether partially or totally, the respondent shall, prior to issuance of a denial, afford the requestor a reasonable opportunity to discuss the treatments(s) and/or service(s), or the plan of treatment and discuss the clinical basis for the respondent's decision with the appropriate doctor or health care provider performing the review. The respondent shall contact the requestor by telephone and offer this opportunity by 5 p.m. central standard time on the second working day following receipt of the complete request and shall extend this opportunity until at least 2 p.m. central standard time on the third working day following receipt of the complete request. If the requestor is unable to speak with the respondent's doctor or health care provider at the time the respondent calls, the respondent shall provide the toll-free telephone number the requestor can use to call the respondent back.

(C) By the due date, the respondent shall complete the response section on the preauthorization request form and transmit it by facsimile or agreed electronic transmission to the requestor. For denials or partial denials, the response must include:

(i) the decision;

(ii) the denial rationale as defined in §134.601 of this subchapter;

(iii) the full name, license type, and professional license number, including the name of the state that issued the license, of the doctor or health care provider making the denial determination; and,

(iv) a reasonable list of documents needed to be submitted for reconsideration of the denial.

(D) Respondents shall not partially or totally deny preauthorization for any of the following reasons:

(i) claimant reached MMI;

(ii) compensability in dispute;

(iii) extent of injury in dispute;

(iv) carrier liability in dispute; or

(v) no further entitlement to medical benefits.

(E) For partial denials, the requestor can perform those treatment(s) and/or service(s) that are approved and would only need to pursue the reconsideration process for those services that are denied.

(e) The Reconsideration.

(1) If, after receiving a denial or partial denial, the requestor wants to request reconsideration, the requestor shall submit a reconsideration request to the respondent within 30 days of receipt of a denial or partial denial. If the requestor fails to request reconsideration within the time period, the respondent shall return the reconsideration request marked "UNTIMELY", and this return does not constitute an approval or a denial. When an untimely reconsideration request is returned to the requestor, the requestor may re-initiate the preauthorization process by completing and submitting a new form as specified in this section. The proper return of an untimely request by the respondent ends the carrier's obligations with regard to the untimely request. Respondents shall not return a request as untimely except as provided by this section.

(2) The request for reconsideration shall:

(A) be transmitted by facsimile or agreed electronic transmission on the same form as previously submitted.

(B) indicate that the request is for reconsideration.

(C) include the documents identified by the respondent in the denial as needed for reconsideration and any additional documentation not previously submitted with the preauthorization request to the respondent to support the medical reasonableness or necessity of the treatment(s) and/or service(s) to be reconsidered.

(3) The review of a request for reconsideration of a denial shall be performed by a doctor who is qualified and permitted by licensure to provide the requested treatment(s) and/or service(s). The reconsideration doctor cannot be the same doctor who performed the initial review.

(4) The respondent shall notify the requestor by facsimile or agreed electronic transmission of the decision within three working days after receipt of the request for reconsideration. This notice shall indicate approval, denial, or partial denial on the request form. If the response is again a denial or partial denial, the response to the requestor shall also include the information identified in subsection (d)(3)(C) of this section.

(5) The requestor may appeal the decision by filing a request for medical dispute resolution as provided in the Texas Labor Code, §413.031 and in §133.305 of this title (relating to Request for Medical Dispute Resolution) if the reconsideration decision is a denial or partial denial. Requestors may not request medical dispute resolution if they have not completed the reconsideration process.

(f) Submission of a Subsequent Request.

(1) If the requestor determines that there is a substantial change in the injured employee's medical condition, a new preauthorization request form for the same requested treatment(s) and/or services or individualized plan of treatment that was denied or partially denied may be completed and submitted for processing.

(2) The subsequent request must document the previous preauthorization reference number and the change in medical condition.

(3) All of the requirements of this subchapter apply to the subsequent request and its review.

(4) Requestors shall not request preauthorization for the same treatment(s) and/or service(s) that a respondent has previously denied unless a substantial change in condition has occurred, the requestor is utilizing the reconsideration process under subsection (e) of this section, or the requestor is re-submitting a previously incomplete request under subsection (b) of this section.

§134.605. Record Keeping.

(a) The requestor and the respondent shall maintain records in either paper or electronic format of preauthorization and reconsideration requests and responses for a period of two years from the date of the request.

(b) For each preauthorization request, the requestor must maintain a copy of the final preauthorization request form with all attachments and documentation of:

(1) the date the initial request was sent;

(2) the date the following were received from the respondent (as applicable):

(A) the returned request marked "INCOMPLETE;"

(B) the returned request marked "PREAUTHORIZATION NOT REQUIRED;" or

(C) the acknowledgment with the preauthorization due date and reference number;

(3) the date the requestor was given the opportunity to discuss a potential denial or partial denial with the respondent's doctor or health care provider;

(4) the date the reconsideration request was sent, if applicable;

(5) the date the reconsideration response was received by the requestor, if applicable; and

(6) all communication, either verbal or written, between the requestor and respondent to include: date of communication, name of parties, and summary of communication.

(c) For each preauthorization request, the respondent must maintain a copy of the final preauthorization request form with all attachments and documentation of:

(1) the date the initial request was received (this is the earlier of the date the carrier or their contracted utilization review agent received the request);

(2) the date the following was sent to the requestor (as applicable);

(A) the returned request marked "INCOMPLETE;"

(B) the returned request marked "PREAUTHORIZATION NOT REQUIRED;" or

(C) the acknowledgment with the preauthorization due date and reference number;

(3) the date requestor was given the opportunity to discuss a potential denial or partial denial with the respondent's doctor or health care provider;

(4) the date the reconsideration request was received, if applicable;

(5) the date the reconsideration response was sent, if applicable;

(6) all communication, either verbal or written, between the requestor and respondent to include: date of communication, name of parties, method of communication, and summary of communication.

(d) Upon request by the Commission, an insurance carrier shall provide all information in the form and manner as prescribed by the Commission. Each insurance carrier shall maintain the following information, in a consolidated electronic format, for each preauthorization request and reconsideration received:

(1) the date the request was received;

(2) type of request (e.g., initial request or reconsideration);

(3) the name of the requestor;

(4) the name, date of injury, and Social Security number of the claimant for which the request is being made;

(5) the treatment(s) and/or service(s) being requested;

(6) the final response (e.g., approval, partial denial, or denial) to the request;

(7) the name and license number of the appropriate doctor or health care provider who made the denial; and,

(8) the date the respondent provided the requestor with its final response.

(e) Each insurance carrier shall submit to the Commission by March 1 of each year, a summary report for the preceding calendar year containing the following preauthorization information:

(1) total number of requests approved, denied, partially denied, and processed, grouped by each item listed in §134.606 (a) and (b) of this title (relating to The List);

(2) total numbers of reconsiderations approved, denied, partially denied, and processed, grouped by each item listed in §134.606 (a) and (b), of this title; and

(3) average cost to process each of the following: approvals, denials, partial denials, and reconsiderations.

§134.606. The List.

(a) The following health care treatment(s) and/or service(s) require preauthorization except as provided by §134.603 of this title (relating to Limitations on Applicability):

(1) Inpatient and outpatient admissions to any hospital or ambulatory surgical center as follows:

(A) the admission includes the treatment(s) and/or service(s) to be performed; and

(B) approval of the admission shall not include length of stay, and disputes regarding length of stay shall be reviewed retrospectively.

(2) Physical medicine (as defined by the Medical Fee Guideline), work hardening, work conditioning, and/or manipulations beyond eight weeks from the date of injury.

(3) Electrodiagnostic testing (includes all sensory, motor, and reflex studies, including but not limited to, electromyogram (EMG), surface electromyogram (SEMG), somatosensory evoked potential (SSEP), dermatomal sensory evoked potentials (DSEP), nerve conduction velocity (NCV), and H reflex and F reflex studies).

(4) A repeat individual radiology/nuclear medicine procedure with a whole procedure maximum allowable reimbursement (MAR) or DOP charged at greater than $350 as specified by the Medical Fee Guideline.

(5) Durable medical equipment with charges exceeding $500 per item (either purchase or cumulative rental), and purchase or rental of all transcutaneous and/or neuromuscular electrical nerve stimulators, as specified by the Medical Fee Guideline.

(b) The requestor may elect to request preauthorization for an individualized plan of treatment. An individualized plan of treatment is defined as a documented course of treatment for an injured employee with specific proposed treatment(s) and/or service(s) to include the following at a minimum: type of intervention/treatment, frequency of treatment, expected duration of treatment, expected clinical response to treatment, and specification of re-evaluation timeframe. An individualized plan of treatment may include treatment(s) and/or service(s) as specified in subsection (a) of this section and therefore, would not require separate preauthorization.

(c) If preauthorization of an individualized plan of treatment listed in subsection (b) of this section is:

(1) requested, the respondent is required to process and respond to the request in the same manner as for any treatment(s) and/or service(s) listed in subsection (a) of this section and all reconsideration and appeal provisions apply; and

(2) approved, the insurance carrier is liable for all medically reasonable and necessary costs of all treatment(s) and/or service(s) specifically listed in the approved individualized plan of treatment.

§134.607. Severability.

Where any terms or sections of this subchapter are determined by a court of competent jurisdiction to be inconsistent with any applicable law, the applicable law will apply, and the remaining terms and provisions of this subchapter shall remain in effect.

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 August 16, 1999.

TRD-9905185
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707-5829

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Chapter 136. Benefits–Vocational Rehabilitation

28 TAC §136.2

The Texas Workers' Compensation Commission (the Commission) proposes an amendment to §136.2, concerning the registry of private providers of vocational rehabilitation services. The amendment is proposed in response to the addition of subsection (e) of Texas Labor Code, §409.012, as passed by the 76th Legislature. The amendment is proposed to remove reference to a specific Commission form and to establish the criteria a private provider of vocational rehabilitation services must meet in order to be included in the Commission's Registry of Private Providers of Vocational Rehabilitation Services.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

The proposed amendment to §136.2(b) removes the reference to the TWCC form number. The requirements for the application to be on a Commission approved form remains. Additional language specifying that the form shall submitted in the form, format and manner prescribed by the Commission has been added.

Proposed amended §136.2(b)(5) removes the requirement that the application for inclusion on the Commission's registry of private providers of vocational rehabilitation services show any accreditation held with any national or state-wide organization and replaces it with the requirement that the private provider be credentialed as a Licensed Professional Counselor (LPC), Certified Case Manager (CCM), Certified Rehabilitation Counselor (CRC), Certified Vocational Evaluator (CVE), or Certified Disability Management Specialist (CDMS).

Proposed amended §136.2(d) deletes the requirement that a copy of the registration form for each private provider be available in each Commission field office. This requirement is not in harmony with the Commission's efforts to reduce its reliance on paper and is not necessary because a copy of the registry itself will be available for inspection at each field office and at the Commission's central office.

Victor Rodriguez, Chief Financial Officer, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There may be minimal costs to the Commission to review application forms and compile and maintain the registry; however these functions are already being performed so there will be little change in the process.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be:

Compliance with the changes to Texas Labor Code, §408.081(c), as passed by the 76th legislature.

Injured employees, employers, and insurance carriers will benefit from proposed amendment by being able to access the registry to determine if a private provider of vocational rehabilitation services possesses the credentials required by Commission rule.

There will be no adverse economic effect on small or micro-businesses. There will be no difference in the costs of compliance for small businesses or micro-businesses as compared to large businesses.

Comments on the proposal must be received by 5:00 p.m., September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Due to the large number of rules proposed by the Commission at its August meeting, commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The Commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that the reasoning for the comment also be included for Commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon action by the commissioners at the public meeting, the rule(s) as adopted may be revised from the rule(s) as proposed in whole or in part. Persons in support of the rule(s) as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 14, 15, or 16, 1999, at the Austin central office of the Commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the Commission's website at http://www.twcc.state.tx.us.

The amended rule is proposed under: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.141, which addresses the award of supplemental income benefits; Texas Labor Code, §408.142, which sets out the requirements for an employee's eligibility to receive supplemental income benefits; Texas Labor Code, §408.143, which requires an injured employee to file with the insurance carrier a quarterly statement regarding employment after the Commission's initial determination of supplemental income benefits; Texas Labor Code, §408.147, which sets out the procedures for contest of supplemental income benefits by an insurance carrier and provides that the insurance carrier is liable for the attorney's fees of an employee who prevails in such a contest; Texas Labor Code, §408.150, as amended by the 76th Legislature, which provides for Commission referral to the Texas Rehabilitation Commission for vocational rehabilitation and training; Texas Labor Code, §408.151, as added by the 76th Legislature, which

requires the selection of a designated doctor to resolve a dispute regarding an employee's ability to return to work; Texas Labor Code, §409.012(e), as added by the 76th Legislature, which allows the Commission to require a private provider of vocational rehabilitation services to maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation claim; and Chapter 410 of the Texas Labor Code, regarding adjudication of disputes.

This proposed amendment to §136.2 affects the following statutes: Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the Commission to adopt rules on claims service activities of insurance carriers; Texas Labor Code, §408.141, which addresses the award of supplemental income benefits; Texas Labor Code, §408.142, which sets out the requirements for an employee's eligibility to receive supplemental income benefits; Texas Labor Code, §408.143, which requires an injured employee to file with the insurance carrier a quarterly statement regarding employment after the Commission's initial determination of supplemental income benefits; Texas Labor Code, §408.147, which sets out the procedures for contest of supplemental income benefits by an insurance carrier and provides that the insurance carrier is liable for the attorney's fees of an employee who prevails in such a contest; Texas Labor Code, §408.150, as amended by the 76th Legislature, which provides for Commission referral to the Texas Rehabilitation Commission for vocational rehabilitation and training; Texas Labor Code, §408.151, as added by the 76th Legislature, which requires the selection of a designated doctor to resolve a dispute regarding an employee's ability to return to work; Texas Labor Code, §409.012(e), as added by the 76th Legislature, which allows the Commission to require a private provider of vocational rehabilitation services to maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation claim; and Chapter 410 of the Texas Labor Code, regarding adjudication of disputes.

§136.2. Registry of Private Providers of Vocational Rehabilitation Services.

(a) The Commission shall maintain a registry of private providers of vocational rehabilitation services. A private provider may apply to the Commission to be included in the registry.

(b) A private provider who wishes to be included in the registry shall complete a Commission approved registration form [~~TWCC-65~~]. The registration form shall be submitted in the form, format and manner prescribed by the Commission to the Commission at its Austin office, signed by the provider, and include the following information:

(1) the private provider's name, business address, and telephone number;

(2) an informational brochure that describes the evaluation, assessment, assistance, placement, or support services available from the private provider;

(3) the locations where the private provider renders services;

(4) a statement showing the private provider's education, training, or experience in vocational rehabilitation; and

(5) a statement showing [~~any accreditation held by~~] the private provider is credentialed as a Licensed Professional Counselor (LPC), Certified Case manager (CCM), Certified Rehabilitation Counselor (CRC), Certified Vocational Evaluator (CVE), or Certified Disability Management Specialist (CDMS) [~~with any national or state-wide organization~~] .

(c) The Commission shall include in its registry, for a period of one year from the date the Commission enters the private provider's name in the registry, a copy of the registration form of each private provider who complies with the requirements of subsection (b) of this section.

(d) The Commission shall provide a copy of the [~~registration form of each private provider included in the~~] registry for inspection by the public at the Commission's central office in Austin, Texas and each local field office of the Commission.

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

Filed with the Office of the Secretary of State, on August 16, 1999.

TRD-9905187
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 707-5829

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 150. Counselor Licensure

40 TAC §§150.1, 150.3, 150.6, 150.8, 150.9, 150.31–150.33, 150.35, 150.36, 150.38–150.40, 150.51–150.54, 150.60, 150.61, 150.71, 150.72, 150.75–150.78

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§150.1, 150.3, 150.6, 150.8, 150.9, 150.31-150.33, 150.36, 150.38, 150.39, 150.52-150.54, 150.61, 150.71 and proposes new §§150.35, 150.40, 150.51, 150.60, 150.72, 150.75-150.78 concerning Counselor Licensure. These sections contain information on the commission's authority, definitions, scope of practice, consumer information, current standing, licensure application, requirements for licensure, background investigation, graduate status, examination, licensure expiration and renewal, inactive status, retired status, provisional license, reciprocity, sanctions, suspension for failure to pay child support, civil penalty enforcement, ethical standards, pre-service education institutions registration, pre-service education institutions standards, practicum provider registration, practicum provider standards, clinical training institution registration, and clinical training institution standards.

These amendments and new sections are proposed to update citations; add new definitions and better define other terms; to specify that the current certificate of licensure must be displayed and that complaint forms must have current information regarding the commission; to clarify standards and expectations; to more completely and fully describe the application process; to simplify procedures; to clarify the applicant's responsibility in

relation to remaining knowledgeable about the commission's rules; to more clearly and fully describe the licensure requirements; to expand the degrees for which the commission shall waive the 4000 hours of supervised work experience requirement; to update terms to be consistent with those used in statutory references; to add to the list of factors that will be considered in determining the present fitness of a person convicted of a crime which relates to the duties and responsibilities of a chemical dependency counselor; to establish clear parameters for graduate status; to more specifically state that an applicant may not sit for the examination more than four times in his or her lifetime; to reflect a change in procedure regarding sending examinees their test results; to update continuing education requirements to implement a new statute and to move specific course requirements to the pre-service education curriculum; to allow a higher number of continuing education hours to come from independent study or long-distance learning courses to make continuing education more easily accessible for counselors; to increase the restrictions related to inactive status to prevent abuses while accommodating counselors in difficult life situations; to create a formal process for retiring one's license in response to requests that commission create such a process; to implement a provisional licensure process as allowed by statute to accommodate qualified applicants; to clarify that the $25 surcharge for required of reciprocity applicants is in addition to the application fee; to specifically state that individuals who have had their license revoked cannot become a counselor intern during the period of revocation; to add the commission to the list of entities to whom a licensed chemical dependency counselor must report information fairly, professionally, and accurately; to provide clearer guidance regarding prohibited relationships with clients or former clients; to more fully describe registration and standards for pre-service education institutions, practicum providers and clinical training institutions; to increase the structure and standards of the entire counselor licensure training system to improve the competency and quality of care for clients; to conform to national standards regarding knowledge, skills and abilities; to improve grammar used and increase readability and understanding; and to reorganize the rules so that subjects are presented in more logical order. Pre-service education institutions, practicum providers and clinical training institutions will be allowed six months from the effective date of the rules to come into full compliance with the new provisions established in §§150.71, 150.72, and 150.75-150.78.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be more effective licensure and training processes which will result in better qualified counselors to provide services to the chemically dependent in Texas. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new rules.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

These amendments and new rules are proposed under the Texas Occupations Code, Chapter 504, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for the licensure of chemical dependency counselors.

The code affected by the proposed amendments and new rules is the Texas Occupations Code, Chapter 504.

§150.1. Authority.

The commission has authority under Texas Occupations Code, Chapter 504 [~~Texas Civil Statutes, Article 4512o~~], to adopt and enforce rules for the licensure of chemical dependency counselors.

§150.3. Definitions.

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

(1) Abuse - Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client abuse includes:

(A) any sexual activity between facility personnel and a client;

(B) corporal punishment;

(C) nutritional or sleep deprivation,

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client;

(F) restraint that does not conform with these rules;

(G) coercive or restrictive actions taken in response to the patient's request for discharge or refusal of medication or treatment that are illegal or not justified by the patient's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) [~~(1)~~] Applicant - A person who has submitted a complete licensure application packet and paid the application fee.

(3) [~~(2)~~] Application - A complete application packet as described in §150.31 of this title (relating to Licensure Application) for examination applicants and §150.52 of this title (relating to Reciprocity) for reciprocity applicants.

(4) [~~(3)~~] Certified addictions registered nurse (CARN) - An individual certified as an addictions registered nurse by the National Nurses Society on Addictions.

(5) [~~(4)~~] Chemical dependency counseling - Assisting an individual or group to develop an understanding of chemical dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs as affected by claimed or indicated chemical dependency problems.

(6) [~~(5)~~] Client - A person who receives counseling or treatment services from a licensed chemical dependency counselor, or from an organization where the counselor is working on a paid or voluntary basis. A client's status continues for two years after services end.

(7) [~~(6)~~] Clinical training institution - An individual or legal entity registered with the commission to supervise a counselor intern.

(8) [~~(7)~~] Commission (TCADA) - The Texas Commission on Alcohol and Drug Abuse.

(9) [~~(8)~~] Compulsive gambling - A condition marked by continuous or periodic loss of control over gambling; a progression in frequency and amount wagered and in the preoccupation with gambling and with obtaining money with which to gamble; irrational thinking; and a continuation of the behavior despite adverse consequences.

(10) [~~(9)~~] Continuing education hour - At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information.

(11) [~~(10)~~] Counselor intern - A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered clinical training institution who has been designated as a counselor intern by the institution. The supervised course of training includes practicum hours and supervised work experience hours that are described in writing, performed under the auspices of the institution, and performed under the direct supervision of a qualified credentialed counselor.

(12) [~~(11)~~] Cultural awareness and sensitivity training - Training to improve an individual's ability to understand and interact with persons of a different culture. Culture defines the lifestyle of a distinct population and includes values, behavioral norms, and patterns of interpersonal relationships. It may be based on race, ethnicity, religion, age, gender, sexual orientation, or disability.

(13) [~~(12)~~] Direct supervision - Oversight and direction of a counselor intern provided by a qualified credentialed counselor (QCC). If the intern has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern is providing services. If the intern has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone. The qualified credentialed counselor shall:

(A) assume responsibility for the actions of the intern within the scope of the intern's clinical training;

(B) be available for assistance;

(C) conduct and document a complete review of the intern's current written work [~~product~~] at least weekly during the practicum and the first 1000 hours of supervised work experience, monthly during the second 1000 hours, and quarterly during the final 2000 hours;

(D) complete and document a session to observe the intern providing services to chemical dependency clients at least weekly during the practicum, every two weeks during the first 1000 hours of supervised work experience, monthly during the second 1000 hours, and as deemed necessary during the final 2000 hours; [~~and document the observation; and~~]

(E) provide and document at least one hour of face-to-face individual or group supervision each week which includes verbal and written feedback and direction; and [~~meet with the intern at least weekly to provide written and verbal feedback and direction and document the supervision.~~]

(F) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(14) [~~(13)~~] DWI - Driving While Intoxicated.

(15) Exploitation - An act or process to use, either directly or indirectly, the labor or resources of a client for monetary or personal benefit, profit or gain of another individual or organization.

(16) Graduate - An individual who has successfully completed the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience but has neither received a license nor failed the examination four times.

(17) [~~(14)~~] ICRC - International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc.

(18) [~~(15)~~] Inactive status - A period during which counselors maintain their licenses but do not act as counselors, represent themselves as counselors, or provide counseling services.

[~~(16) Graduate - An individual who has successfully completed the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience but has not received a license or failed the examination four times.~~]

(19) KSAs - The knowledge, skills, and attitudes of addictions counseling as defined by the Center for Substance Abuse Treatment in Technical Assistance Publication 21: *Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice.*

(20) [~~(17)~~] Licensed chemical dependency counselor (LCDC) - A person who:

(A) renders, for compensation, chemical dependency counseling or chemical dependency counseling-related services to an individual, group, organization, corporation, institution, or the general public;

(B) implies that the person is licensed, trained, or experienced in chemical dependency counseling; and

(C) holds a license under this chapter to offer or provide chemical dependency counseling.

(21) [~~(18)~~] Licensed marriage and family therapist (LMFT) - An individual who is currently licensed as a marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists.

(22) [~~(19)~~] Licensed master social worker (LMSW) - An individual who is licensed as a master social worker by the Texas State Board of Social Work Examiners.

(23) [~~(20)~~] Licensed professional counselor - An individual licensed as a professional counselor by the Texas State Board of Examiners of Professional Counselors.

(24) [~~(21)~~] Licensed psychological associate - A person licensed as a psychological associate by the Texas State Board of Examiners of Psychologists.

(25) [~~(22)~~] Licensee - An individual who holds a license from the Texas Commission on Alcohol and Drug Abuse to practice chemical dependency counseling and whose license is active and not under suspension.

(26) Neglect - Actions resulting from inattention, disregard, carelessness, ignoring or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client. Examples of neglect include, but are not limited to:

(A) failure to provide adequate nutrition, clothing, or health care;

(B) failure to provide a safe environment free from abuse;

(C) failure to maintain adequate numbers of appropriately trained staff;

(D) failure to establish or carry out an appropriate individualized treatment plan; and

(E) any other act or omission classified as neglect by the Texas Family Code, §261.001.

(27) [~~(23)~~] Physician - A physician licensed by the Texas State Board of Medical Examiners, or a physician employed by any agency of the United States who has a license in any other state of the United States.

(28) [~~(24)~~] Practicum provider - An individual or legal entity registered with the commission to supervise practicums.

(29) [~~(25)~~] Pre-service educational institution - An individual or legal entity registered with the commission to provide the 270 hours of education required for licensure.

(30) [~~(26)~~] Probation - A period of time during which a licensed chemical dependency counselor shall abide by special conditions established by the commission.

(31) Provisional license - A temporary license issued by the commission to an applicant who is currently licensed in another state.

(32) [~~(27)~~] Psychologist - An individual currently licensed as a psychologist by the Texas State Board of Examiners of Psychologists.

(33) [~~(28)~~] Qualified credentialed counselor (QCC) - A licensed chemical dependency counselor or one of the professionals listed below:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(34) [~~(29)~~] Related education hours - Coursework that is relevant to the practice of chemical dependency counseling, including courses in psychology, upper division sociology, counseling, mental health, behavioral science, psychiatric nursing, pharmacology, ethics, and rehabilitation counseling.

(35) [~~(30)~~] Sexual exploitation - A pattern, practice, or scheme of conduct by a licensed chemical dependency counselor that may include sexual contact, that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It is not a defense to sexual exploitation of a client or former client if it occurs:

(A) with consent of the client or former client;

(B) outside of therapy or treatment;

(C) off the premises used for therapy or treatment; or

(D) within a two-year period following termination of treatment.

(36) [~~(31)~~] Specific education hours to alcohol and drug (A&D) - Courses that deal directly with substances that alter the mind and/or moods, or counseling to deal with dependency or addiction to any of these substances.

(37) [~~(32)~~] Supervised work experience - Documented, verifiable, work experience providing chemical dependency services within the twelve core functions which is performed by a counselor intern under the auspices of a registered clinical training institution with direct supervision from a qualified credentialed counselor. Supervised work experience may be paid or voluntary.

(38) [~~(33)~~] TAADAC - See TAAP.

(39) [~~(34)~~] TAAP - Texas Association of Addiction Professionals.

(40) [~~(35)~~] Treatment intervention - A meeting designed to persuade a chemically dependent individual to enter treatment.

(41) [~~(36)~~] Twelve [~~12~~] core functions - Screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, referral, report and record keeping, and consultation, defined as follows:

(A) screening - the process by which a client is determined appropriate and eligible for admission to a particular program.

(B) intake - the administrative and initial assessment procedures for admission to a program.

(C) orientation - describing to the client:

(i) general nature and goals of the program;

(ii) rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;

(iii) the hours services are available;

(iv) treatment costs to be paid by the client, if any; and

(v) clients' rights.

(D) assessment - those procedures by which the counselor/program identifies and evaluates an individual's strengths, weaknesses, problems, and needs.

(E) treatment planning - process by which the counselor and the client:

(i) identify and rank problems needing resolution;

(ii) establish agreed-upon immediate and long-term goals; and

(iii) decide on a treatment process and the resources to be utilized.

(F) counseling - the utilization of special skills to assist individuals, families, or groups in achieving the objectives leading to recovery through:

(i) exploration of a chemical dependency-related problem and its ramifications;

(ii) examination of attitudes and feelings;

(iii) consideration of alternative solutions; and

(iv) decision making.

(G) case management - activities which bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals. It may involve liaison activities and collateral contacts.

(H) crisis intervention - those services which respond to an alcohol and/or drug abuser's needs during acute emotional and/or physical distress.

(I) client education - provision of information to individuals and groups concerning alcohol and other drug abuse and the available services and resources.

(J) referral - identifying the needs of the client that cannot be met by the counselor or agency and assisting the client to utilize the support systems and community resources available.

(K) report and record keeping - charting the results of the assessment and treatment plan, and writing reports, progress notes, discharge summaries, and other client-related data.

(L) consultation - relating with professional within one's own and other fields to assure comprehensive, quality care of the client.

§150.6. Scope of Practice.

A licensed chemical dependency counselor is licensed to provide chemical dependency services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the twelve [~~12~~] core functions. The license does not qualify an individual to provide services outside this scope of practice.

§150.8. Consumer Information.

Licensed chemical dependency counselors shall keep the current certificate of licensure and public complaint notice prominently displayed in their place of business. The public complaint notice shall include:

(1) the current name, mailing address, and telephone number of the commission; and

(2) a statement telling consumers that a complaint against a licensed chemical dependency counselor may be filed with the commission.

§150.9. Current Standing.

(a) A person's name and address will not appear on any list of licensed counselors produced by the commission unless the person is in good standing when the list is compiled.

(b) Licensed chemical dependency counselors shall notify the commission in writing within 14 days of a change in address.

§150.31. Licensure Application.

(a) A person seeking licensure through examination shall submit the application fee and a complete licensure application packet, which includes:

(1) the commission's current application form which has been completed, signed, dated, and notarized;

(2) a recent full-face wallet-sized photograph of the applicant;

(3) documentation of a high school diploma or its equivalent;

(4) required documentation that the applicant has successfully completed the 270 classroom hours of education or an acceptable college transcript as described in §150.32 of this title (relating to Requirements for Licensure);

(5) required documentation that the applicant has successfully completed the 300 hour field work practicum or an acceptable college transcript as described in §150.32 of this title (relating to Requirements for Licensure);

(6) two letters of recommendation from LCDCs; and

(7) the applicant's initial letter of intent to take the licensure examination.

(b) An application packet may be considered incomplete if documentation does not conform with the following standards.

(1) All documents must be complete, signed, and dated. Signatures shall include credentials when required. If the documentation relates to past activity, the date of the activity shall also be recorded.

(2) Documentation shall be permanent and legible.

(3) When it is necessary to correct a document, the error shall be marked through with a single line, dated, and initialed by the writer. Correction fluid shall not be used.

(c) [~~(b)~~] An applicant shall:

(1) disclose and provide complete information on all misdemeanor and felony convictions;

(2) read the commission rules (Texas Administrative Code, Title 40, Chapter 150);

(3) follow all laws and rules, including the ethical standards; and

(4) allow the commission to seek any additional information or references necessary.

(d) [~~(c)~~] Complete application packets become the property of the commission.

(e) [~~(d)~~] An application will not be accepted unless it is complete.

(1) Incomplete documents [~~licensure packets~~] will be returned to the sender. The remaining documents will be held by the commission, but the application is not accepted until all outstanding documents have been completed and approved by the commission.

(2) The application fee is not refundable and will not be returned. When resubmitting documents [~~an application packet~~] which were [~~was~~] returned to the sender as incomplete, a second application fee is not required.

(f) By signing the application, the applicant accepts responsibility for remaining knowledgeable of licensure rules, including revisions.

(1) Current rules are published in the Texas Administrative Code and posted on the secretary of state's web site and the commission's web site.

(2) Proposed rule changes are published in the Texas Register and posted on the secretary of state's web site and the commission's web site.

§150.32. Requirements for Licensure.

(a) To be eligible for a license under this chapter, a person shall:

(1) be at least 18 years of age;

(2) have a high school diploma or its equivalent;

(3) successfully complete 270 classroom hours of approved curricula from a registered Pre-Service Education Institution [~~which is compatible with ICRC standards~~];

(4) complete 300 hours of approved supervised field work practicum under the supervision of a registered Practicum Provider or accredited institution of higher education which is compatible with ICRC standards;

(5) complete 4,000 hours of approved supervised experience working with chemically dependent persons at a registered Clinical Training Institution;

(6) submit two letters of recommendation from currently licensed chemical dependency counselors;

(7) pass the written chemical dependency counselor examination approved by the commission;

(8) submit an adequate, written case presentation to the test administrator;

(9) pass an oral chemical dependency counselor examination approved by the commission;

(10) be worthy of the public trust and confidence, as determined by the commission; and

(11) sign a written agreement to abide by the standards of ethics contained in §150.61 of this title (relating to Ethical Standards).

(b) Applicants holding a [~~baccalaureate~~] degree in chemical dependency counseling, sociology, psychology, or any other degree approved by the commission are exempt from the 270 hours of education and the 300 hour practicum. The applicant must submit an official college transcript with the official seal of the college and the signature of the registrar. Degree programs approved by the commission include baccalaureate, masters, or doctoral degrees with a course of study in human behavior/development and service delivery. [~~:~~]

[~~(1) baccalaureate degrees in social work, behavioral science, human development, or marriage and family that have an internship or field placement course; and~~]

[~~(2) master's or doctorate degrees in social work, guidance and counseling, or rehabilitation counseling.~~]

(c) The commission shall waive the 4000 hours of supervised work experience for individuals who hold a 48-hour masters or doctoral degree in social work or addiction counseling. The commission may waive all or a portion of the 4000 hours of supervised work experience for individuals who hold a related 48-hour masters or doctoral degree if the commission determines that the degree program provides a level of training equivalent to the supervised work experience that is waived. These related degrees shall be reviewed on a case-by-case basis. The applicant must submit an official college transcript with the official seal of the college and the signature of the registrar, and any other related documentation requested by the commission.

[~~(c) The following requirements apply to the 270 hours of classroom education.~~]

[~~(1) The education shall be provided by a registered pre-service education institution. ~~]

[~~(2) At least 135 hours shall be specific chemical dependency education, and the remaining hours shall be related education.~~]

[~~(3) No more than 12 hours of education shall be obtained through independent study or long-distance learning courses. ~~]

[~~(A) Only related education may be obtained through independent study or long-distance learning courses.~~]

[~~(B) The courses shall be faculty- or instructor-guided and monitored, and students shall have access to faculty or instructors for questions and assistance in the completion of course work.~~]

[~~(C) Independent and long-distance learning courses are only accepted when provided by an accredited institution of higher education.~~]

(d) Practicum hours and supervised work experience may be paid or voluntary.

(e) Documentation of practicum and supervised work experience hours must include original supervision records that show accumulated hours.

(f) [~~(d)~~] The following requirements apply to the 300 hour practicum.

(1) The practicum must be completed under the supervision of a registered practicum provider or an accredited institution of higher education.

(2) An applicant shall complete the required 270 hours of education before participating in a practicum, with one exception. Students enrolled in an accredited university, college, junior college, or community college may complete the practicum before completing the 270 hours of education if the practicum is:

(A) part of the assigned curriculum; and

(B) performed under the auspices of the educational institution.

(3) The applicant must complete the practicum under the supervision of a single practicum provider or institution of higher education.

(A) A practicum provider or an institution of higher education may contract with other facilities so that the student can obtain experience at more than one site.

(B) The contracted sites do not need to be registered practicum providers.

(4) The commission shall not accept a practicum without documentation from the practicum provider that shows the student successfully completed all 300 hours.

(5) The practicum shall include at least ten hours of supervised work experience in each of the twelve [~~12~~] core functions.

[~~(6) The provider shall not require an intern to work more than 325 hours in order to accumulate the 300 required practicum hours.~~]

[~~(7) The provider shall give the student a written practicum schedule which includes a completion date before the practicum begins.~~]

[~~(e) The following requirements apply to the 4,000 hours of supervised work experience.~~]

[~~(1) The work experience must be part of a supervised course of training at a registered clinical training institution.~~]

[(2) An applicant cannot accumulate supervised work experience until the 270 classroom hours are complete.]

[(3) The applicant must be designated as a counselor intern by the clinical training institution.]

[(4) The work may be paid or voluntary.]

[(f) An unlicensed graduate has three years to complete testing and may continue to provide counseling for up to three years after the date of graduation if the graduate is working under appropriate supervision at a registered clinical training institution. Direct supervision is not required.]

§150.33. Background Investigation.

(a) The commission conducts a background investigation on every applicant for licensure. Checks are conducted when:

(1) an applicant has met all other requirements for licensure;

(2) a licensed chemical dependency counselor applies for license renewal; and

(3) the commission receives information of a possible conviction.

(b) The commission obtains a criminal history report from the Texas Department of Public Safety. When an applicant applies through reciprocity, the commission also obtains a criminal history report from the Federal Bureau of Investigations (FBI).

(c) The individual shall disclose and provide complete information regarding all misdemeanor and felony convictions. Failure to make full and accurate disclosure will be grounds for immediate application denial, disciplinary action, or license revocation.

(d) Applications with criminal histories are categorized according to the seriousness of the offense. The category shall be determined by the most serious offense, as defined by law.

(1) Category I. The following felonies:

(A) attempted murder and homicide; and

(B) sexual assault, including but not limited to attempted sexual assault, rape, indecency with a child, molestation, sexual assault of a child, and indecent exposure.

(2) Category II. Felonies or misdemeanors that may result in harm to others, including but not limited to:

(A) intoxication [vehicular] manslaughter;

(B) involuntary manslaughter;

(C) kidnapping and attempted kidnapping;

(D) arson;

(E) robbery;

(F) attempted robbery;

(G) assault (felony or misdemeanor);

(H) theft from person (felony or misdemeanor); and

(I) intoxication assault [DWI involving injury or accident].

(3) Category III. Felonies which do not result in harm to others, including but not limited to:

(A) any combination of three or more misdemeanors from Category IV [II];

(B) burglary;

(C) theft (felony);

(D) three or more DWIs;

(E) felony DWI;

(F) larceny (felony);

(G) forgery (felony);

(H) possession of a controlled substance (felony);

(I) delivery of a controlled substance (felony);

(J) fraud/credit card abuse;

(K) unauthorized use of a motor vehicle;

(L) unlawfully carrying a weapon (felony or misdemeanor); [and]

(M) burglary of a vehicle; and

(N) falsification of government documentation.

(4) Category IV: Misdemeanors which do not result in harm to others. Three or more Category IV convictions shall be reclassified as a Category III offense. Category IV offenses include but are not limited to:

(A) one or two DWIs;

(B) possession of a controlled substance (misdemeanor);

(C) disorderly conduct;

(D) arrest and convictions resulting from traffic warrants ;

(E) reckless damage;

(F) resisting arrest;

(G) theft (misdemeanor);

(H) bad check;

(I) prostitution;

(J) public intoxication;

(K) criminal mischief (misdemeanor); and

(L) driving while license suspended

(e) The commission shall determine if the conviction(s) are directly related to the duties and responsibilities of a chemical dependency counselor. The commission shall consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in chemical dependency counseling;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of chemical dependency counseling.

(f) If the conviction(s) do not relate to the duties and responsibilities of a chemical dependency counselor, the commission shall process the license application according to standard procedures.

(g) If the conviction(s) do relate to the duties and responsibilities of a chemical dependency counselor, the commission shall evaluate the present fitness of the individual to provide chemical dependency counseling.

(h) The commission uses the following guidelines in evaluating an individual's present fitness:

(1) An applicant with a Category I conviction should have at least 15 years since the last Category I conviction.

(2) An applicant with a Category II conviction should have at least ten years since the last Category II conviction to be eligible for a license.

(3) An applicant with a Category III conviction should have at least seven years since the last Category III conviction to be eligible for a license.

(4) An applicant with a Category IV conviction should have at least five years since the last Category IV conviction to be eligible for a license.

(i) The commission shall also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a chemical dependency counselor:

(1) the age at the time each crime was committed;

(2) the conduct and work history of the person before and after the criminal conviction(s);

(3) evidence of the person's rehabilitation efforts and outcome;

(4) the extent and nature of the past criminal history;

(5) [~~(4)~~] two letters of recommendation from qualified credentialed counselors; and

(6) [~~(5)~~] other evidence of fitness that may be relevant.

(j) If the person's criminal activity is related to a history of chemical dependency, the commission will also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency should demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.

(k) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedures established in Chapter 142 of this title (relating to Investigations and Hearings). To the extent that the disciplinary action is based on the applicant's criminal background, the hearing shall also be governed by Texas Occupations Code , Chapter 53 [~~Texas Civil Statutes, article 6252-13c~~].

§150.35. Graduate Status.

(a) An unlicensed graduate has three years from the date of graduation to complete testing.

(b) During this period, the graduate may continue to provide counseling if the graduate is working under appropriate supervision at any registered clinical training institution. Appropriate supervision must include at least one hour of individual or group supervision weekly.

(c) A QCC must cosign all assessments, treatment plans, and discharge summaries completed by the graduate.

(d) A graduate who fails to obtain licensure within three years may begin the licensure process over (accumulating new educational, practicum and supervised work experience hours). However, the individual may not test more than four times in a lifetime.

§150.36. Examination.

(a) The written and oral chemical dependency counselor examination is offered at least twice a year. An applicant may take the written and oral portions of the exam separately.

(b) An applicant shall not sit for the examination more than four times in a lifetime. The applicant may take one or both parts of the examination at each sitting.

(c) An individual who fails the examination four times is ineligible for licensure and cannot perform counseling, assessments, or treatment interventions.

(d) [~~(b)~~] It is the applicant's responsibility to obtain testing information and send the commission a letter of intent to take the examination.

(e) [~~(c)~~] To take the examination, an applicant shall complete all activities and submit all required documentation and fees by the specified deadlines. Failure to receive notice from the commission does not waive or extend examination deadlines.

(f) [~~(d)~~] To be eligible for either the written or the oral examination, an applicant shall:

(1) submit a complete application packet as defined in §151.31 and pay the application fee; and

(2) pay the written examination fee to the test administrator before the deadline.

(g) [~~(e)~~] To be eligible for the oral examination, an applicant shall also submit an acceptable case study to the test administrator.

(h) [~~(f)~~] The test administrator [~~commission~~] shall send examinees their test results within 30 days of the examination date.

[~~(g) An applicant shall not sit for the examination more than four times. The applicant may take one or both parts of the examination at each sitting.~~]

[~~(h) An individual who fails the examination four times is ineligible for licensure and cannot perform counseling, assessments, or treatment interventions.~~]

§150.38. License Expiration and Renewal.

(a) A license issued under this chapter is valid for two years, or until the expiration date printed on the license.

(b) To renew a license, the counselor shall:

(1) send a renewal application to the commission;

(2) pay the renewal application and license fees;

(3) pass a criminal background check; and

(4) complete all required continuing education. [~~at least 60 hours of continuing education that is related to chemical dependency and approved by the commission during the two-year licensure period. If an individual does not have six documented hours in any of the following areas, the continuing education must include:~~]

[~~(A) ethics (including courses in legal and liability issues, such as confidentiality);~~]

[~~(B) HIV and other infectious diseases associated with chemical dependency (including tuberculosis and sexually transmitted diseases);~~]

[(C) cultural awareness and sensitivity (courses on specific ethnic cultures, cross-competency training, and racism);]

[(D) compulsive gambling; and]

[(E) sexual abuse or dual diagnosis (mental illness and chemical dependence co-morbidity).]

[(5) Individuals applying for licensure renewal who can show at least six education hours of documented training in any of these five topics are not required to obtain any additional hours of training in that topic. Instead, the applicant shall obtain an additional three hours of chemical dependency training to complete the required 60 hours.]

(c) A licensed chemical dependency counselor who is also licensed as an LMSW, LMFT, LPC, physician, or psychologist shall complete at least 24 hours of continuing education during each two-year licensure period. The individual must submit a copy of the current non-LCDC licensure certificate to be eligible for this provision.

(d) A licensed chemical dependency counselor who does not meet the criteria in paragraph (c) of this section must complete at least 60 hours of continuing education.

(e) All continuing education hours must be specific to chemical dependency or related to chemical dependency, regardless of source.

(f) Continuing education hours must include at least three hours of ethics training.

(g) If an individual's job duties include clinical supervision, required hours of continuing education must include three hours of clinical supervision training.

(h) [(c)] The commission will accept continuing education (CE) hours that meet the following criteria. Hours that do not meet these criteria may be evaluated on a case-by-case basis.

[(1) All continuing education courses must be related to chemical dependency.]

(1) [(2)] The commission will accept continuing education credits from the Texas Association of Addiction Professionals and other recognized certification boards, including, but not limited to, the National Association of Drug and Alcohol Abuse Counselors, the Texas State Board of Nurse Examiners , and the Texas State Board of Social Work Examiners. Continuing education certificates must contain:

(A) date CE hours were completed;

(B) number of CE hours assigned to each course;

(C) CE course title;

(D) educational provider number;

(E) sponsoring agency name;

(F) signature of instructor or coordinator; and

(G) applicant's name.

(2) [(3)] The commission will also accept education hours from an accredited college or university.

(A) College transcripts must contain the official seal of the college and the signature of the registrar.

(B) One hour of college credit is equivalent to 15 CE hours.

(3) [(4)] No more than 30 [12] hours of independent study or long-distance learning courses will be accepted.

(A) Independent study or guided learning courses must be faculty- or instructor-guided and monitored, and include an evaluation of performance and/or participation verification. In addition, the course must be structured so that students [must] have access to faculty or instructors for questions and assistance in the completion of such course work.

(B) Independent and long-distance learning courses are only accepted when provided by an accredited institution of higher education or an organization accredited by the Texas Association of Addiction Professionals or the National Association of Drug and Alcohol Abuse Counselors.

(C) Certificates of completion must indicate that the course was a distance learning experience. If this information is not reflected on the certificate, the applicant must attach alternate documentation to the certificate when submitting it to the commission.

(4) No more than 15 hours of CE credit will be granted for courses taught by the applicant.

(i) [(d)] Renewal fees are due on or before the expiration date. A licensee who submits a late renewal application shall pay a penalty fee in addition to the renewal application and licensure fees, as provided in §150.10 of this title (relating to Fees). Failure to receive notice from the commission does not waive or extend renewal deadlines.

(j) [(e)] A license cannot be renewed more than one year after the date of expiration. To obtain a new license, the person shall comply with the [all] requirements and procedures for obtaining an initial license, including passing the written and oral examinations. Since an individual may only sit for the oral and written examinations a maximum of four times, individuals who have already reached this lifetime limit will not be able to obtain a new license. In only one situation is a person excused from the requirement of passing the written and oral examinations. [This includes passing the written and oral examinations, with one exception.] If the person was licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay a fee that is equal to two times the required renewal fee.

(k) [(f)] [A license ceases to be valid on the expiration date, unless the person has met all requirements before that date and is waiting to receive a renewal sticker.] A person whose license has expired cannot perform counseling, assessments, or treatment interventions, represent himself or herself as an LCDC, or act in the capacity of a QCC.

§150.39. Inactive Status.

(a) A licensee may place his or her license on inactive status by submitting a written request and paying the inactive fee before the license expires. The written request must include an attestation that the individual will not provide counseling, assessment, or treatment intervention services, use the "LCDC" credential, or otherwise represent himself or herself as a counselor while on inactive status.

(b) Inactive status shall not be granted unless the license is current and in good standing, with no pending investigations.

(c) Inactive status periods shall not exceed two years and cannot be renewed.

(1) An inactive license will automatically expire at the end of the two year period.

(2) The person must meet the eligibility criteria and pay the inactive status fee for the two-year period of inactive status.

(d) A person on inactive status cannot perform counseling, assessments, or treatment interventions, represent himself or herself as an LCDC, or act in the capacity of a QCC. [~~Individuals may not act as counselors, use the "LCDC" credential or otherwise represent themselves as counselors, or provide counseling services while on inactive status.~~] A person is subject to investigation and action during the period of inactive status.

(e) To return to active status, the person shall submit a written request to reactivate the license, a completed renewal application form, the renewal application fee and the license renewal fee, and documentation of 30 hours of continuing education within the inactive status period.

§150.40. Retired Status

(a) A licensee who is in good standing may request his or her license be placed on retired status by submitting a written request along with the license certificate. The commission will stamp and date the license certificate as retired and return the certificate to the licensee.

(b) After the license has been retired, the person can no longer perform counseling, assessments, or treatment interventions, represent himself or herself as an LCDC, or act in the capacity of a QCC. The individual will no longer be required to pay renewal fees or to obtain continuing education.

(c) A retired license cannot be renewed or reinstated. To be eligible for a new license, the person would be required to apply for another license by meeting requirements in effect at the time of the application, including passing the examination.

§150.51. Provisional License.

(a) The commission may issue a provisional license to an applicant who is currently licensed in another state. An applicant for a provisional license must:

(1) document intent to use the provisional license to practice chemical dependency counseling in the state of Texas;

(2) be licensed and in good standing as a chemical dependency counselor at least two years in another state, the District of Columbia, a foreign country, or a territory of the United States that has licensing requirements that are substantially equivalent to the commission's licensure requirements;

(3) have passed a national or other examination recognized by the commission relating to the practice of chemical dependency counseling; and

(4) be sponsored by a licensed chemical dependency counselor with whom the provisional license holder may practice.

(b) The commission may waive the sponsorship requirement if it determines that compliance would create a hardship to the applicant.

(c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license or 180 days from the date of issue, whichever occurs first. If necessary, the provisional license will be renewed until the application for licensure is approved.

§150.52. Reciprocity.

(a) The commission may issue a license based on reciprocity if the individual:

(1) submits an application and pays the application and licensure fees;

(2) is at least 18 years of age;

(3) passes the background investigation; and

(4) is currently licensed or certified by another state as a chemical dependency counselor (or its equivalent).

(b) The commission shall not issue a license based on reciprocity unless it finds that the licensing or certification standards of the state of origin are at least substantially equivalent to the requirements of this chapter.

(c) The applicant must submit a copy of the reciprocal license and two letters of recommendation.

(d) As part of the background investigation, the commission shall obtain a criminal history report from the Federal Bureau of Investigations (FBI).

(1) The applicant shall submit a set of fingerprints obtained through an authorized law enforcement agency to the commission.

(2) In addition to the application fee, the [~~The~~] applicant shall also pay a $25 surcharge to cover the cost of implementing this provision [~~obtaining the criminal history report from the FBI~~].

§150.53. Sanctions.

(a) The commission shall refuse to issue or renew a license, place on probation a license holder whose license has been suspended, reprimand a license holder, or revoke or suspend a license for:

(1) violating or assisting another to violate the statute or these rules;

(2) circumventing or attempting to circumvent the statute or these rules;

(3) participating, directly or indirectly, in a plan to evade the statute or these rules;

(4) engaging in false, misleading, or deceptive conduct as defined by Business and Commerce Code, §17.46;

(5) engaging in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(6) revealing or causing to be revealed, directly or indirectly, a confidential communication made to the licensed chemical dependency counselor by a client or recipient of services, except as required by law;

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the commission finds would constitute a violation of this chapter;

(8) refusing to perform an act or service for which the person is licensed to perform under this chapter on the basis of the client's or recipient's sex, race, religion, age, national origin, or handicaps; or

(9) committing an act of sexual exploitation in violation of Penal Code, §12.14, or for which liability exists under Civil Practice and Remedies Code, Chapter 81.

(b) The commission will determine the length of the probation or suspension. The commission may hold a hearing at any time and revoke the probation or suspension.

(c) The commission may impose an administrative penalty against a licensee who violates Texas Occupations Code, Chapter 504 [~~Texas Civil Statutes, Article 4512o~~], or a rule or order adopted under the statute.

(d) Surrender or expiration of a license does not interrupt the investigation or sanctions process. The individual is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved.

(e) An individual whose license has been revoked is not eligible to apply for licensure until two years have passed since the date of revocation. During the period of revocation, the individual cannot become an counselor intern.

§150.54. Suspension for Failure to Pay Child Support.

(a) The Office of the Attorney General or a custodial parent may obtain an order suspending the license of a licensed chemical dependency counselor who:

(1) is a non-custodial parent;

(2) owes an amount equal to more than 90 days of past due child support, and

(3) is not in compliance with an existing repayment plan.

(b) On receiving a final order for suspension from the Office of the Attorney General or a court with continuing jurisdiction over the support order, the commission shall:

(1) record the suspension in the person's file;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(c) The commission shall implement the terms of the final order for suspension without additional review or hearing.

(d) The licensee is not entitled to a refund for any fees paid.

(e) A licensee who provides chemical dependency counseling during the period of suspension is subject to civil penalties, as provided in §150.60 [~~§150.51~~] of this title (relating to Civil Penalty Enforcement [~~Penalties~~]).

(f) An order suspending a license under this section does not affect the commission's power to grant, deny, suspend, revoke, terminate, or renew a license.

(g) On receiving a final order vacating or staying an order suspending a license from the Office of the Attorney General or a court with continuing jurisdiction over the support order, the commission shall promptly re-issue the license to the person if the person is otherwise qualified for the license.

§150.60. Civil Penalty Enforcement.

(a) A person who violates the statute (Texas Occupations Code, Chapter 504) or a rule in this chapter is subject to a civil penalty of not less than $50 nor more than $500 for each day of violation.

(b) If a person has violated, is violating, or is threatening to violate the statute or these rules, the commission may bring a civil action in a district court for injunctive relief to restrain the violation.

§150.61. Ethical Standards.

(a) All applicants, and licensed chemical dependency counselors shall comply with these ethical standards.

(b) The licensed chemical dependency counselor shall not discriminate against any client or other person on the basis of gender, race, religion, age, national origin, disability, sexual orientation, or economic condition.

(c) The licensed chemical dependency counselor shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(d) The licensed chemical dependency counselor shall:

(1) report violations of Texas Occupations Code, Chapter 504 [~~Texas Civil Statutes, Article 4512o~~], or rules adopted under the statute, including violations of this section, to the commission;

(2) recognize the limitations of his or her ability and shall not offer services outside the counselor's scope of practice or use techniques that exceed his or her professional competence; and

(3) try to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons.

(e) The licensed chemical dependency counselor shall, not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol.

(f) The licensed chemical dependency counselor shall uphold the law and refrain from unprofessional conduct. In so doing, the licensed chemical dependency counselor shall:

(1) comply with all applicable laws and regulations;

(2) not make any claim, directly or by implication, that the counselor possesses professional qualifications or affiliations that the counselor does not possess;

(3) not mislead or deceive the public or any person; and

(4) refrain from any act which might tend to discredit the profession.

(g) The licensed chemical dependency counselor shall:

(1) report information fairly, professionally, and accurately to clients, other professionals, the commission, and the general public;

(2) maintain appropriate documentation of services provided; and

(3) provide responsible and objective training and supervision to interns and subordinates under the counselor's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(h) In any publication, the licensed chemical dependency counselor shall give written credit to all persons or works which have contributed to or directly influenced the publication.

(i) The licensed chemical dependency counselor shall respect a client's dignity, and shall not engage in any action that may injure the welfare of any client or person to whom the counselor is providing services. The licensed chemical dependency counselor shall:

(1) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(2) remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(3) not engage in any activity which could be considered a professional conflict, and shall immediately remove himself or herself from such a conflict if one occurs;

(4) terminate any professional relationship or counseling service which is not beneficial, or is in any way detrimental to the client;

(5) always act in the best interest of the client;

(6) not abuse, neglect, or exploit a client;

(7) not have sexual contact with or intentionally enter into a personal or business relationship with a client (including any client receiving services from the counselor's employer) for at least two years after the client's date of discharge;

(8) [~~(6)~~] not request a client to divulge confidential information that is not necessary and appropriate for the services being provided; and

(9) [~~(7)~~] not offer or provide chemical dependency counseling or related services in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling.

(j) The licensed chemical dependency counselor shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensed chemical dependency counselor shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:

(1) inform the client, and obtain the client's consent, before tape-recording the client, allowing another person to observe or monitor the client;

(2) ensure the security of client records;

(3) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case;

(4) avoid invasion of the privacy of the client; and

(5) provide the client his/her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect the client's confidentiality; and

(6) ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

(k) The licensed chemical dependency counselor shall inform the client about all relevant and important aspects of the professional relationship between the client and the counselor, and shall:

(1) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances which might influence the professional relationship;

(2) not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(3) not establish a personal relationship with any client (including any individual receiving services from the counselor's employer) for at least two years after the client's date of discharge;

(4) neither [~~not~~] engage in any type or form of sexual behavior with a client (including any individual receiving services from the counselor's employer) for at least two years after the client's date of discharge nor accept as a client [~~clients~~] anyone with whom they have engaged in sexual behavior; and

(5) not exploit relationships with clients for personal gain, [~~including social or business relationships~~].

(l) The licensed chemical dependency counselor shall treat other professionals with respect, courtesy, and fairness, and shall:

(1) refrain from providing or offering [~~not provide or offer to provide~~] professional services to a client who is receiving chemical dependency treatment from another professional, except with the knowledge of the other professional and the consent of the client, until treatment with the other professional ends;

(2) cooperate with the commission, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information unless prohibited by law; and

(3) ensure that his/her actions in no way [~~not in any way~~] exploit relationships with supervisees, employees, students, research participants or volunteers.

(m) Prior to treatment, the licensed chemical dependency counselor shall inform the client of the counselor's fee schedule and establish financial arrangements with a client. The counselor shall not:

(1) charge exorbitant or unreasonable fees for any treatment service;

(2) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for treatment;

(3) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for treatment provided;

(4) accept a private professional fee or any gift or gratuity from a client if the client's treatment is paid for by another funding source, or if the client is receiving treatment from a facility where the counselor provides services (unless all parties agree to the arrangement in writing).

§150.71. Pre-Service Education Institutions (PSEI) Registration.

(a) To become a pre-service education institution (PSEI), an organization must submit a complete application and agree to comply with commission requirements described in the application packet. An organization that is not in good standing with the appropriate licensing and regulatory authorities is not eligible to become a PSEI.

(b) The application shall include the course syllabus for each 45-hour course.

(c) [~~(b)~~] The PSEI shall receive the registration letter and PSEI number before training begins.

(d) Approval allows the organization to provide education at any of the sites listed on the application.

(e) [~~(c)~~] The approval is valid for two years. The PSEI shall reapply every two years by submitting the Application Update Form provided by the commission. The commission may mail a courtesy notice, but it is the PSEI's responsibility to reapply at least 45 days before the expiration date.

(f) [~~(d)~~] The PSEI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the education program;

(2) addition of a new education site; or

(3) a change in the organization's name.

(g) [~~(e)~~] The commission may withdraw approval if the PSEI fails to comply with all applicable commission rules [~~minimum requirements~~].

(h) A PSEI may also provide the practicum, providing the organization registers as a Practicum Provider.

§150.72. Pre-Service Education Institutions (PSEI) Standards.

(a) Training Curriculum Framework.

(1) All Pre-Service Education Institutions (PSEIs) shall adopt and implement a curriculum that conforms with the training curricula framework approved by the commission.

(2) Each PSEI shall offer six 45-hour units of instruction consistent with the curriculum framework.

(3) Courses must be non-repetitive in structure.

(4) The PSEI must develop a syllabus that shows each week's text, teaching goals and objectives, and teaching methods. The syllabus for each class must be given to each student at the beginning of the course.

(5) Each 45-hour course must run on a 50-minute hour allowing adequate time for breaks.

(6) No more than 45 hours of education shall be offered through independent study or long-distance learning courses.

(A) The courses shall be faculty- or instructor-guided and monitored, and students shall have access to faculty or instructors for questions and assistance in the completion of course work.

(B) Independent and long-distance learning courses are only accepted when provided by an accredited institution of higher education or an organization accredited by the Texas Association of Addiction Professionals or the National Association of Drug and Alcohol Abuse Counselors.

(b) Admission. The PSEI shall establish and implement admission criteria.

(1) All students must have a minimum of a high school diploma or GED.

(2) The PSEI shall maintain documentation that each student admitted to the program meets the admission criteria.

(3) The provider shall give each applicant a copy of the commission's rules and explain the requirements related to Background Investigations so the applicant can make an informed decision whether or not to pursue education.

(c) Accessibility. The PSEI shall comply with the Americans with Disabilities Act to accommodate disabled students.

(d) Record Keeping. The PSEI shall maintain attendance and graduation records on each student for four years. These records shall include:

(1) student name and address;

(2) signed copies of the financial policy and the students' rights and obligations;

(3) copy of high school diploma or GED;

(4) attendance records for each 45-hour course;

(5) certificates documenting successful completion for each 45-hour course; and

(6) student evaluation of instructors and course content for each 45-hour course.

(e) Student Rights. The PSEI must give each student a handbook explaining student rights and obligations. The handbook shall include:

(1) refund policy;

(2) attendance policy;

(3) homework obligations;

(4) grading system; and

(5) grievance procedure which includes the right to file a complaint with the commission if the grievance process has been exhausted.

(f) Attendance Policies. Students must attend 85% (38 hours) of each course in order to obtain credit.

(1) Students that are absent must be allowed to make up at least 10% (5 hours) of the course. Make-up work may include a report and/or completion of a project that relates to the material covered on the missed class days.

(2) After 15% (7 hours) of a 45-hour course has been missed (and not made up), the student cannot earn credit. The course must be repeated in order to grant the student credit.

(3) Partial credit cannot be given for any course.

(g) Financial Policies. The PSEI must have a written policy regarding fees and refunds. A copy of the policy shall be given to each student at enrollment, and the student shall indicate receipt and understanding of the policy by his/her signature.

(h) Hours and Credits.

(1) The PSEI must offer all 270 hours of instruction within a 24-month period.

(2) Courses must be scheduled at least 30 days in advance.

(i) Teaching Modalities. Each course must have a balanced teaching approach that includes visual, auditory, and kinesthetic modalities. A course shall not include more than nine hours of video presentations.

(j) Student Evaluation. The PSEI shall give each student a grade for each course reflecting achievement of course objectives.

(1) The grade shall be based 30% on homework assignments, 30% on class projects and quizzes, and 40% on tests.

(2) The PSEI shall give students a progress report halfway through the semester that includes the average grade based on performance to date.

(3) A final grade below 70 shall result in no credit for the course. The student must repeat the course and receive a grade of at least 70 to receive credit.

(k) Certificates of Completion. Each student who successfully completes a 45-hour course shall receive a certificate of completion.

(1) The provider shall issue sequentially numbered certificates and maintain a log of the certificates issued.

(2) Certificates shall be issued in person or by mail within 14 days of the last day of instruction.

(l) Instructors. Every instructor shall be a Qualified Credentialed Counselor with documented experience or training in teaching or workshop presentation facilitation.

(m) Instructor Evaluation. The PSEI coordinator shall evaluate each instructor at the end of each course. If performance is below standards, the PSEI shall work with the instructor to develop and implement an appropriate plan for professional development.

(n) The PSEI shall use all forms mandated by the commission.

§150.75. Practicum Provider Registration.

(a) To become a practicum provider, an organization must submit a complete application and agree to comply with the requirements in this section. An organization that is not in good standing with the appropriate licensing and regulatory authorities is not eligible to become a practicum provider.

(b) If treatment is provided on site, the practicum provider must be either licensed to provide chemical dependency treatment or exempt from licensure.

(c) The provider shall receive the registration letter and practicum provider number before training begins.

(d) Approval allows the organization to provide practicum supervision at any of the programs or sites listed on the application.

(e) The approval is valid for two years. The practicum provider shall reapply every two years by submitting the Application Update Form provided by the commission. The commission may mail a courtesy notice, but it is the provider's responsibility to reapply at least 45 days before the expiration date.

(f) The provider shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) establishment of additional training sites;

(2) closure of the training program; and

(3) a change in the organization's name.

(g) The commission may withdraw approval if the practicum provider fails to comply with all applicable commission rules.

§150.76. Practicum Provider Standards.

(a) The practicum provider shall establish admission criteria. No applicant shall be admitted without:

(1) documentation that the applicant has successfully completed the 270 hours of required classroom education; and

(2) a signed ethics agreement which is consistent with the LCDC Ethical Standards in §150.61 of this title (relating to Ethical Standards).

(b) The practicum provider shall appoint a single practicum coordinator who is a qualified credentialed counselor (QCC). The practicum coordinator shall oversee all training activities and ensure compliance with commission requirements and rules.

(c) The practicum provider shall develop a written training curriculum.

(1) The training program shall document learning objectives, learning activities, and the estimated number of hours of experience in each of the twelve core functions.

(2) All training shall be provided by QCCs.

(3) Training may be provided through formal agreements with other agencies if the practicum provider agency does not perform all of the twelve core functions. These agencies do not need to be registered practicum providers. All contractual agreements must be documented and available for review by the commission upon request.

(4) Although the practicum may involve multiple sites and facilities, all practicum credit is awarded under a single practicum provider number and the designated practicum coordinator maintains responsibility for the overall practicum training.

(5) An intern must complete all 300 hours of the practicum with a single approved practicum provider. A practicum provider cannot grant partial credit for a practicum.

(d) All interns shall work under the direct supervision of a qualified credentialed counselor (QCC). During the practicum the supervisor must:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least once per week;

(3) conduct and document a weekly review of all of the intern's written work produced since the previous review;

(4) provide and document one hour of face-to-face individual or group supervision each week which includes verbal and written feedback and direction; and

(5) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(e) A single QCC shall not supervise more than five interns.

(f) Each practicum supervisor must obtain three hours of continuing education in clinical supervision every two years.

(g) The QCC shall evaluate each intern's progress in writing and provide the intern with appropriate information and guidance.

(1) The practicum coordinator will complete written evaluations with input from other QCCs who have provided direct supervision for the intern.

(2) The coordinator will complete a Practicum Student Evaluation Form and a Supervised Field Work Practicum Documentation of Hours Form for each intern. This information must be given to the intern no later than 10 business days after the date the intern completes all practicum requirements.

(3) All documentation must be completed on current, commission-approved forms. The practicum provider shall use all forms mandated by the commission.

(h) The provider shall not allow an intern to accrue more than 40 practicum hours per week.

(i) The provider shall not require an intern to work more than 325 hours in order to accumulate the 300 required practicum hours.

(j) The provider shall give the student a written practicum schedule that includes a completion date before the practicum begins.

(k) The provider shall give each student the commission's Student Practicum Assessment Form with instructions to complete the assessment and mail it directly to the commission's counselor licensure department.

(l) The practicum provider shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the commission.

(m) The practicum provider shall maintain the following documentation for four years:

(1) curricula;

(2) letters of agreement with other agencies (if applicable);

(3) verification of current credentials of all training personnel;

(4) supervision assignments;

(5) documentation of supervisor continuing education; and

(6) student files, which shall include:

(A) application and documentation of eligibility;

(B) ethics agreement signed by the student;

(C) documentation of all supervision activities;

(D) documentation of accumulated hours in each of the twelve core functions;

(E) copy of the Practicum Documentation Form; and

(F) copy of the Practicum Student Evaluation Form.

§150.77. Clinical Training Institution Registration.

(a) To become a clinical training institution (CTI), an organization must submit a complete application and agree to comply with the standards in this section. An organization that is not in good standing with the appropriate licensing and regulatory authorities is not eligible to become a CTI.

(b) If treatment is provided on site, the CTI must be either licensed to provide chemical dependency treatment or exempt from licensure.

(c) The CTI must provide nine of the twelve core functions, including assessment and counseling, and serve a predominantly substance-abusing population.

(d) The CTI shall receive the registration letter and CTI number before training begins.

(e) Approval allows the organization to provide clinical training at any of the programs or sites listed on the application.

(f) The approval is valid for two years. The CTI shall reapply every two years by submitting the Application Update Form provided by the commission. The commission may mail a courtesy notice, but it is the CTI's responsibility to reapply at least 45 days before the expiration date.

(g) The CTI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) establishment of additional training sites;

(2) closure of the training program; and

(3) a change in the organization's name.

(h) The commission may withdraw approval if the CTI fails to comply with all applicable commission rules.

§150.78. Clinical Training Institution Standards.

(a) The CTI shall establish admission criteria. No applicant shall be admitted without:

(1) documentation that the applicant has successfully completed the 270 hours of required classroom education and the 300 hour practicum or an official college transcript showing a degree that qualifies for waiver of these requirements as described in §150.32 (relating to Requirements for Licensure); and

(2) a signed ethics agreement which is consistent with the LCDC Ethical Standards in §150.61 of this title (relating to Ethical Standards).

(b) The CTI shall appoint a single CTI coordinator who is a qualified credentialed counselor (QCC). The CTI coordinator shall oversee all training activities and ensure compliance with commission requirements and rules.

(c) The CTI shall establish the following level system to classify interns according to hours of supervised work experience:

(1) Level I: 0-1000 hours of work experience;

(2) Level II: 1001-2000 hours of work experience; and

(3) Level III: 2001-4000 hours of work experience.

(d) The CTI shall designate each intern's level in writing and provide the intern with a copy of the documentation.

(e) The CTI shall develop an outline of reading assignments and training activities for each KSA domain.

(f) The CTI shall work with the intern to establish goals using the commission's KSA evaluation tool as a guideline.

(1) The clinical supervisor and the intern shall set weekly objectives based on areas that need improvement.

(2) Clinical training activities shall be assigned to each intern which relate to the intern's KSA goals and objectives.

(3) The clinical supervisor shall monitor the intern's progress towards goals and objectives and provide verbal and written feedback during weekly supervision meetings.

(4) The supervisor shall provide reading and/or video assignments that address areas needing improvement. The CTI shall allow the intern two hours per month to complete these assignments.

(g) The CTI shall use the commission's KSA evaluation tool to evaluate intern progress and provide feedback.

(1) The intern shall complete a written KSA self-evaluation during the first 50 hours of work experience.

(2) The clinical supervisor and the intern shall complete and discuss a written KSA evaluation at the completion of each level of experience (after 1000 hours, 2000 hours, and 4000 hours).

(h) All interns shall work under the direct supervision of a qualified credentialed counselor (QCC).

(1) During an intern's first 1000 hours of supervised work experience (Level I), the supervisor must:

(A) be on duty at the program site where the intern is working;

(B) observe and document the intern performing assigned activities at least once every two weeks;

(C) conduct and document a weekly review of all of the intern's written work produced since the previous review;

(D) provide and document one hour of face-to-face individual or group supervision each week; and

(E) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(2) During an intern's second 1000 hours of supervised work experience (Level II), the supervisor must:

(A) be on duty at the program site where the intern is working;

(B) observe and document the intern performing assigned activities at least once every month;

(C) conduct and document a monthly review of the intern's current written work;

(D) provide and document one hour of face-to-face individual or group supervision each week; and

(E) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(3) During an intern's last 2000 hours of supervised work experience (Level III), the supervisor must:

(A) be available by phone while the intern is working;

(B) observe and document the intern performing assigned activities as determined necessary by the CTI coordinator;

(C) conduct and document a quarterly review of all of the intern's current written work;

(D) provide and document one hour of face-to-face individual or group supervision each week; and

(E) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(i) Each clinical supervisor must obtain three hours of continuing education in clinical supervision every two years.

(j) A single QCC shall not supervise more than five interns.

(k) The CTI shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the commission.

(l) The CTI shall review and sign each intern's Supervised Work Experience Form(s).

(m) The CTI shall not allow an intern to accrue more than 40 hours of supervised work experience per week.

(n) Only work experience primarily related to chemical dependency counseling and other core functions can be counted towards supervised work experience.

(o) The provider shall give each student the commission's Student CTI Assessment Form with instructions to complete the assessment and mail it directly to the commission's counselor licensure department.

(p) The CTI shall use all forms mandated by the commission.

(q) The CTI shall maintain the following documentation for four years:

(1) curricula;

(2) verification of current credentials of all training personnel;

(3) supervision assignments; and

(4) intern files, which shall include:

(A) application and documentation of eligibility;

(B) ethics agreement signed by the student;

(C) copies of KSA evaluations;

(D) documentation of all supervision activities;

(E) documentation of intern levels and accumulated hours;

(F) copy of the Supervised Work Experience Form (when applicable).

(r) The CTI shall give the student a copy of all information contained in the intern file.

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 August 11, 1999.

TRD-9905056
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 349–6733

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40 TAC §§150.51, 150.72, 150.73

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§150.51, 150.72 and 150.73 concerning Counselor Licensure. These sections contain information on civil penalty enforcement, clinical training institutions and practicum providers. These repeals are proposed because this chapter is being reorganized to a more logical sequence and the requirements in these sections will be incorporated into new sections that are proposed concurrently.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will be that the requirements contained in these sections will be presented in the counselor licensure rules in a way that is more understandable. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments

must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

These repeals are proposed under the Texas Occupations Code, Chapter 504, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for the licensure of chemical dependency counselors.

The code affected by the proposed repeals is the Texas Occupations Code, Chapter 504.

§150.51. Civil Penalty Enforcement.

§150.72. Clinical Training Institutions.

§150.73. Practicum Providers.

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

Filed with the Office of the Secretary of State, on August 11, 1999.

TRD-9905057

Mark Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: September 26, 1999

For further information, please call: (512) 349–6733

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Part IV. Texas Commission for the Blind

Chapter 163. Vocational Rehabilitation Program

The Texas Commission for the Blind proposes the amendment of §§163.4, 163.11-163.14, 163.18, 163.25, 163.26, 163.28, 163.34, 163.36 - 163.38, 163.40, 163.52 and the repeal of §163.15 regarding the Vocational Rehabilitation Program. The amendments and repeal are proposed to bring the agency's state rules into conformance with 1998 amendments to the Rehabilitation Act of 1973. The proposed amendments are predominately the result of changes in terminology in the Act. What was formerly known as an "individualized written rehabilitation program" has been changed to an "individualized plan for employment." Section 163.18 contains the new mandatory components of a consumer's plan. The repeal of §163.15 is proposed because references to extended evaluations have been deleted in the Act.

Robert A. Packard, Deputy Director of Administrative Services, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Packard has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rules will be a state rule base that conforms to federal law, which is required to derive the full benefits to the state of the federal program. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rule.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P. O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

Subchapter A. General Information

40 TAC §163.4

The amendments are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The amendments also affect Human Resources Code §91.053 and §91.055.

§163.4. Definitions.

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

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

(5) Comparable services and benefits – Services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the consumer at the time needed to achieve the intermediate rehabilitation objectives in the individual's individualized plan for employment (IPE) [~~written rehabilitation program (IWRP)~~]; and commensurate to the services that the consumer would otherwise receive from the commission.

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

(15) Individual with a most significant [~~severe~~] disability – An individual with a significant [~~severe~~] disability who:

(A) is seriously limited in four or more functional capacities (such as the inability to obtain or retain employment independently, obtain a driver's license without special optical accommodations, care for self independently, access standard print, travel independently, socially interact with others, access technology without special adaptations, or manage one's home independently) in terms of an employment outcome;

(B) requires, in addition to comprehensive assessment, counseling, guidance, and employment assistance, at least four other substantial VR services; and

(C) needs services for a period of at least six months.

(16) Individual with a significant [~~severe~~] disability – An individual with a disability:

(A) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(17) Individualized Plan for Employment (IPE) [~~Written Rehabilitation Program (IWRP)~~] – A written record that documents all phases of the consumer's rehabilitation process as developed by the counselor and the consumer.

(18) Maintenance – Monetary support authorized in an IPE [~~IWRP~~] for those expenses, such as food, shelter, clothing, that are in excess of the normal expenses of a consumer or an applicant receiving extended evaluation services and that are necessitated by the person's participation in a program of vocational rehabilitation services.

(19) Ongoing support services – As used in the definition of "supported employment," services that are needed to support and maintain a person with a most significant[~~severe~~] disability in supported employment, identified based on a determination by the commission of the person's needs as specified in an IPE [~~IWRP~~]; and furnished by the commission from the time of job placement until transition to extended services, unless post-transition services are provided, following transition; and thereafter by one or more extended services providers throughout the person's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment.

(20)-(28) (No change.)

(29) Supported employment – Competitive work in an integrated setting with ongoing support services for individuals with the most significant [~~severe~~] disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a significant [~~severe~~] disability; and who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition in order to perform this work, or transitional employment for individuals with the most significant [~~severe~~] disabilities due to mental illness.

(30) Supported employment services – Ongoing support services and other appropriate services needed to support and maintain an individual with a most significant [~~severe~~] disability in supported employment.

(31)-(32) (No change.)

(33) Transportation – Travel and related expenses that are necessary to enable a person to participate in a [~~any~~]vocational rehabilitation service.

(34) (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 August 13, 1999.

TRD-9905113
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 459–2611

♦ ♦ ♦

Subchapter B. Basic Program Requirements

40 TAC §§163.11–163.14, 163.18

The amendments are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The amendments also affect Human Resources Code §91.053 and §91.055.

§163.11. Eligibility.

(a) An applicant's eligibility for vocational rehabilitation services shall be based on the following requirements:

(1) The applicant must have a visual impairment.

(2) The applicant's visual impairment must constitute or result in a substantial impediment to employment for the applicant.

(3) Subject to §163.12 of this title (relating to Presumption of Benefit), the applicant must be capable of benefiting in terms of an employment outcome from the provision of vocational rehabilitation services.

(4) The applicant must require vocational rehabilitation services to secure, retain, or regain employment [~~prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice~~].

(b)-(e) (No change.)

§163.12. Presumption of Benefit.

(a) An applicant shall be presumed capable of benefiting in terms of an employment outcome unless the commission demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services. With respect to situations in which the issue concerns the severity of the applicant's disability and potential for employment outcome, the commission shall explore the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences [~~conducts an extended evaluation pursuant to provisions in §163.15 of this title (relating to Extended Evaluation for Persons with Severe Disabilities)~~].

(b) (No change.)

(c) Upon receiving appropriate evidence that establishes the applicant's eligibility for benefits under title II or title XVI of the Social Security Act due to blindness and the person has indicated a willingness to work, the commission presumes that the applicant meets the [~~first two~~] basic eligibility requirements in subsection (a) of §163.11 of this title (relating to Eligibility)[~~; however, the applicant must meet the remaining eligibility requirements~~].

§163.13. Eligibility Determination Time Frame.

(a) (No change.)

(b) Exceptions to exceeding the 60-day time frame for determining eligibility or ineligibility may occur only when:

(1) the commission notifies the applicant that unforeseen circumstances beyond the control of the commission preclude the commission from completing the determination in 60 days; and

(2) the applicant, or the applicant's representative, as appropriate, agrees to a specific extension of time; or

(3) the commission is exploring an individual's abilities, capabilities, and capacity to perform in work situations [~~determination is made that an extended evaluation is necessary to determine the individual's eligibility for vocational rehabilitation services and the nature and scope of services needed~~].

(c) (No change.)

§163.14. Data for Eligibility Determination.

(a) The [~~Except as provided in §163.15 of this title (relating to Extended Evaluation for Persons with Severe Disabilities, the~~] commission bases its determination of eligibility on existing data, including information provided by the applicant or the applicant's family, education records, information used by the Social Security Administration, and, to the extent appropriate and available, determinations made by officials of other agencies.

(b) (No change.)

§163.18. Individualized Plan for Employment (IPE))[~~Written Rehabilitation Program (IWRP)~~].

(a) All IPE's shall be written on the form prescribed by the commission for this purpose. [~~The IWRP and all subsequent amendments shall be developed jointly by the counselor and consumer or, as appropriate, the consumer's representative.~~]

(b) The commission shall advise each consumer or, as appropriate, the consumer's representative, of the consumer's options and all commission procedures and requirements affecting the development and review of an IPE [~~IWRP~~], including the availability of special modes of communication.

(c) In developing an IPE [~~IWRP~~], for a student with a disability who is receiving special education services, the commission shall consider the student's individualized education program.

(d) The IPE [~~IWRP~~], shall be reviewed with the consumer, or as appropriate, the consumer's representative, as often as necessary, but at least once each year, to assess the consumer's progress in meeting the objectives identified in the IPE [~~IWRP~~].

(e) All substantive revisions necessary to reflect changes in the consumer's employment outcome, specific vocational rehabilitation services, service providers, and the methods used to procure services shall be incorporated into the consumer's IPE. [~~The counselor shall incorporate into the IWRP any revisions that are necessary to reflect changes in the consumer's vocational goal, intermediate objectives or vocational needs.~~]

(f) The counselor shall provide the consumer, or, as appropriate, the consumer's representative, with a copy of the IPE [~~IWRP~~], and its amendments, in the mode of communication specified by the consumer or representative .

(g) The data used for preparing the IPE [~~IWRP~~] shall be the information necessary to satisfy federal requirements and to adequately document a consumer's plan of services. Regardless of the approach selected by an eligible individual to develop an IPE, an individualized plan for employment shall, at a minimum, contain the following mandatory components:

(1) a description of the consumer's specific employment outcome;

(2) a description of the specific vocational rehabilitation services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and timelines for the achievement of the employment outcome and for the initiation of the services;

(3) a description of the entity chosen by the consumer or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;

(4) a description of criteria to evaluate progress toward achievement of the employment outcome;

(5) the terms and conditions of the IPE, including, as appropriate, information describing:

(A) the responsibilities of the Commission;

(B) the responsibilities of the consumer, including:

(i) the responsibilities the consumer will assume in relation to the employment outcome of the individual;

(ii) if applicable, the participation of the consumer in paying for the costs of the plan; and

(iii) the responsibility of the consumer with regard to applying for and securing comparable benefits; and

(iv) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits;

(6) for a consumer with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying:

(A) the extended services needed by the eligible individual; and

(B) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and

(7) as determined to be necessary, a statement of projected need for post-employment services.

(h) Prior to suspending, reducing, or terminating any planned service in the IPE [~~IWRP~~], the agency shall send written notification of intent to the consumer's last known address.

(i) (No change.)

(j) The Commission shall not institute a suspension, reduction, or termination of services being provided under an IPE [~~IWRP~~] in instances in which the consumer has filed a request for a formal hearing or informal review, pending final resolution unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

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 August 13, 1999.

TRD-9905114
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 459–2611

♦ ♦ ♦

40 TAC §163.15

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

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

The repeal is proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The amendments also affect Human Resources Code §91.053 and §91.055.

§163.15. Extended Evaluation for Persons with Severe Disabilities.

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 August 13, 1999.

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Terrell I. Murphy
Executive Director
Texas Commission for the Blind
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For further information, please call: (512) 459–2611

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Subchapter C. Vocational Rehabilitation Services

40 TAC §§163.25, 163.26, 163.28, 163.34, 163.36–163.38, 163.40

The amendments are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The amendments also affect Human Resources Code §91.053 and §91.055.

§163.25. Goods and Services.

(a) (No change.)

(b) Services are provided only when planned in advance and contained in the consumer's IPE [~~IWRP~~].

(c) Subject to the limitation prescribed in subsection (b) of this section, the following vocational rehabilitation services are available on an as-needed basis:

(1)-(19) (No change.)

(20) technical assistance and other consultation services. [~~other goods and services determined necessary for the individual with a disability to achieve an employment outcome.~~]

(d) If comparable services or benefits exist under any other program and are available to the consumer at the time needed to achieve the rehabilitation objectives in the individual's IPE [~~IWRP~~], the commission shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

(e) If comparable services or benefits exist under any other program, but are not available to the consumer at the time needed to satisfy the rehabilitation objectives in the individual's IPE [~~IWRP~~], the commission shall provide vocational rehabilitation services until those comparable services and benefits become available.

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

§163.26. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Assessment for Rehabilitation Technology.

(a) The commission conducts assessments for determining eligibility, vocational rehabilitation needs, and, if necessary, rehabilitation technology for each consumer in order to develop an IPE [~~IWRP~~], that is designed to achieve the consumer's vocational goal. The vocational goal shall be an employment outcome that is consistent with the person's unique strengths, resources, priorities, concerns, abilities, capabilities, and career interests.

(b) If additional data are necessary to prepare an IPE [~~IWRP~~], the commission conducts a comprehensive assessment of the consumer's unique strengths, resources, priorities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the consumer.

(c)-(d) (No change.)

§163.28. Vocational and Other Training Services.

(a) (No change.)

(b) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) shall be subject to the following:

(1) Academic training in vocational schools and technical institutes shall be provided only in schools that are certified by the State of Texas.

(2) No academic training shall be paid from vocational rehabilitation funds unless maximum efforts have been made by the agency and the consumer to secure grant assistance in whole or in part from other sources to pay for such training.

(3) The consumer must contact the college or university and apply for any available financial aid [~~to determine what grants, loans, or scholarships may be available; must apply for SSI or SSDI; and must complete any paperwork required to apply for such grants, loans, or scholarships~~].

(4)-(12) (No change

§163.34. Post-Employment Services.

(a) (No change.)

(b) Post-employment services must be incidental to the original impediment to employment, ancillary to the services provided through the consumer's IPE [~~IWRP~~], and related to the previously planned vocational goal.

§163.36. Personal Assistance Services

(a) (No change.)

(b) A consumer who is an individual with a significant [~~severe~~] disability or a most significant [~~severe~~] disability may receive personal attendant services if:

(1) the consumer is actively receiving another vocational rehabilitation service covered in §163.25 of this title (pertaining to Goods and Services), and

(2) personal attendant services are necessary for the consumer to achieve an employment outcome.

(c)-(h) (No change.)

§163.37. Transition Services.

(a) (No change.)

(b) Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's IPE [~~IWRP~~].

§163.38. Supported Employment Services.

(a) (No change.)

(b) Supported employment services are limited to 18 months unless the consumer and the commission jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the consumer's IPE [~~IWRP~~].

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

§163.40. Self-employment Services.

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

(c) Existing business.

(1) If a request for services is primarily to get additional tools or equipment for an existing business and the business venture can be reasonably expected to succeed as it currently exists, the commission determines that the person does not meet all of the requirements contained in §163.11 of this title (relating to Eligibility).

(2) If a substantial impediment to employment exists because of the lack of necessary tools and equipment and the person is in danger of loss of self-employment, an IPE [~~IWRP~~] is developed that includes the services to prevent loss of self-employment.

(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 August 13, 1999.

TRD-9905116
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 459–2611

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Subchapter D. Order of Selection for Services

40 TAC §163.52

The amendments are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The amendments also affect Human Resources Code §91.053 and §91.055.

§163.52. Order of Selection.

(a) If it becomes necessary, due to limited funds, for the Commission to operate under an order of selection, vocational rehabilitation services shall be provided according to the following priorities:

(1) Priority 1 – Persons who meet the definition of individual with a most significant [~~severe~~] disability.

(2) Priority 2 – Persons who meet the definition of individual with a significant [~~severe~~] disability.

(3) Priority 3 – Persons who meet the definition of individual with a disability.

[~~(b) Within the priorities listed in subsection (a) of this section, special consideration and priority are given to public safety officers whose visual impairments are sustained in the line of duty.~~]

(b) [~~(c)~~] To inquire if the agency is operating under the order of selection, a person may contact any commission office, including the central office at 4800 North Lamar, Austin, Texas, toll-free 800-252-5204.

(c) [~~(d)~~]In the event the order of selection is implemented, the commission shall:

(1) implement the order of selection on a statewide basis;

(2) notify all eligible individuals of the priority categories in the order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) continue to provide all needed services to any consumer who has begun to receive services under an IPE[~~IWRP~~] prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and

(4) ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the commission shall renegotiate these funding arrangements so that they are consistent with the order of selection.

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 August 13, 1999.

TRD-9905117
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 459–2611

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Chapter 166. Blindness Education, Screening and Treatment Program

40 TAC §§166.1–166.3

The Texas Commission for the Blind proposes the adoption of new §§166.1-166.3 pertaining to the Blindness Education, Screening, and Treatment Program. In accordance with Human Resources Code, §91.027, these rules implement the program insofar as funds available under Transportation Code, §521.421 allow. The rules define terms, prescribe eligibility criteria for receiving vision-screening services, and delineate who may provide screening services.

Robert A. Packard, Deputy Director of Administrative Services, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The funds appropriated to the Commission for services covered in the rules are limited to the amount donated by the public for program purposes.

Mr. Packard has also determined that for each year of the first five years the rule as proposed is in effect the public

benefits anticipated as a result of enforcing the rules will be the availability of screening services that will aid in identifying eye conditions that may lead to blindness. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rule.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P. O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The rules are proposed under Human Resources Code, Title 5, Chapter 91, §91.027, which authorizes the commission to develop the program and adopt rules prescribing eligibility requirements

The rules also affect Transportation Code, §521.421.

§166.1. Purpose and Authority.

These sections describe the Blindness Education, Screening, and Treatment (BEST) Program administered by the Texas Commission for the Blind under the authority of Human Resources Code, §91.027. The Commission is authorized to implement the program only to the extent that funds are available under Transportation Code, §521.421(f).

§166.2. Definitions.

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

(1) Commission – Texas Commission for the Blind.

(2) Resident – An individual who is physically present within the geographic boundaries of Texas; has an intent to remain within the state, either permanently or for an indefinite period; actually maintains an abode (e.g., house, apartment, etc., but not merely a post office box) within this state.

(3) Program – The Blindness Education, Screening and Treatment Program.

(4) Vision Screening – A nondiagnostic procedure that uses uniform testing techniques to assess the person's risk of vision loss and eye disease.

§166.3. Vision Screening Services.

(a) To be eligible to receive program vision screening services, an individual must be an adult resident of the state.

(b) Vision screening services may be provided through a contractor.

(c) Vision screenings shall be conducted by:

(1) Persons who have attended and completed vision screening training from the Texas Department of Health and are currently certified as vision screeners; or

(2) Persons who have been trained by a vision screener currently certified by Texas Department of Health as a vision screener; or

(3) Persons who are eye care professionals licensed by the State of Texas (optometrists and ophthalmologists); or

(4) Persons who are trained and supervised by an eye care professional licensed by the State of Texas.

(d) Persons receiving vision screenings shall receive the screening results and, if necessary, a recommendation regarding the need for a follow-up examination by an eye care professional.

(e) When a referral is made for an eye examination to another agency or organization, the referral agency or organization's rules shall apply. A referral by the BEST program is not an endorsement of another agency, organization or eye care professional by the Texas Commission for the Blind.

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 August 13, 1999.

TRD-9905103
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: September 26, 1999
For further information, please call: (512) 459–2611

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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 1. ADMINISTRATION

Part XV. Health and Human Services

Chapter 361. Children's Health Insurance Program

1 TAC §361.1

The Health and Human Services has withdrawn from consideration for permanent adoption the proposed new §361.1, which appeared in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5619).

Issued in Austin, Texas, on August 16, 1999.

TRD–9905170
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services
Effective date: August 16, 1999
For further information, please call: (512) 424–6576

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 89. General Rules and Regulations

22 TAC §89.11

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Cosmetology Commission has been automatically withdrawn. The amended section as proposed appeared in the February 19, 1999 issue of the *Texas Register* (24 TexReg 1105).

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905295

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 130. Impairment and Supplement Income Benefits

Subchapter A. Impairment Income Benefits

28 TAC §130.3

The Texas Workers' Compensation Commission has withdrawn from consideration for permanent adoption the amendment to §130.3, which appeared in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1134).

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905217
Susan Cory
Assistant General Counsel
Texas Workers' Compensation Commission
Effective date: August 17, 1999
For further information, please call: (512) 707–5829

♦ ♦ ♦

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 XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans-Standards

1 TAC §251.1

The Advisory Commission on State Emergency Communications adopts an amendment to §251.1, concerning regional plans for 9-1-1 service, without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4093).

Section 251.1 proposes to meet new technology advancements in telecommunications for the protection and reliability of 9-1-1 systems and to be consistent with changes in Commission policy. This section was a part of the agency's rule review of Chapter 251.

The amendment provides updated language and clarifies requirements; adds language consistent with newer rules, such as wireless; incorporates contractor reference, such as memorandum of understanding; and sets minimum standards for performance and reporting.

There were no comments received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056 and 771.059, which provides the Advisory Commission on State Emergency Communications the authority to plan for and implement emergency communication systems that meet set standards and in accordance with approved agency strategic plan.

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 August 16, 1999.

TRD-9905153
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305-6933

♦ ♦ ♦

1 TAC §251.2

The Advisory Commission on State Emergency Communications adopts an amendment to §251.2, concerning guidelines for changing or extending 9-1-1 service arrangements, without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4095).

The section provides the guidelines so that 9-1-1 service in the competitive and fast-changing telecommunications environment does not degrade the provision of the highest level of service. The amendment incorporates language consistent with new agency rule on wireless solution and provides consistency with the changes in Commission policy. This section was a part of the agency's rule review of Chapter 251.

There were no comments received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.056 and 771.059, which provides the Advisory Commission on State Emergency Communications the authority to provide the Advisory Commission on State Emergency Communications with the authority to administer and implement 9-1-1 emergency communications.

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 August 16, 1999.

TRD-9905154
James Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305-6933

♦ ♦ ♦

1 TAC §251.3

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §251.3, concerning guidelines for addressing funds, without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4649).

The section reflects reporting requirements that call for more timely, structured, and quantitative reports from the Councils of Governments to the ACSEC. The reporting to the ACSEC of addressing data will be required on a quarterly basis, at a minimum, or on an as-needed basis. The amendment to the section also addresses the reallocation of pool funds. This section was a part of the agency's rule review of Chapter 251.

There were no comments received on the proposal during the comment period.

The amendment is proposed pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.075, which authorizes the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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 August 16, 1999.

TRD-9905155
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 305-6933

♦ ♦ ♦

1 TAC §251.4

The Advisory Commission on State Emergency Communications adopts an amendment to §251.4, concerning guidelines for the provisioning of accessibility equipment, without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4097).

The proposed amendment includes restructuring the layout of the rule to provide reference to statutory requirements of the Americans with Disabilities Act (ADA) at the beginning of this section; clarifies section as a rule and not a "standard" pertaining to accessibility equipment and requires such to meet ADA requirements and standards set forth by the National Emergency Number Association; deletes agency historical information; expands the definition of "TDD"; adds "TTY" to all references made to "TDD" for clarification; and delineates funding for one TDD/TTY per position in accordance with federal mandate The amendment provides consistency with the changes in Commission policy. This section was a part of the agency's rule review of Chapter 251.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071 and 771.072, which provides the Advisory Commission on State Emergency Communications with the authority to develop standards for the establishment and operation of 9-1-1 service.

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 August 16, 1999.

TRD-9905156
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305-6933

♦ ♦ ♦

1 TAC §251.5

The Advisory Commission on State Emergency Communications adopts an amendment to §251.5, concerning guidelines for 9-1-1 equipment management, disposition and capital recovery, without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4099).

The amendment allows for improved methods of equipment management, disposition, and replacement planning and meets the recommendations of the State Auditor's Report No. 98-054 to the ACSEC received July 29, 1998. This section was a part of the agency's rule review of Chapter 251.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.072, 771.075, 771.071 and 771.072, which provides the Advisory Commission on State Emergency Communications with the authority to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds and for developing standards for the establishment and operation of 9-1-1 service.

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 August 16, 1999.

TRD-9905157
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.6

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §251.6, concerning guidelines for Strategic Plans, Amendments, and Equalization Surcharge, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4650).

The amendment provides language consistent with new legislation; provides for a biennial review of strategic plans; provides additional minimum standards for reporting; improved system for quantitative reporting and monitoring mechanisms for the 9-1-1 program statewide; and updates administrative require-

ments and processes. This section was a part of the agency's rule review of Chapter 251.

There were no comments received on the proposal during the comment period.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorizes the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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 August 16, 1999.

TRD-9905158
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 305–6933

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1 TAC §251.7

The Advisory Commission on State Emergency Communications adopts an amendment to §251.7, concerning guidelines and provisions for implementing integrated services, without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4102).

The amendment provides clarification on the process prior to integrating and deploying expanded third-party applications and provides consistency with the changes in Commission policy. This section was a part of the agency's rule review of Chapter 251.

There were no comments received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.056 and 771.059, which provides the Advisory Commission on State Emergency Communications the authority to administer the implementation of statewide 9-1-1 service, to develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and to allocate money to prepare and operate regional plans.

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 August 16, 1999.

TRD-9905159
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305–6933

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1 TAC §251.8

The Advisory Commission on State Emergency Communications adopts new § 251.8, concerning guidelines for the procurement of Equipment and Services with 9-1-1 Funds, without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4104).

The rule provides an improved mechanism to local governments in the procurement of equipment and services with 9-1-1 funds and to ensure that all minimum competitive procurement requirements are met. It further provides clarification for end-to-end lease arrangements.

There were no comments received regarding the adoption of the amendment.

The rule is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorizes the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

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TRD-9905160
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: September 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305–6933

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TITLE 7. BANKING AND SECURITIES

Part V. Office of Consumer Credit Commissioner

Chapter 85. Rules of Operation for Pawnshops

7 TAC §85.1, §85.2

The Office of Consumer Credit Commissioner (the agency) adopts the repeal of §85.1, defining terms, and §85.2, concerning licensing of pawnshops without changes to the text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5288).

The subjects of these sections will be addressed in new replacement sections that the agency is simultaneously adopting elsewhere in this issue of the *Texas Register*. The process of the repeal and simultaneous adoption of replacement rules is part of the agency's rule review process. Adoption of the repeals is necessary as the sections that are proposed for repeal would conflict with the adoption of new rules. Furthermore, repeal of obsolete rules will reduce the volume of existing rules, providing additional space for replacement rules. This process of repeal and adoption benefits the public and the industry by making the rules more accessible and readable.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Finance Code, §371.006, which authorizes the commissioner to adopt rules relating to the administration and enforcement of the Texas Pawnshop Act.

The statutory provision affected by the repeals is Chapter 371 of the Finance 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 August 16, 1999.

TRD-9905150
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 5, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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7 TAC §§85.21, 85.31, 85.41, 85.51, 85.61, 85.71, 85.81

The Office of Consumer Credit Commissioner (the agency) adopts the repeal of §85.21 concerning business records, §85.31 relating to crime victim assistance, §85.41 regarding security of persons and pledged goods, §85.51 concerning lost or damaged pledged personal property, §85.61 relating to advertising, §85.71 regarding examinations and investigations, and §85.81 concerning miscellaneous operating provisions without changes to the text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5289).

The repeals are necessary for administrative purposes in clarifying the printed version of the Texas Administrative Code. The sections that are proposed for repeal were challenged in district court. Upon appeal, the appeals court ruled that a technical and procedural violation in the manner of adoption invalidated the rule adoption.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Finance Code, §371.006, which authorizes the commissioner to adopt rules relating to the administration and enforcement of the Texas Pawnshop Act.

The statutory provision affected by the repeals is Chapter 371 of the Texas Finance 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 August 16, 1999.

TRD-9905151
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 5, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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Chapter 85. Rules of Operation for Pawnshops

Subchapter A. General Provisions

7 TAC §§85.101-85.104

The Office of Consumer Credit Commissioner (the commissioner) adopts new §§85.101-85.104 concerning general provisions with changes to the text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5289). The rules interpret and provide guidance to interested parties concerning the meaning and application of Subchapter A of the Texas Pawnshop Act (Texas Finance Code, Chapter 371).

Simultaneously, the Office of Consumer Credit Commissioner is repealing various rules and adopting these rules in their place. The rules being repealed and those being adopted here were reviewed and evaluated. An assessment was made that the reasons for (re)adopting the rules continue to exist. The process of repeal of certain rules and the adoption of these rules benefits the public and the industry by making the rules more accessible, readable, and providing clarity and guidance in certain administrative and enforcement procedures.

The agency received one comment from William R. Pakis concerning the application of §85.102 if implemented as proposed. The comment did not specify whether the commenter was for or against the rule adoption, but rather offered technical suggestions for modifying the rule as proposed.

Section 85.101 delineates the purpose and scope of this chapter of rules. The purpose and scope more clearly define the applicability of the chapter. This rule is necessary to ensure consistent application of the administrative rules to all persons who are engaging in transactions that are tantamount to pawn transactions even if they are not labeled as such.

Section 85.102 defines various terms that are used within the rules and the Texas Pawnshop Act. Definition of the terms is necessary to advise persons trying to comply with the rules on the meaning and effect of certain terms. The definitions are also necessary to ensure consistent application of the licensing and enforcement rules. For example, the definition of "principal party" is important to determine which individuals affiliated with a new pawnshop are required to submit personal affidavits, fingerprint investigation forms, and other forms in the licensing of a pawnshop. The commenter suggested that the definition of principal party should include both voting and non-voting members of a limited liability company, as well as each manager, officer, and agent of the limited liability company as these parties are required to be stated on the application form as provided by proposed rule 7 TAC §85.202(a)(1)(A)(iii)(V). The rule as proposed defines voting members (not non-voting members) of a limited liability company as a "principal party." The significance of the definition of "principal parties" is that it specifically identifies the individuals or natural persons who must provide fingerprints under Texas Finance Code §14.151 and 7 TAC §85.202(a)(1)(D). A principal party is an individual who has a substantial relationship with the applicant. Texas Finance Code §371.054(b)(2) requires that all owners, partners, or shareholders must be named on an application for a pawnshop. Rule 7 TAC §85.202(a)(1)(A)(iii) is consistent in applying these disclosure requirements. In some instances one of these individuals named on the application may not necessarily have a substantial relationship with the pawnshop. A non-voting member of a limited liability company, a silent investor, is one example. The fact that the individual is not permitted to vote regarding the affairs of the business suggests that the individual does not have a substantial relationship with the entity. The

rule was drafted in an attempt to not be overly burdensome with regulatory requirements upon individuals who do not have a substantial relationship with the pawnshop. Furthermore, the definition of "principal party" states that the definition "includes, but is not limited to," the parties enumerated in the section. The commissioner may still require fingerprints, or "principal party" status, of a non-voting member of a limited liability company if the commissioner believes that the non-voting member has a substantial relationship with the entity, as provided by Texas Finance Code §14.151(b). The agency respectfully disagrees with the comment.

Section 85.103 addresses the applicability of the chapter. The rule is necessary to clarify that any person who may attempt to disguise a transaction that would otherwise fit the definition of a pawn transaction may not evade the application of the chapter by employing a device or subterfuge.

Section 85.104 prescribes the dates for renewal and expiration of pawnshop and pawnshop employee licenses. The rule is necessary to stagger the dates of renewal from other licenses that the agency issues, so as to more evenly distribute the workload throughout the year.

The new sections are adopted under Texas Finance Code, §371.006 which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act. Additionally, these rules of procedure are proposed pursuant to Texas Government Code, §2001.004, requiring an agency to adopt rules of practice relating to the nature and requirements of administrative procedures.

§85.101. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of the Texas Finance Code, Chapter 371, which may be cited as the Texas Pawnshop Act.

(b) Scope. This chapter applies to a person engaged in the business of:

(1) lending money on the security of pledged goods; or

(2) purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.

§85.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Bank deposits–Cash on deposit in banks or in other federally insured depository institutions. The value of deposits shall be reduced by any taxes or penalties that would be due and payable if the funds were withdrawn on the date of valuation.

(2) Book value–The dollar amount assigned to assets using generally accepted accounting principles (GAAP). In evaluating merchandise inventory, the lower of the cost or the market value of the asset method is generally used when determining book value.

(3) Commissioner–The Commissioner of the Office of Consumer Credit Commissioner of the State of Texas as defined in Chapter 14 of the Texas Finance Code.

(4) Facility–The physical space used or proposed for the use of the operation of a pawnshop.

(5) Merchandise inventory–Tangible personal property held by a pawnbroker or applicant for immediate sale in the pawnshop or proposed pawnshop.

(6) Operator–A person or entity who manages the daily operations of a pawnshop. This term includes a party to a management agreement for oversight and supervision of the operations of the pawnshop on behalf of the owners of the pawnshop.

(7) Pawnbroker–A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the commissioner. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(8) Pledged goods–Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(9) Principal party–Each proprietor and adult individual with a substantial relationship to the proposed business of the applicant. An individual with a substantial relationship to the proposed business of the applicant shall include but is not limited to:

(A) a general partner;

(B) a voting member of a limited liability corporation;

(C) a corporate officer, including the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and an officer with substantial responsibility for operations or compliance with the Texas Pawnshop Act;

(D) a director of a corporation;

(E) a shareholder owning 5% or more of the outstanding voting stock;

(F) a trustee; and

(G) an operator.

§85.103. Attempted Evasion of Chapter.

A person may not use any device, subterfuge, or pretense to evade the application of this chapter. A device, subterfuge, or pretense includes any transaction that in form may appear on its face to be something other than a pawn transaction, but in substance meets the definition of a pawn transaction as defined in the Texas Pawnshop Act, §371.003(8).

§85.104. Renewal Dates of Licenses.

A pawnshop license and a pawnshop employee license shall expire on June 30th of each year unless the annual fee for the following year has been paid.

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 August 16, 1999.

TRD-9905124
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 5, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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Subchapter B. Pawnshop License

7 TAC §§85.201-85.212

The Office of Consumer Credit Commissioner (the commissioner) adopts new §§85.201-85.212 concerning the licensing of pawnshops with changes to the text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5291).

The rules pertain to Subchapter B of Chapter 371, Texas Finance Code. The rules interpret and provide guidance to interested parties concerning the meaning and application of Subchapter B of the Texas Pawnshop Act.

Comments on the proposed rules were received from: American Pawn, Garland; Big-Tex Pawn, Midland; CJM Enterprises, Inc., Killeen; Cash America International, Ft. Worth; and William R. Pakis, Waco. The comments received generally offer technical suggestions for modifying certain rules as proposed. None of the comments expressed support or opposition to the rules as a whole. The comments will be summarized below.

Simultaneously, the Office of Consumer Credit Commissioner is repealing various rules and adopting these rules in their place. These rules being repealed were reviewed and those being adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continues to exist. The process of repeal of certain rule and the adoption of these rules benefit the public and the industry by making the rules more accessible, readable, and providing clarity and guidance in certain administrative and enforcement procedures.

Section 85.201 clarifies the requirement that any person who desires to engage in the business of making pawn loans must obtain a license before being authorized to make pawn loans. Additionally, the section requires that an individual be appropriately authorized to make pawn loans before advertising the operation of a pawnshop. This is consistent with the requirement of Texas Finance Code, §341.404.

Section 85.202 prescribes the requirements for filing a new pawnshop application. The rule states the specific forms and accompanying information that must be filed with a new application. The rule is necessary to provide consistent procedures for the filing of pawnshop license applications and to advise the public and the industry of the filing requirements. Additionally, in subsection (c) the rule implements the provisions of House Bill 1878 regarding the distance requirement of a new pawnshop from existing pawnshops in counties with a population of greater than 250,000. One comment was received pertaining to this section regarding the filing requirements in subsection (a)(2)(B)(ii) for publicly held corporations. The comment was not received from a representative of a publicly held corporation. The proposed rule requires that the publicly held corporation must submit the most recent quarterly and annual reports required by §15(d) of the Securities and Exchange Act for the applicant or the parent company who files the reports. The commenter suggests that the phrase "or the parent company respectively" be stricken from the rule. The commenter states that "by allowing a public corporation to create multiple layers of business entities that use assets dedicated to the operation of business other than Texas pawnshops circumvents the law in both letter and intent. This situation places a heavier burden on small pawnshop owners than on the larger chains". The rule as drafted only applies to a publicly held corporation or an applicant held by a publicly held corporation. As such, it should not place a heavier burden on small pawnshop owners since the rule does not apply to them. It is not uncommon for publicly traded firms to create multiple levels of subsidiaries or other business structures with a common parent holding company and the Pawnshop Act nor the commissioner may preclude this. The applicant must meet the financial requirements in its own right. On occasion the applicant corporation may be indebted to the parent holding company in a way that might cause the applicant to fail to meet the qualifications. It is imperative that the commissioner be able to look behind the applicant subsidiary corporation or limited partnership to the parent holding company in order to determine financial responsibility and to ensure that the applicant meets the net asset requirement. The agency respectfully disagrees with the comment. Another comment was received regarding subsection (a)(2)(F) related to the requirement to provide a copy of a general liability and fire insurance policy. The commenter states that the section is vague and needs to be reworked. The commenter further questions how much insurance does a new pawnshop need to buy. The agency has had protracted conversations with the industry over the years regarding the appropriate amount of insurance that should be required. The rule as proposed recognizes that pawnshops are unique and that a pawnshop's loan volume may affect the required amount of insurance. The rule purposefully does not specify an amount of required insurance so that individual pawnshops may determine the amount that is satisfactory for their needs. Should the agency disagree with the amount of insurance that a pawnshop has procured, then the agency will address that issue, generally through the examination function. The agency respectfully disagrees with the comment and retains the rule as drafted as it represents the best solution for the wide diversity of pawnshops that currently exist and provides a lower level of regulatory burden.

Section 85.203 prescribes the requirements for relocating a pawnshop license. The rule states the specific forms and accompanying information that must be filed with the relocation application. The rule is necessary to provide consistent procedures for the filing and processing of pawnshop license applications and to advise the public and the industry of the filing requirements. One commenter suggests that the definition of relocation in subsection (a)(1). The agency agrees with the comment. The suggested language improves the clarity of the section, yet is not substantively different from the proposed rule. The subsection is amended accordingly.

Additionally, in subsection (f) the rule implements the provisions of House Bill 1878 regarding the distance requirement of existing pawnshop licenses from existing pawnshops in counties with a population of greater than 250,000. Specifically, the rule is necessary to fairly interpret and consistently apply the provisions of §371.059 of the Texas Pawnshop Act. During the legislative enactment of House Bill 1878, the legislative history indicates that §371.059(b)(2) was intended to apply to licenses that are not actively being used for the operation of a pawnshop. The rule is drafted to apply the statute in that fashion. Several comments were received regarding the rule as proposed implementing the provisions of §371.059(b)(2). One commenter agreed with the section, acknowledging its consistency with legislative intent. This commenter also pointed out an error in the rule as drafted in subsection (f)(2)(D). The rule states that if the licensee meets the conditions then "it may locate within one mile from an operating pawnshop." The rule should have read that if the licensee meets the conditions then "it may locate not less than one mile from an operating

pawnshop." The agency withdraws this portion of the rule. Several comments were received that were against the adoption of the provisions of subsection (f)(2) as proposed. These comments are summarized as follows:

(1) §85.203(f)(2)(A) makes extensive reference to September 1, 1999 as a guide in determining relocation criteria. There is no reference to or basis for this criterion in existing law. The law states that a licensed pawnshop can not be located within one mile of an existing pawnshop if it is relocating to a facility that is not an already existing pawnshop;

(2) §85.302(f)(2)(A) and (D) should be modified to eliminate a distinction based upon the date the license became inactive and should provide that an inactive license may be activated at any facility which is not within one mile of an existing operating pawnshop.

(3) §85.203(f)(2)(C) should read "if the pawnshop has been operating continuously at its current location for at least three years, it may locate not less than one mile from an operating pawnshop if it is relocating more than one mile from its current location";

(4) §85.203(f)(2)(D) should be modified to remove the three year inactive requirement. The commenter states that pursuant to §371.059(b)(2) an inactive license may be located at any facility which is not within one mile of an existing operating pawnshop;

(5) §85.203(f)(2)(D) refers to when licenses were assigned inactive status. Current law does not differentiate between active and inactive status of pawn licenses and will not support differentiation between licenses designated inactive before or after any given date. In addition, there is only one situation in which the law allows a pawnshop to move within one mile of an existing pawnshop and that is when it has been at its current location for three years and it is moving less than one mile from its location;

(6) §85.203(f)(2)(E) should be modified to provide that an active license, regardless of the time that it has been in operation at its current location, may be located at a facility which is not within one mile of an existing operation pawnshop;

(7) §85.203(f)(2)(E) should be modified to read that the pawnshop may locate not less than one mile from another operating pawnshop instead of two miles;

(8) §85.203(f)(2)(B) (D) should be modified to read: if the inactive license has been in existence at its current address for at least three years, it may activate at any location within one mile of its current address regardless of the distance from another operating pawnshop, or if activating in excess of one mile from its current address, the location shall not be less than one mile from an operating pawnshop;

(9) §85.203(f)(2)(B) (E) should be modified to read:

(A) If the pawnshop license has been in existence at its current address for less than three years, it may locate at any location not less than one mile from an operating pawnshop.

(B) If the pawn license has been in existence for at least three years, it may relocate at any location within one mile of its current address regardless of the distance from another operating pawnshop, or if activating in excess of one mile from its current address, the location shall not be less than one mile from an operating pawnshop.

RESPONSE: Two commenters assert that the proposed rules in 7 TAC §85.203(f)(2)(C) and (D) improperly distinguish between relocation of active and inactive licenses that have been at their current locations for at least three years. The commissioner disagrees. The text of §371.059(b)(3) of the Pawnshop Act, as amended in House Bill 1878, expressly refers to "relocation of a licensed pawnshop if at the time the application is filed the pawnshop has been in operation at its current location for at least three years." The commissioner cannot properly presume that the words "in operation" are mere surplusage. As Texas Supreme Court Chief Justice Thomas R. Phillips recently wrote in Rodriguez v. Service Lloyds Ins. Co., 42 Tex. Sup. J. 900 (July 1, 1999) (concurring opinion), "the proper presumption is that every word in a statute or rule was deliberately chosen for a meaning and a purpose. A cardinal rule of statutory construction is that each sentence, clause and word is to be given effect if reasonable and possible." Jessen Assocs., Inc. v. Bullock, 531 S.W. 2d 593, 600 (Tex. 1975); Perkins v. State 367 S.W. 2d 140, 146 (Tex. 1963). Further, even if the commissioner was to find ambiguity in the legislative language (which she does not), a resort to legislative history supports proposed rule §85.203(f)(2)(C) and (D) as currently worded. In this regard, a clear explanation of legislative intent appears at www.senate.state.tx.us/75r/Senate/Live.htm-Economic Development Committee Hearing 5/11/99 Part II. The agency further believes that September 1, 1999 is extremely significant in implementation of this rule as that is the effective date of the legislation and licenses in an inactive status on that date are able to avail themselves of the statute and rule's provisions. Nonetheless, the agency has removed references to the effective date of the legislation. In subsection (f)(2)(C) and (E), the agency evaluated these comments and agrees that in order to be consistent with §371.059(b)(3) of the Pawnshop Act that a pawnshop in operation may relocate not less than one mile from another pawnshop. The agency amends subsection (f)(2)(C) to remove the three year requirement of operation and deletes subparagraph (E). Comments regarding subparagraph (D) were addressed above and the agency has deleted this section of the rule.

Section 85.204 addresses the requirement for active operation of approved applications and provides authority for the approval of a temporary facility. The rule discusses the appropriate time frames for both of these requirements. The rule is necessary to provide consistent procedures, to prevent circumvention of the distance requirements, and to prevent a person from monopolizing a trade location and area without the intention of opening and operating a pawnshop.

Section 85.205 prescribes the requirements for filing an application for the transfer of ownership of a pawnshop license. The rule states the specific forms and accompanying information that must be filed with the application. The rule is necessary to provide consistent procedures for the filing of pawnshop license applications and to advise the public and the industry of the filing requirements. One comment was received pertaining to subsection (a) suggesting that the phrase "an existing owner relinquishes any interest in a licensee or" be deleted. The effect of implementing this suggesting would be that if an individual sold his entire interest in a pawnshop, then the agency would not be informed of that fact. The Texas Pawnshop Act §371.069 requires an application if a change in direct or beneficial ownership of a licensed pawnshop occurs. Relinquishing an entire interest in a pawnshop is a direct change in ownership. The agency needs to be informed of events such as this in order to

maintain appropriate ownership and legal responsibility records. The agency respectfully disagrees with the comment. Another comment was received regarding subsection (d) and the authority for a transferee to operate under a transferor's license for a limited period of time. The commenter requested that the rule be modified similarly to the current rule (§85.2(e) being proposed for repeal), specifically that the transferee be permitted three business days in which to file a request to operate under the transferor's license. The agency agrees with the commenter and has modified the rule accordingly.

Section 85.206 discusses the procedures that will be used in processing and evaluating license applications for pawnshops. The rule defines when an application will be accepted, the order in which decisions on competing applications will be made, and the procedures for protesting an application. One comment was received suggesting complete modification of subsections (a) and (d). For subsection (a) the commenter suggested that applications should be reviewed in the order received. Administratively, this presents an unworkable solution as applications arrive at the agency by mail, fax, and in person. An applicant who delivers an application in person may receive an immediate initial review, while an application that arrives in the mail may be reviewed some time later. Additionally, it would slow down the initial review of applications if they must be reviewed in strict chronological order. This would require even the applications that may not be affected by the distance requirements of counties with a population of 250,000 to be processed in a similar manner. The agency believes that the method suggested by the commenter would decrease the level of customer service that the agency may provide to certain applicants resulting in inefficiencies and a lengthening of the time required to process a license. Additionally, this commenter states that the proposed rule could lead to an application being accepted without being complete. This is correct. In order to be accepted an application must be substantially complete. The agency intends to publish a checklist to advise applicants of the elements required to be deemed substantially complete. There may be further items required to complete the application, particularly after the investigation is conducted. If the agency followed the commenter's suggestion it seems that new applicants who have never been licensed by the agency would be unfairly disadvantaged over applicants who are already licensed. The agency does not believe that it is appropriate public policy to grant this competitive advantage to one business over another. The agency believes that the methodology proposed provides the fairest, most expeditious method for processing applications. Another commenter suggests that subsection (c)(3) is "open-ended" and that a list of specific items that may be required should be published. The agency understands the commenter's concern that is difficult to know exactly what may be required in a particular application. Generally, any additional information required is information that supplements investigational findings regarding an applicant's criminal history background or financial responsibility. The agency makes very specific requests of these applicants, so the affected applicant is well aware of the items required to complete the application. The agency neither agrees nor disagrees, but retains the rule as proposed. Another commenter points out that an error in subsection (f)(1)(A)(vi) where the word "assets" should read "liabilities". The agency agrees with this comment and amends the rule accordingly. The commenter additionally points out an inaccurate section reference in section (f)(1)(B) that should read 7 TAC §85.203(f)(2). The agency agrees with the comment and amends the rule accordingly. The commenter also states that the phrase "providing that assets other than current assets are sufficient to secure the debt" should be removed. The commenter explains that subordinated debt by definition is not collectable until net assets exceed the requirement and then only to the extent of the excess. The agency agrees with the commenter that in theory subordinated debt is not to be paid by the borrower unless the borrower is able to maintain the net assets requirement. However, in practice, the agency believes that this is not always the case. The agency believes that an entity does not have sufficient net assets to operate the business if the agency's subordinated debt exceeds the entity's assets leaving the entity insolvent. The agency believes that it is appropriate to retain the rule as written and disagrees with the comment.

Section 85.207 states the process that will be followed if the commissioner requires a bond of an applicant. One commenter stated that "as most jurisdictions require a bond prior to opening a pawnshop, would the state also require one"? The agency is unsure as to who "most jurisdictions" are. The rule is merely permissive and does not suggest that the commissioner will require a bond, but if the commissioner determines that it is in the public interest to require one, then the rule provides the appropriate procedure for filing the bond. The agency respectfully disagrees with the comment.

Section 85.208 discusses the notification and transfer requirements of a pawnshop licensee if the licensee has a change in the organizational form of business or a change in proportionate ownership of the licensee.

Section 85.209 requires an applicant to file supplemental information to an application if any subsequent action or additional information would have required a different response than that filed in the original application. This rule is necessary to advise the commissioner of relevant facts to be considered in determining whether to grant the application or to investigate changed circumstances regarding a licensee's fitness to be or to remain licensed.

Section 85.210 provides the authority for a licensee to designate a license from an active status to an inactive status. The rule also requires a licensee who desires to activate an inactive license to comply with the requirements for relocation of a license.

Section 85.211 encompasses the fee schedule for pawnshop licenses. The fees stated in this section are consistent with the fees set by the statute and the existing fee structure for administrative licensing activities. The fees are required in order to allow the agency to recover the costs associated with performing the licensing function.

Section 85.212 explains the treatment of license applications and associated documents received by the agency as open records under the Texas Government Code. The rule is necessary to advise applicants of the treatment and the public nature of documents that are filed with the agency.

The new sections are adopted under Texas Finance Code, §371.006 which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act. Additionally, these rules of procedure are proposed pursuant to Texas Government Code, §2001.004, requiring an agency to adopt

rules of practice relating to the nature and requirements of administrative procedures.

§85.201. Engaging in Business.

An application must be filed and approved before any person engages in the business of making pawn loans. The application and approval is required without regard to the rate of interest or pawn service charge contracted for, charged, or received, if any. An applicant shall not advertise the opening of a new pawnshop prior to approval.

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted on forms prescribed by the commissioner at the date of filing. The application shall include the following:

(1) Required forms. All questions must be answered.

(A) Application form (Form ADM-10/11).

(i) A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application will not be accepted if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) If the applicant is a corporation, then the officers and directors' sections on the form (ADM-011) must be completed.

(iii) The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then a spouse with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming that status must be provided.

(I) Sole proprietorship. The individual owning and operating the business must be named.

(II) General partnership. Each partner must be listed and the percentage of ownership stated.

(III) Corporation. Each shareholder holding voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(IV) Limited partnership. Each partner, general and limited, must be listed and the percentage of ownership stated. If a partner is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(V) Limited liability company. Each manager, officer, agent, and member, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes Art. 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(VI) Trusts or estates. Each beneficiary, trustee, and executor must be named.

(iv) Manager. Each person who is responsible for the day-to-day operation of one or more of applicant's proposed locations must be named. The manager must be:

(I) a principal party as defined above;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(v) Supervisor. Each person who will be responsible for the supervision of a licensed location must be named. The supervisor must be:

(I) a principal party as defined above;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(vi) Signature. On an application for a sole proprietorship or a partnership, each proprietor and general partner must sign. On an application for a corporate applicant, two officers must sign unless only one officer of the corporation has been appointed. On an application for a limited liability company, two authorized members must sign unless the company only has one member. On an application for a trust or an estate, each trustee or executor must sign.

(B) Statutory agent disclosure (Form ADM-13). This form must be completed by all applicants. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is an individual, the address must be a residential address. On an application for a corporation, the statutory agent listed on Form ADM-13 should be the registered agent listed in the articles of incorporation. On an application for a limited liability company, the statutory agent listed on Form ADM- 13 must be the registered agent listed in the articles of organization. If the statutory agent is not listed in the relevant organizational document, then the applicant must submit certified minutes appointing the new agent.

(C) Personal affidavit (Form ADM-15/16). Each individual listed on the license application (ADM-10/11) as a principal party, except for a pawnshop employee or an applicant for a pawnshop employee license, must complete this form. The percentage of ownership stated on this form must correspond to the individual's percentage listed on the license application Form ADM-10/11. The record of business association must also include the individual's association with the entity applying for the license.

(D) Fingerprint cards. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party" as that term is defined in 7 TAC §85.102. An individual who has previously been licensed by the commissioner or a principal party of an entity currently licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee or another person with some relationship to the applicant if the commissioner believes that the individual's involvement in the pawnshop operation is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and

the Federal Bureau of Investigation. A request for fingerprint cards may be made by submitting a completed Form ADM-030.

(E) Financial statement (Form ADM-17/18/19).

(i) General information. A financial statement must be dated no earlier than sixty (60) days prior to the date of application. An applicant may also submit an audited financial statement dated within one year prior to the application date in order to expedite verification procedures. A financial statement must be certified as true, correct, and complete by a principal party. A financial statement should be prepared in accordance with generally accepted accounting principles (GAAP). A financial statement must reflect the net assets as defined in the Texas Pawnshop Act §371.003 of at least the lesser of the following amounts:

(I) The amount required in the Texas Pawnshop Act §371.072(a); or

(II) The amount required by the Texas Pawnshop Act §371.072(b) as the license existed or should have existed under the law and rules in effect on August 31, 1999. A change in net asset requirement occurs with respect to any change of ownership or other event causing a change in the net asset requirement that may have occurred prior to September 1, 1999. The change in the net asset requirement is effective as of the date of change of ownership or other event causing the change of the net asset requirement.

(ii) Sole proprietorship. A sole proprietor must complete all sections of Form ADM-17 and the attached schedules, Form ADM-18/19, or provide a personal financial statement that contains all of the information requested by Forms ADM-17/18/19.

(iii) Partnership. A balance sheet for the partnership itself must be submitted. In addition, each general partner must submit a balance sheet. Each balance sheet for the partnership and the partners must be dated the same day. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application.

(iv) Corporation or limited liability company. A corporation or a limited liability company must file a balance sheet. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application. A financial statement is generally not required of related parties, but may be required by the commissioner if the commissioner believes the information is relevant.

(v) Trusts or estates. A trust or an estate must file a balance sheet. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application. A financial statement is generally not required of related parties, but may be required by the commissioner if the commissioner believes the information is relevant.

(F) Assumed name certificate (Forms ADM-20 and ADM-21). For an applicant that does business under an assumed name as that term is defined in Tex. Bus. & Comm. Code, §36.02(7), an assumed name certificate must be filed as provided in this subsection.

(i) Corporation, limited partnership, or limited liability company. An applicant using or planning to use an assumed name must file an assumed name certificate (ADM-21 or its equivalent) in compliance with Tex. Bus. & Comm. Code, §36.0011, as amended. Evidence of the filing bearing the appropriate filing stamp must be submitted or, alternatively, a certified copy.

(ii) All other applicants. An applicant using or planning to use an assumed name must file an assumed name certificate (ADM-20 or its equivalent) with the county clerk of the county where the proposed business is located in compliance with Tex. Bus. & Comm. Code, §36.0010, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(2) Other required filings.

(A) Statement of experience. An applicant for a new license should provide an attached statement setting forth the details of the applicant's prior experience in the pawn or credit-granting business. If an individual named on the application does not have significant experience in the pawnshop business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant experience and why the commissioner should find that the applicant has the necessary experience.

(B) Entity documents.

(i) Partnership. A partnership applicant must submit a complete copy of the partnership agreement. This copy must be signed and dated by each partner. A limited partnership must submit a copy of the articles of partnership filed with the secretary of state, any amendments, and a copy of the secretary of state's acknowledgment.

(ii) Corporation.

(I) A corporate applicant, domestic or foreign, must provide the following documents:

(-a-) A copy of the articles of incorporation and any amendments;

(-b-) A copy of the corporate by-laws;

(-c-) Minutes of corporate meetings that record the election of each current officer and director as listed on the license application (Form ADM-10/11); and

(-d-) A certificate of good standing from the comptroller of public accounts.

(II) A foreign corporate applicant must provide a certificate of authority to do business in Texas; and

(III) A publicly held corporation or an applicant owned by a publicly held corporation must submit the most recent quarterly and annual reports required by §15(d) of the Securities Exchange Act of 1934 (Form 10-K and Form 10-Q) for the applicant or for the parent company respectively.

(iii) Trusts. A copy of the instrument that created the trust and the trust agreement must be filed with the application.

(iv) Estates. A copy of the instrument establishing the estate must be filed with the application.

(C) Map. A map must be provided of the area where the proposed license will be situated graphically defining the site of the proposed pawnshop, the location, including the name and address, of each pawnshop within three miles of the location, and the scale at which the map was constructed. The commissioner may require a survey to determine the distance from the proposed pawnshop location to existing operating pawnshops.

(D) Zoning. Each applicant shall file a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site.

(E) Lease agreement or proof of ownership. Each applicant shall file an executed lease agreement, deed, or other evidence that the entity has control of the proposed site.

(F) Proof of general liability and fire insurance. Each applicant shall file a copy of a general liability and fire insurance policy in an amount sufficient to protect pledged goods including jewelry. The policy must explicitly cover loss of pledged goods.

(b) Subsequent applications. If the applicant is currently licensed and filing an application for a new location, the applicant must provide the forms and other information that are unique to the new location including the application form (ADM 10/11) and an updated financial statement as provided in this section. Other information required by this section need not be filed if the information on file with the agency is current and valid.

(c) Distances shall be measured in a direct line despite travel patterns and natural or manmade obstacles and shall be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for a new license may not be approved unless the eligibility requirements are met and the proposed facility is within:

(1) a county with a population of less than 250,000 according to the most recent decennial census regardless of distance from another operating pawnshop;

(2) a county with a population of 250,000 or more according to the most recent decennial census and the pawnshop is not less than two miles from another operating pawnshop .

§85.203. Relocation.

(a) Definition.

(1) As used in this §371.059 of the Texas Pawnshop Act and in this section, the "relocation of a licensed pawnshop" means either:

(A) the act of moving an existing licensed operating pawnshop from its existing location to a new location, or

(B) the activation of an inactive license for purposes of establishing and operating a pawnshop at a facility.

(2) As used in §371.059 of the Texas Pawnshop Act and in this section, "the relocation of a licensed pawnshop" means the act of moving an existing pawnshop license from a location at which or premises in which a pawnbroker holds a pawnshop license to a new location.

(b) Approval of relocation. A pawnshop may not be relocated without the prior approval of the commissioner. When a relocation is requested, an application for relocation must be filed.

(c) Filing requirements. An application for relocation must be submitted on forms prescribed by the commissioner. The application for relocation shall include the following:

(1) Change of address application form (Form ADM-22).

(2) Financial statement (ADM-17/18/19). If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, an updated financial statement is required. The instructions in 7 TAC §85.202 are applicable to this filing.

(3) Other required filings.

(A) Map. A map must be provided of the area where the proposed license will be situated graphically defining the site of the proposed pawnshop, the location, including the name and address, of each pawnshop within three miles of the location, and the scale at which the map was constructed. The commissioner may require a survey to determine the distance from the proposed pawnshop location to existing operating pawnshops.

(B) Zoning. Each applicant shall file a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site.

(C) Lease agreement or proof of ownership. Each applicant shall file an executed lease agreement, deed, or other evidence that the entity has control of the proposed site.

(D) Proof of general liability and fire insurance. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, a copy of a general liability and fire insurance policy in an amount sufficient to protect pledged goods including jewelry must be filed. The policy shall explicitly cover loss of pledged goods.

(d) Engaging in business. An applicant may not advertise the opening of a relocated pawnshop prior to approval, except that a pawnbroker who intends to relocate a pawnshop may, beginning 90 days or less prior to the projected date of relocation, post a sign inside the existing shop and give customers a written notice of the anticipated relocation pursuant to the subsection below.

(e) Notice to customer. A written notice of relocation must be given to each pledger whose pledged goods will be moved. Five days prior to relocation the pawnbroker must mail written notices to each pledger who has not been given a written notice prior to that date. A notice must identify the pawnshop, both the old and the new location, the telephone number of the new location, and the date the relocation is effective. The commissioner may modify the notification requirement if the relocation adversely affects pledgers. The modification may require the pawnbroker to extend the maturity date of pawn transactions or waive the collection of pawn service charges which may accrue after relocation. No relocation may be made which will adversely affect pledgers to the extent that redemption is unreasonable or impossible due to the distance between the locations. The commissioner may approve notification by signs in lieu of notification by mail if no pledgers will be adversely affected.

(f) Relocation distances. Distances shall be measured in a direct line despite travel patterns and natural or manmade obstacles, and shall be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for relocation may not be approved unless the eligibility requirements are met.

(1) If the proposed facility is within a county with a population of less than 250,000 according to the most recent decennial census, there is no distance requirement from another operating pawnshop;

(2) If the proposed facility is within a county with a population of 250,000 or more according to the most recent decennial census and:

(A) if the pawnshop was licensed and was not operating, it may locate not less than one mile from an operating pawnshop;

(B) if the pawnshop has been operating continuously at its current location for at least three years, it may locate within one mile of its current location regardless of distance from another operating pawnshop;

(C) if the pawnshop has been in operation, it may locate not less than one mile from an operating pawnshop.

§85.204. Temporary and Permanent Operation of Facility.

(a) The pawnshop must commence operation within a period of six months after the date of approval unless an extension is granted, in writing, by the commissioner. No more than one six- month extension will be approved by the commissioner, unless good cause for the extension is shown. At the end of any approved extension, if the pawnshop has not been opened, the authority for approval of the pawnshop shall be forfeited.

(b) The commissioner may approve opening and operating a temporary facility for an approved application, provided that the facility is within a one-half mile radius of the approved, permanent site. The operation of the temporary facility will cease immediately upon the permanent facility being completed for occupancy. The temporary facility shall not operate longer than 18 months unless extended in writing by the commissioner.

§85.205. Transfer of License.

(a) Definition. As used in this section, a "transfer of ownership" occurs whenever an existing owner relinquishes any interest in a licensee or an entirely new person has obtained an ownership interest in the licensee. This term also includes any purchase or acquisition of control over more than 5% of the outstanding voting stock of any licensed corporation or of any corporation which is the parent or controlling stockholder of a licensed corporation. This term also includes any acquisition of a license by gift, devise, or descent.

(b) Approval of transfer. No pawnshop license may be sold, transferred, or assigned without written approval of the commissioner.

(c) Filing requirements. An application for transfer of a pawnshop license must be submitted on forms prescribed by the commissioner. The application for transfer must include the following:

(1) Application form (Form ADM-10/11). The instructions in 7 TAC §85.202 are applicable to this filing.

(2) Statutory agent disclosure (Form ADM-13). The instructions in 7 TAC §85.202 are applicable to this filing.

(3) Personal affidavit (Form ADM-15/16). Each individual listed on the license application (ADM-10/11) who is a principal party, except for a pawnshop employee or an applicant for a pawnshop employee license, of the transferee must complete this form. The instructions set forth in 7 TAC §85.202 are applicable to this filing.

(4) Fingerprints. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party" as that term is defined in 7 TAC §85.102. An individual who has previously been licensed by the commissioner or a principal party of an entity currently licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee or another person with some relationship to the applicant if the commissioner believes that the individual's background history is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on a format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-030.

(5) Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application. This must include one of the following:

(A) a copy of the asset purchase agreement when the license or other assets have been purchased, including a statement relating to the sale of the license;

(B) a copy of the stock purchase agreement or other evidence of a stock transfer; or

(C) a copy of any document that transferred ownership in a licensee by gift, devise, or descent, such as a probated will or a court order.

(6) Financial statement (ADM-17/18/19). The instructions in 7 TAC §85.202 are applicable to this filing.

(7) Other required filings. All filings required of new license applicants pursuant to 7 TAC §85.202 must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the information that is unique to the new location. Other information required by this subsection need not be filed if the information on file with the agency is current and valid.

(d) Transferee operating under transferors license. The commissioner may approve a written agreement whereby a transferor grants a transferee the authority to operate under the transferor's license pending approval of the transferee's license application. Within three business days after the date of sale the written agreement between the transferor and transferee must be submitted with a request to operate under the transferor's license. The agreement must provide that the transferor accepts full responsibility to the commissioner and any customer of the licensed business for any acts of the transferee in connection with the operation of the business. The written agreement between the transferor and the transferee must be submitted with a request to operate under the transferor's license. The agreement may include a provision whereby the transferee may operate using the transferee's name during the pendency of the application if the transferee has an existing pawnshop license issued under this chapter. The agreement shall be for a limited time as provided in the agreement and in no case may such authority extend beyond 180 days. The commissioner may deny a request for permission to operate during the pendency of the application.

(e) Application filing deadline. An application filed in connection with a transfer of ownership may be filed in advance but must be filed no later than ten (10) calendar days following the actual transfer.

§85.206. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 10 working days of receipt stating that the application is accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with 7 TAC §§85.202, 85.203, or 85.205 as appropriate.

(c) Complete application. An application is complete when it:

(1) conforms to the statutes, rules, and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(d) Competing application. An application in a county with a population of 250,000 or more will be acted upon based on the chronological order in which the application was accepted pursuant to Subsection (b) of this section. A competing application may not be granted until a final ruling on any preceding competing application has been made.

(e) Notice of application and protest procedures. A notice of the application will be mailed to each pawnshop licensee in the county of the proposed location. The notice will state a date and time, 10 working days following the date of notice, by which any interested person may request a hearing. Any pawnbroker who believes that the applicant's proposed pawnshop will significantly affect that pawnbroker's current business may submit a sworn petition to be admitted as a party in opposition to an application for a new or relocated pawnshop. The petition must present the commissioner with relevant facts designed to show how the protesting pawnshop licensee will be affected by the approving of the proposed application and the basis for the protest. Upon a showing that the pawnshop licensee would be significantly affected by the granting of the license, the commissioner shall admit the protesting pawnshop licensee as a party. Any person intending to appear, present evidence, and be heard on a license application may do so only if written notice of the intention is filed and received by the commissioner as required in the notice of application. A copy of the written notice shall be delivered to the applicant and certification of that delivery shall be made to the commissioner at the time of filing.

(f) Decision on application. The commissioner may approve or deny an application.

(1) Approval. The commissioner shall approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information described in 7 TAC §85.601 and the applicant's conduct and activities as described in 7 TAC §85.602.

(ii) A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the commissioner will consider an applicant's background and history. If the commissioner questions the applicant's ability to meet this standard, the commissioner may require further conditions, such as probation, to favorably consider an applicant for a license.

(iii) Financial responsibility. In evaluating the financial responsibility of an applicant, the commissioner may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes, and judgments, if any, and handling of financial affairs generally.

(iv) Experience. In evaluating experience, the commissioner will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.

(v) General fitness to command the confidence of the public. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the agency may be grounds for denial.

(vi) Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those liabilities that are secured by assets other than current assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.

(B) Distance requirement. A pawnshop within a county with a population of 250,000 or more must be not less than two miles from an existing pawnshop or if the application is for a relocation it must meet the requirements in 7 TAC §85.203(f)(2).

(2) Denial.

(A) If an application has not been completed within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(B) The commissioner may also deny an application when the applicant fails to demonstrate the eligibility requirements or the applicant fails to meet the distance requirements.

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e), a hearing shall be set. This hearing shall be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and 7 TAC §9.01 et seq. The commissioner shall make a final decision approving or denying the license.

(h) Processing time. The commissioner shall ordinarily approve or deny a license application within 60 days after the date the application is complete. The commissioner may take more time if previous competing applications are on file, the placement of a reinstated expired pawnshop license would have an impact on the approval of an application, or where other good cause exists as defined by Texas Government Code, §2005.004 for exceeding the established time periods in this section.

§85.207. Bond.

The commissioner may require a bond under Texas Pawnshop Act §371.056, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Upon failure to submit a bond within 40 calendar days of the date of the commissioner's notice, the pending application may be denied.

§85.208. Change in Form or Proportionate Ownership.

(a) Organizational form. If a licensee desires to change the organizational form of its business (e.g. from sole proprietorship to corporation), the licensee must advise the commissioner in writing of the change within ten (10) calendar days by filing the appropriate transfer documents as provided in 7 TAC §85.205.

(b) Merger. A merger of a corporate licensee is a change of ownership and requires the filing of a transfer application pursuant to 7 TAC §85.205. A merger of the parent corporation of a licensee with another corporation that results in the creation of a new corporate entity requires a transfer application pursuant to 7 TAC §85.205. A merger of the parent corporation of a licensee with another corporation that results in the situation where the

surviving corporation is not the existing parent corporation requires a transfer application pursuant to 7 TAC §85.205. A merger of another corporation with a beneficial interest beyond the parent corporation only requires notification within 10 calendar days.

(c) Proportionate ownership. A mere change in the proportion of ownership among the current owners does not require the filing of a transfer application. A change in the proportionate interests of two or more current owners of pawnshop licenses must be reported in writing.

(d) Notice deadline. A notice filed in connection with a change in proportionate ownership may be filed in advance but must be filed no later than ten (10) calendar days following the actual change.

§85.209. Amendments to Pending Applications.

Each applicant shall provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact, or information.

§85.210. Designation of Active or Inactive Status.

(a) Inactivation of an active license. A licensee may cease operating a pawnshop and render the license inactive by giving notice of the cessation of operations to the commissioner not less than 30 days prior to the anticipated cessation date. Notification must be filed on the license amendment form (ADM-22). The notice must include a valid mailing address, the fee for amending the license, a certification that no loans will be made or collected under this license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the commissioner may unilaterally place the license in inactive status.

(b) Activation of an inactive license. Activation of an inactive license to a location other than that listed on the license must comply with the relocation requirements set forth in 7 TAC §85.203.

§85.211. Fees.

(a) New licenses. A $500 investigation fee is assessed each time an application for a new license is filed and is non- refundable. In addition, the applicant is initially required to pay an annual license fee of $100 that is not prorated but is refundable if the license application is denied.

(b) Subsequent licenses. A $250 investigation fee is assessed each time an application for a new license of an existing licensee is filed or if the application involves substantially identical principals and owners of a licensed pawnshop and is non-refundable. In addition, the applicant is initially required to pay an annual license fee of $100 that is not prorated but is refundable if the license application is denied.

(c) License transfers. An investigation fee of $500 for the first license transfer and $250 on each additional license transfer sought simultaneously is required and is non-refundable. If the application involves substantially identical principals and owners of a licensed pawnshop, then the fee is $250 for the first license transfer.

(d) Fingerprint checks. The fee to investigate each applicant's fingerprint record is $40 per set and is non- refundable. This fee must be paid for each set of fingerprints filed with applications for new licenses or license transfers.

(e) Annual Renewal Fee. A $125 annual renewal fee is required by June 30 each year to keep a license from expiring.

(f) License amendment. A fee of $25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office. An activation or relocation in a county with a population of 250,000 or more shall require a $250 investigation fee and other fees as may be required of a new license applicant.

(g) License duplicate. The fee for a license duplicate is $10.

(h) Each applicant for a new or relocated license shall pay $1.00 to the commissioner for each notice of application that is required to be mailed.

(i) Costs of hearing. The commissioner or administrative law judge may assess the costs of an administrative appeal hearing afforded under 7 TAC §85.206(g), including the cost of the administrative law judge, the court reporter, and agency staff representing the agency at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(j) Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

§85.212. Applications and Notices as Public Records.

Once a license application or notice is accepted by the commissioner, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Texas Government Code, §552.002. Certain information, such as social security numbers, may be protected under the provisions of the Texas Government Code. Under Texas Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Texas Government Code, §441.187. Under Texas Government Code, §441.191, the commissioner may not return any original documents associated with a license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Government Code, Chapter 552.

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

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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7640

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Subchapter C. Pawnshop Employee License

7 TAC §§85.301-85.307

The Office of Consumer Credit Commissioner (the commissioner adopts new §§85.301-85.307 concerning pawnshop employee licensing with changes to the text as published in the

July 16, 1999, issue of the *Texas Register* (24 TexReg 5298). The rules interpret and provide guidance to interested parties concerning the meaning and application of Subchapter C of the Texas Pawnshop Act (Texas Finance Code, Chapter 371).

No comments were received regarding the proposed rules.

Section 85.301 prescribes the requirements for filing a new pawnshop employee application. The rule states the specific forms and accompanying information that must be filed with a new application. The rule is necessary to provide consistent procedures for the filing of pawnshop employee license applications and to advise the public and the industry of the filing requirements.

Sections 85.302 and 85.303 require a pawnshop to notify the commissioner when a licensed pawnshop employee is terminated or hired by the pawnshop. These sections are necessary to ensure the accuracy of the agency's records concerning the location of employment for licensed pawnshop employees. The agency will provide the appropriate forms to pawnshops for the notification.

Section 85.304 states the procedures that will be applied in processing a new pawnshop employee license. The rule discusses when an application will be accepted, how a decision on an application occurs, the permissibility of a probationary license, the procedures for a hearing on a denied application, and general application processing time lines. The rule is necessary to provide consistent procedures for the processing of pawnshop employee license applications and to advise the public and the industry of the procedures.

Section 85.305 requires an applicant to file supplemental information to an application if any subsequent action or additional information would have required a different response than that filed in the original application. This rule is necessary to advise the commissioner of relevant facts to be considered in determining whether to grant the application or to investigate changed circumstances regarding a licensee's fitness to be or to remain licensed.

Section 85.306 encompasses the fee schedule for pawnshop employee licenses. The fees stated in this section are consistent with the fees set by the statute and the existing fee structure for administrative licensing activities. The fees are required in order to allow the agency to recover the costs associated with performing the licensing function.

Section 85.307 explains the treatment of license applications and associated documents received by the agency as open records under the Texas Government Code. The rule is necessary to advise applicants of the treatment and the public nature of documents that are filed with the agency.

The new sections are adopted under Texas Finance Code, §371.006 which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act. Additionally, these rules of procedure are proposed pursuant to Texas Government Code, §2001.004, requiring an agency to adopt rules of practice relating to the nature and requirements of administrative procedures.

§85.301. Filing of New Application.

An application for issuance of a new employee license must be submitted on forms prescribed by the commissioner. The application shall include the following required forms. All questions must be answered.

(1) Application form (Form ADM-30/31).

(A) Identifying information. The application shall contain complete and accurate information identifying the applicant.

(B) Residence information. The application shall report a continuous five-year residential history.

(C) Employment information. The application shall report a continuous five-year employment history. If an applicant was unemployed for a period of time or was enrolled as a student during a period of time, the application shall state that fact.

(D) Background and history. Any response about an employee's background and history must be true, correct, and complete. Additional information as required must be provided as an attachment to the application.

(E) Signature. The applicant must sign and affirm the application as true, correct, and complete.

(2) Fingerprint cards. A complete set of legible fingerprints shall be provided for each applicant. An individual who has previously been licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the person's criminal background. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-025.

§85.302. Notification of Termination.

It is the responsibility of a pawnshop to notify the commissioner within a reasonable period of time when an employee ceases working at a pawnshop. A reasonable period of time is within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.303. Notification of Hiring.

It is the responsibility of a pawnshop to notify the commissioner when a licensed employee begins working at a pawnshop within a reasonable period of time whose address is different from that printed on the employee's license. A reasonable period of time is within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. Processing of Application.

(a) Application acceptance. An application for a pawnshop employee license will not be accepted until it contains the appropriate fees and the items required in accordance with 7 TAC §85.301.

(b) Complete application. An application is complete when:

(1) the application conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Decision on application. The commissioner may approve or deny an application.

(1) Approval. The commissioner shall approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the

employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

(A) Good moral character. In evaluating an applicant's moral character, the commissioner will consider criminal history information described in 7 TAC §85.601 and the applicant's conduct and activities as described in 7 TAC §85.602.

(B) Good business repute. In evaluating an applicant's business repute, the commissioner will consider the applicant's background and history.

(C) Character and fitness to warrant the belief that the pawnshop will be operated lawfully and fairly. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the agency may be grounds for denial.

(2) Denial.

(A) If an application has not been completed within 30 days after notice of delinquency has been sent to the applicant, the application may be denied.

(B) The commissioner may also deny an application when the applicant fails to demonstrate the eligibility requirements.

(d) Probationary license. The commissioner may conditionally approve an application for a probationary period of time when an employee's background and history indicate that confidence in the employee's ability to operate lawfully within the purposes of the Texas Pawnshop Act is questionable. If the commissioner determines that the terms of the probation are not being met, the commissioner may issue an order setting a hearing to suspend or revoke the employee's license.

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and 7 TAC §9.01 et seq. When a hearing is requested following an initial license application denial, the hearing shall be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner shall make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(f) Processing time. The commissioner shall ordinarily approve or deny a license application within 60 days after the date the application is complete. The commissioner may take more time where good cause exists, as defined by Texas Government Code, §2005.004.

§85.305. Amendments to Pending Applications.

Each applicant shall provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact, or information.

§85.306. Fees.

(a) New licenses. A $25 investigation fee is assessed each time an application for a new license is filed and is non- refundable. The fee is not refundable if the license application is denied.

(b) Fingerprint checks. The fee to investigate each applicant's fingerprint record is $40 per set and is non- refundable. This fee must be paid for each set of fingerprints filed with applications.

(c) Annual Renewal fee. The annual renewal fee for a pawnshop employee license is $15. The fee must be paid by June 30 each year.

(d) License amendment. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation shall require notice on the form provided by the commissioner to the pawnshop.

(e) License duplicate. The fee for a license duplicate is $10.

(f) Cost of hearing. The commissioner or the administrative law judge may assess the cost of an administrative appeal hearing afforded under 7 TAC §85.304(e), including the cost of the administrative law judge, the court reporter, and agency staff representing the agency at a hearing.

§85.307. Applications and Notices as Public Records.

Once a license is accepted with the commissioner, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Texas Government Code, §552.002. Certain information, such as social security numbers, may be protected under the provisions of the Texas Government Code. Under Texas Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Texas Government Code, §441.187. Under Texas Government Code, §441.191, the commissioner may not return any original documents associated with a license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Government Code, Chapter 552.

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

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Subchapter F. License Revocation, Suspension, and Surrender

7 TAC §§85.601-85.603

The Office of Consumer Credit Commissioner (the commissioner) adopts new §85.601 concerning the effect of criminal history information on licenses and license applications, §85.602 addressing the licensee's or applicant's conduct, and §85.603 relating to reinstatement of an expired pawnshop license with changes to the text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5300). The rules interpret and provide guidance to applicants for a license and individuals who hold licenses concerning criminal history of certain individuals, the applicant or licensee's conduct, and rights of reinstatement related to pawnshop licenses. The rules per-

tain to the provisions of Subchapter F of the Texas Pawnshop Act (Texas Finance Code, Chapter 371).

No comments were received regarding the rules as proposed in the *Texas Register*; however, during the development process comments were received from the President of the Texas Association of Pawnbrokers and CJM Enterprises, Inc., Killeen.

Section 85.601 defines the crimes that are considered to be directly related to the duties and responsibilities of a pawnbroker, the persons whose conviction of such a crime could adversely affect a proposed or existing license, and specifies the administrative remedy available if a criminal conviction results in the denial or a license application. One comment received pertains to §85.601(c)(1)(F) and states "'failure to file a required report with a governmental body' is too broad and can include too many inconsequential actions." The rule, 7 TAC §85.601(c) only pertains to situations where an individual has been convicted of a criminal offense. The section enumerates those crimes considered to be involving moral character that the commissioner may consider. If a person has been convicted of a criminal offense because the person failed to file a governmental report, the commissioner believes that this is a serious matter that should fully be investigated and, depending on the mitigating circumstances as outlined in subsection (c)(4), may warrant a decision to deny an application. If a person has been convicted of this offense, the commissioner seriously questions the person's fitness to hold a license and respond appropriately to a regulated agency or a law enforcement agency. The agency doubts that "inconsequential actions of failing to file a governmental report" will rise to the level of a criminal conviction, but if it does the commissioner will consider those factors in determining an applicant or a licensee's fitness to hold a license. Another comment relates to 7 TAC §85.601(c)(3). This comment states that the rule should be modified such that any criminal conviction related to misrepresentation of the costs or benefits of a product or service should be a "gross and deliberate" misrepresentation. The comment further states that a criminal conviction involving the failure to file a governmental report should be modified to only those convictions involving a deliberate failure to file a governmental report. The agency believes that it should not attempt to characterize criminal convictions as gross or deliberate. The court with jurisdiction over the criminal complaint will generally address questions of deliberate or gross actions, it these qualifications are factors in the determination of guilt or innocence and in the determination of appropriate punishment. The agency does not believe it is appropriate to make this determination, especially since the agency may not have the benefit of all the information presented during the criminal case. The agency will, however, consider the extent and nature of the conviction and other mitigating considerations as specified in subsection (c)(4). Another comment was received that suggested removing the criminal conviction of assault from the types of criminal convictions that the commissioner will consider in determining an applicant's fitness to hold a license. The commenter cites as an example of an assault that should not be considered as a fist-fight between two teenage boys. The agency believes that a criminal conviction of assault should be evaluated in considering an applicant or licensee's fitness to hold a license. The agency will consider the extent and nature of the conviction and other mitigating considerations as specified in subsection (c)(4). The agency has favorably considered applicants in the past for licensees with an assault conviction as described by the commenter; however, these favorable determinations were made after investigating the criminal conviction and evaluating the mitigating considerations. The agency anticipates that its practice of evaluating applicants will remain consistent. The agency respectfully disagrees with the comments received about this section.

Section 85.602 defines the type of conduct by the applicant for a license or by the licensee that may be considered to be directly related to the duties and responsibilities of a pawnbroker. This conduct may be evaluated in determining whether to deny a license or to initiate an enforcement action against a licensee.

Section 85.603 provides the procedure for the reinstatement of an expired pawnshop license. One comment was received suggesting that the annual fee require for reinstatement be $100 instead of the $125 as proposed. House Bill 1878 as passed by the 76th Legislature modified the annual fee required of pawnshops from $100 to $125 as provided in Texas Finance Code §371.064. It would be inconsistent with the provisions of the Texas Pawnshop Act to specify a different annual fee. Another comment suggests that the provision relating to unlicensed acts being subject to administration action should only apply to acts occurring after the agency provides notification to the former licensee that the license has expired rather than apply to acts occurring after the license has expired. The agency believes that any entity that makes pawn loans and charges pawn service charges without a valid license is engaging in unauthorized conduct and should be held accountable for these actions. Nonetheless, the agency will consider reviewing unauthorized transactions from the date of notification when contemplating administrative actions such as requiring refunds of overchages on unauthorized transactions. The agency, however, disagrees with the comment since an entity is not licensed to engage in pawn transaction if its license is expired and retains the proposed version of the rule.

The new sections are adopted under Texas Finance Code, §371.006 which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act. Additionally, these rules of procedure are proposed pursuant to Texas Government Code, §2001.004, requiring an agency to adopt rules of practice relating to the nature and requirements of administrative procedures.

§85.601. Effect of Criminal History Information on Licenses and Applications.

(a) In submitting an application for a license, a principal party to an applicant for a pawnshop license or an applicant for an employee license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history information. The commissioner will continue to receive information on new criminal activity reported to those agencies after the fingerprints have been processed through those agencies. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history information obtained to issue a denial or initiate a revocation or suspension action. Criminal history information relates to good moral character and the information gathered is relevant to the licensing or enforcement action decision as described below:

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions shall be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information

required to make a determination under subsection (c) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the individual has maintained a record of steady work history and has supported the individual's dependents and has otherwise maintained a record of good conduct. At a minimum the individual must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects on an applicant's honesty and moral character.

(c) Effect of criminal conviction on an applicant for or a holder of a pawnbroker license.

(1) The commissioner may deny an application for a license if the applicant is an individual who has been convicted of any felony or a crime involving moral character that is reasonably related to the individual's fitness to hold a license. For purposes of this subsection, the crimes listed below are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing pawnshops of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report; or

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes.

(2) Effect of other criminal convictions on proposed or existing license. The commissioner may deny an application for a license, or revoke an existing license if a principal party of the license applicant or holder has been convicted of a crime that directly relates to the duties and responsibilities of a pawnbroker. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating circumstances and rights of the applicant or licensee.

(3) Crimes directly related to fitness for a license. Being a pawnbroker involves or may involve representations to borrowers and sellers, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, or a crime involving failure to file a governmental report or filing a false report is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial or revocation.

(4) Mitigating considerations. In determining whether a conviction for a crime renders a person or an entity related to the person unfit to be a license holder, the commissioner shall consider:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the time elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) the person's present fitness for a license, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person, the sheriff and chief of police in the community where the person resides, and other persons in contact with the convicted person.

§85.602. Licensee's or Applicant's Conduct.

Upon submission of application for a license a principal party to an applicant for a pawnshop license or an applicant for an employee license is investigated by the commissioner. If the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the information obtained to issue a denial or initiate an enforcement action. Certain conduct relates to good moral character and the ability of the applicant to operate lawfully and fairly within the Texas Pawnshop Act. The commissioner may revoke a license or deny an application for a license if an individual is found to have engaged in conduct that is reasonably related to the individual's fitness to hold a license. For purposes of this subsection, any conduct related to the items listed below are considered to be relevant to moral character:

(1) Fraud, misrepresentation, deception, or forgery;

(2) Breach of trust or other fiduciary duty;

(3) Dishonesty or theft;

(4) Assault;

(5) Violation of a statute governing pawnshops of this or another state; or

(6) Attempt, preparation, or conspiracy to evade the Texas Pawnshop Act and its provisions or to evade the laws relating to the receiving or conveyance of stolen property.

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires on June 30 for failure to pay the annual renewal fee, the commissioner shall by July 31 of that same year notify the pawnshop license holder via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the $125 annual fee and a $1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to administrative action of the commissioner should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

13 TAC §1.77

The Texas State Library and Archives Commission adopts an amendment to §1.77, concerning local government support for public libraries, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3277).

The amendment is required because of state legislation passed allowing the establishment of public libraries through public library taxing districts.

This amendment adds to the definition of local government sources those libraries established as library districts by the provisions of Local Government Code, Chapter 326.

No comments were received concerning the adoption of the amendment.

The amendment is adopted under the Government Code§§441.006(a), 441.136, and 441.0091, which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

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

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TRD-9905080
Raymond Hitt
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Proposal publication date: April 30, 1999
For further information, please call: (512) 463–5440

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Chapter 5. County Librarian Certification

13 TAC §§5.7–5.9

The Texas State Library and Archives Commission adopts new §§5.7-5.9, relating to county librarian certification, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3277).

The new sections are required to bring Chapter 5 more closely in conformance with Government Code §§441.007, 441.0071, and 441.0072.

The sections provide a means of processing complaints from and about county librarians and certifying librarians from other states.

No comments were received concerning the proposed new.

The new rules are adopted under the Government Code§441.006(a) and §441.007(a) which provides the Commission with authority to govern the Texas State Library and adopt rules on certification of county librarians.

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

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Chapter 6. State Records

Subchapter A. Records Retention Scheduling

13 TAC §§6.1–6.9

The Texas State Library and Archives Commission adopts amendments to 13 TAC §§6.1-6.9, relating to records retention scheduling by state agencies, without changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3439).

These amendments revise the definitions and language of the rules to conform with Government Code, Chapter 441, Subchapter L, enacted by the 75th Legislature in 1997. To clarify two areas of the rules that have been a source of confusion to state agencies, the rules now define when a new agency is effectively established and subject to records retention scheduling requirements and now specify those instances in which a records retention schedule of a state agency must be amended during a certification period. The 1997 legislation considerably enhanced the authority of the state archivist over archival state records, and the rules now provide a means by which the records retention schedule of a state agency may be decertified for failure to cooperate with the state archivist in the identification of archival state records as required by state law.

Government Code, Chapter 441, Subchapter L requires each state agency to manage and preserve the records of its activities in the interests of itself, the state and its citizens. The records retention schedule developed, certified, and implemented under these rules is central to the effective fulfillment of that statutory duty. The commission believes that the amendments are necessary to conform rules relating to records retention scheduling to the requirements and intent of Government Code, Chapter 441, Subchapter L.

No comments were received on the proposed amendments.

These amendments are proposed under Government Code, §441.185(e), which provides authorization for the Texas State Library and Archives Commission to adopt rules relating to

the submission of records retention schedules to the state records administrator. These sections affect Government Code, §441.185 and §441.186. §§6.1-6.9. Records Retention Scheduling.

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 August 13, 1999.

TRD-9905083
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: September 2, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 463–5440

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §§9.4, 9.15, 9.20

The Railroad Commission of Texas adopts amendments to §9.4, relating to licenses and related fees, with changes to the proposed version as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5097), and adopts §9.15 and §9.20, relating to registration and transfer of LP-gas transports or container delivery units, and filings required for stationary LP-gas installations, without changes to the proposed versions published in that issue. The sections include various fees to be paid to the commission for licenses, renewals, examinations, transport registration, and other items.

The commission adopts the amendments in response to legislative directives that the commission recover its costs for providing various services. The adopted amendments increase the current fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities. Some of the fees currently in effect are set at about half the statutory maximum, and most have not been increased in several years (in some cases, more than 20 years).

The commission adopts in §9.4 increases in original and renewal license fees, for the most part, to the current statutory maximum. The table is removed from the rule, and the text concerning the fees added to the language about each specific license category. New §9.4(d) raises the fees for management- level rules examinations, currently set at $25, to $50, and raises the employee-level examination fee from $10 to $20. The language in §9.4(e) concerning the general installers and repairman exemption has been moved from another rule; therefore, most of the language is new, although the only substantive change is the increase of the fees. The adopted change is in §9.4(e)(9); the specific reference to the continuing education and training rules is changed to a more general reference because those rules are still being developed, and the numbers or titles may change.

Also, in §9.15(c)(4), (d), and in the table, the commission adds the new $270 transport registration fee and deletes language referring to proration of the transport registration fee. Section 9.15(d) is deleted; this language is moved to a new rule, §9.13 relating to decals and fees, which is adopted in a separate but concurrent rulemaking. In §9.20, the commission increases the filing fees for certain forms from a range of $5.00 to $25, to a range of $10 to $50.

One fee which the commission did not propose to increase is the $25 annual renewal fee which funds the commission's new LP-gas training program, to be adopted in a separate rulemaking. However, the commission will propose in that rulemaking to increase the late-renewal fee from $10 to $20 to address an estimated 28% late renewal problem.

Other adopted nonsubstantive amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period, including the public comment hearing held on July 27, 1999, was reasonable in order to comply with legislative instructions to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

The commission received several written comments on the proposal, as well as eight comments during the July 27, 1999, public comment hearing. One association, the Texas Propane Gas Association (TPGA), commented both in writing and at the public hearing.

At the public hearing, eight speakers provided mostly general comments or suggestions. A representative of TPGA said the fee increases will have a great economic impact on the industry, but acknowledged that due to the legislative directive to raise the fees, no changes could be made at this time. TPGA pledged to work with the commission and the industry to prepare for the next legislative session by formulating some ideas on how to generate fees while providing some economic relief to the industry. Two other speakers generally agreed with TPGA's comments.

One speaker provided some specific suggestions on ways to cut costs. The speaker encouraged the commission to use email whenever possible to save on postage and paper. Forms and letters could be emailed to the industry, or information could be provided in letter-style rather than on printed forms. The speaker also asked if the commission, when it was delegated the authority several years ago for compressed natural gas (CNG) and liquefied natural gas (LNG) activities, had also received more funds to cover these new activities. The third suggestion was that an additional fee be charged for each outlet that a licensee operates; this would be fair to large and small dealers alike. The only problem might be for cylinder exchanges, which oftentimes are found at large retail stores; if a store had many different locations, a fee for each location might be too burdensome.

The commission generally agrees with these comments. A commission representative said that use of electronic filing is already being initiated at the commission. The suggestion regarding charging a fee for each outlet is also being developed as a proposal for the next legislative session; charging this kind of fee will require statutory authority before the necessary rule

could be adopted. The commission is also planning to establish a cylinder exchange task force to examine this unique and fast-growing segment of the industry.

Another speaker questioned the necessity of having so many rules which are hard to understand and hard to enforce. Some dealers get frustrated and stop trying to abide by the rules. As a small dealer, this speaker asked if small dealers were included on the commission's LP-gas advisory committee. A commission representative explained that, as the commission adopts national standards such as those from the National Fire Protection Association (NFPA), the commission's rulebook will get smaller but the additional NFPA pamphlets will become part of the rules. Regarding enforcement of the rules, the commission representative said that the biggest problem is having the proper documentation to support an enforcement action for a rule violation. In appointing advisory committee members, the commission attempts to appoint members representing all types of businesses and all areas of the state.

The next speaker commented that larger dealers seem to have more influence with regard to the rules than smaller dealers. The speaker also said the current rules are not being followed and that the commission needs more inspectors. The commission representative said that the commission is interested in hearing from all segments of the industry and encouraged people to participate in the commission's business as performed in open meetings, summarized on the commission's web site, and published in the *Texas Register*.

Another speaker also stated that enforcement of the rules is a problem and believed the commission should not reduce the number of inspectors.

The last speaker stated that LP-gas dealers should be required to have service departments. Many companies only provide gas and do not have the expertise or equipment to perform maintenance and repairs. Another problem occurs when a dealer decides that a tank needs to be removed from service; the dealer often loses that customer to another dealer who will fill the tank even though it should be removed from service. The commission representative stated that a rule is being developed to require dealers to provide service, either through their own service department or by having one on retainer.

The commission received 11 written comments. TPGA's comments stated that the commission should attempt to take the burden for the increased fees off the bobtails; these trucks are regulated and levied fees by the federal government. TPGA encouraged the commission to proceed with the per-outlet fee, as well as increasing license fees to the statutory maximums. The comments also suggested that the commission streamline its activities as much as possible, proceed with the adoption of NFPA standards, and use email and the web site to provide information. TPGA also plans to work with the commission and the LP-gas advisory committee in preparing for the next legislative session. Comments from one individual essentially repeated TPGA's comments. Another individual supported TPGA's written comments, and added that truck fees should not bear such a disproportionate burden of the fee increases.

An individual commented against the fee increase. Another individual stated the commission should address the loss in state funds by cutting its expenses. Another individual reiterated concern about enforcement of existing rules, support for requiring service departments for each licensee, as well as stating that employee accountability is important. The supervisor cannot always be with the employee, so employees need to be responsible for performing their jobs safely.

One individual stated the commission should address the change in fee structure by reducing the scope and cost of current operations. In particular, the commenter questioned the need for the commission to inspect trucks because of the expanded role of the United State Department of Transportation (DOT). Inspectors could then spend more time on bulk storages and large installations. The commenter also questioned the need to require testing and certification for every type of LP-gas activity. Natural gas and electric utilities are not licensed this way.

The commission was already in the process of streamlining its operations before the legislative mandate regarding the fees was imposed. As part of this streamlining, inspectors will inspect fewer trucks and will concentrate more on public installations and vehicles such as school buses or mass transit vehicles. As far as testing and certification of each type of LP-gas activity, this authority is delegated to and required by the commission through its authorizing statutes. Ceasing the oversight of these activities would require legislative action to amend or repeal the statutes.

Another commenter opposed any increase in fees as well as any new fees and stated that the beneficiaries of the commission's programs, the general public, should be expected to help support these programs through taxes collected by the state. The commenter also requested that the commission identify areas of inefficiency that could be addressed in order to make the fee increases unnecessary.

The commission recognizes that the general public supports state government by paying taxes; however, the legislature directed the commission to increase fees so that the regulated industries fund these programs. Unless changes are made during the next legislative session, the commission must follow its mandate. As already stated, the commission is in the process of streamlining its operations.

One commenter supported the idea that each retail office of an LP-gas company should pay an additional fee. Each office would submit its own license, employee, and truck renewals; this could assist the commission in maintaining accurate numbers. The commenter also suggested that cylinder exchange racks at each location have their own license. This would also help the commission maintain more specific records for each location.

The commission intends to examine these suggestions as it prepares the per-outlet fee proposal for the next legislative session, and to explore the cylinder exchange issues with the cylinder exchange task force.

Another commenter supported higher initial license fees, insurance requirements, and longer training seminars, stating that the commission would then need fewer inspectors to police the industry. The commenter also supported the adoption of NFPA standards.

An individual commented that the commission needs to provide better service in answering questions from dealers or the public, stating that more staff, better trained staff, or better paid staff is necessary. This individual also supports the adoption of NFPA standards.

Nearly all of the comments were general in nature and provided no specific suggestions regarding the proposed fee increases.

Therefore, while the commission agrees with many of the comments and is already working towards resolving many of the issues presented, the commission makes no changes to the rules as a result of the comments.

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §113.051, is affected by the adopted amendments.

§9.4. Licenses and Related Fees.

(a) A prospective licensee may apply to the commission for one or more licenses specified in subsection (c)(1)-(16) of this section. Fees required to be paid shall be those established by the commission and in effect at the time of licensing or renewal.

(b) An original manufacturer of a new motor vehicle powered by LP-gas, or a subcontractor of a manufacturer who produces a new LP-gas powered motor vehicle for the manufacturer, is not subject to the licensing requirements of this title, but shall comply with all other LP-Gas Safety Rules.

(c) The license categories and fees are as follows.

(1) A Category A license for container manufacturers and/or fabricators authorizes the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is $1,000; the renewal fee is $600.

(2) A Category B license for transport outfitters authorizes the subframing, testing, and sale of LP-gas transport containers, the testing of LP-gas storage containers, the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems. The original license fee is $400; the renewal fee is $200.

(3) A Category C license for carriers authorizes the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems. The original license fee is $1,000; the renewal fee is $300.

(4) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LP-gas systems, and motor fuel and recreational vehicle systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category D licensing. The original license fee is $100; the renewal fee is $70.

(5) A Category E license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LP-gas at retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers, and except the sale and installation of LP-gas motor or mobile fuel systems that have an engine with a rating of more than 25 horsepower. The original license fee is $750; the renewal is $300.

(6) A Category F license for cylinder filling authorizes the operation of a cylinder filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves. The original license fee is $100; the renewal fee is $50.

(7) A Category G license for dispensing stations authorizes the operation of LP-gas dispensing stations filling ASME containers designed for motor or mobile fuel. The original license fee is $100; the renewal is $50.

(8) A Category H license for cylinder dealers authorizes the transportation and sale of LP-gas in cylinders. The original license fee is $1,000; the renewal is $300.

(9) A Category I license for service stations and cylinder filling authorizes any service station and cylinder activity set out in Category F and Category G of this section. The original license fee is $150; the renewal is $70.

(10) A Category J license for service stations and cylinder facilities authorizes the operation of a cylinder filling facility, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G. The original license fee is $1,000; the renewal is $300.

(11) A Category K license for distribution systems authorizes the sale and distribution of LP-gas through mains or pipes, and the installation and repair of LP-gas systems. The original license fee is $1,000; the renewal is $300.

(12) A Category L license for engine fuel authorizes the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor or mobile fuel systems. The original license fee is $100; the renewal is $50.

(13) A Category M license for recreational vehicle installers and repairmen authorizes the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers. The original license fee is $100; the renewal is $70.

(14) A Category N license for manufactured housing installers and repairmen authorizes the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing. The original license fee is $100; the renewal is $70.

(15) A Category O license for testing laboratories authorizes the testing of LP-gas containers, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is $400; the renewal is $100.

(16) A Category P license for portable cylinder exchange authorizes the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted. The original license fee is $100; the renewal fee is $50.

(d) Fees for rules examinations.

(1) Individuals wishing to take a management-level rules examination (for company representatives or operations supervisors) shall pay a nonrefundable fee of $50 before taking any such examination.

(2) Individuals wishing to take an employee-level rules examination (for employees other than company representatives or operations supervisors) shall pay a nonrefundable fee of $20 before taking any such examination.

(e) General Installers and Repairmen Exemption.

(1) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category D training or continuing education requirements, and any service and installation employee training or continuing education requirements for Categories D, E, K, or N only by submitting to the commission the following:

(A) LPG Form 16B;

(B) a $30 original filing fee; and

(C) any information the commission may reasonably require.

(2) This exemption does not become effective until the examination exemption card is issued by the commission.

(3) An individual who holds a general installers and repairmen exemption shall not perform LP-gas related activities unless:

(A) that individual works for a properly licensed Category D, E, K, or N licensee;

(B) the individual successfully completes the applicable employee-level training or continuing education required to work for a licensee in a category other than D, E, K, or N; or

(C) the individual successfully completes all training or continuing education requirements for a category of license other than Category D, E, K, or N.

(4) The examination exemption accrues to the individual and is nontransferable.

(5) Any individual granted such exemption shall maintain certified status at all times. Upon failure to maintain certified status, the individual shall immediately cease all affected LP-gas activities until proper status has been regained.

(6) In order to maintain certified status, each individual issued an examination exemption card shall pay a $20 annual renewal fee to the commission on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed certification. If an individual's certification lapses, that individual shall cease all LP-gas activities until certified status has been renewed. To renew a lapsed certification, the applicant shall pay the $20 annual renewal fee plus a $20 late- filing fee. Failure to do so shall result in the expiration of the examination exemption. If an individual's examination exemption has been expired for more than two years, that individual shall complete all requirements necessary to apply for a new exemption.

(7) Each applicant for exemption who plans to substitute an individual as noted in §9.8(a)(3) of this title (relating to designation and responsibilities of company representatives and operations supervisors (branch managers)) for its company representative or operations supervisor may do so provided that individual complies with all of the other requirements.

(8) Any individual who is issued this exemption agrees to comply with the current edition of the LP-gas safety rules. In the event the exempt individual surrenders, fails to renew, or has the licensed revoked either by the Texas State Board of Plumbing Examiners or the Department of Licensing and Regulation, that individual shall immediately cease performing any LP-gas activities granted by this section. The examination exemption card shall be returned immediately to the commission and all rights and privileges surrendered.

(9) Individuals who comply with the general installers and repairmen exemption are not required to participate in the continuing education or training requirements specified in the applicable rules in this chapter.

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

Filed with the Office of the Secretary of State on August 10, 1999.

TRD-9904987
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: August 30, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463–7008

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16 TAC §9.13, §9.29

The Railroad Commission of Texas adopts new §9.13, relating to decals and fees, and amendments to §9.29, relating to application for an exception to a safety rule, without changes to the proposed versions published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5101). The sections include various fees to be paid to the commission for transport registration and applications for exceptions to safety rules.

The commission adopts the new section and amendments in response to legislative directives that the commission recover its costs for providing various services. The adopted new section and amendments add some new fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities.

In new §9.13, the commission adds a $50 decal replacement fee for truck decals which have been lost, damaged, or destroyed; the text of new §9.13 is moved from current §9.15(h) and the new fee added. In §9.29, the commission adds a $50 application fee and a $30 resubmission fee for staff review of applications for an exception to a safety rule. Both services require extensive staff time for research and processing.

The commission received several written comments on the proposal, as well as eight comments during the July 27, 1999, public comment hearing. One association, the Texas Propane Gas Association (TPGA), commented both in writing and at the public hearing.

At the public hearing, eight speakers provided mostly general comments or suggestions. A representative of TPGA said the

fee increases will have a great economic impact on the industry, but acknowledged that due to the legislative directive to raise the fees, no changes could be made at this time. TPGA pledged to work with the commission and the industry to prepare for the next legislative session by formulating some ideas on how to generate fees while providing some economic relief to the industry. Two other speakers generally agreed with TPGA's comments.

One speaker provided some specific suggestions on ways to cut costs. The speaker encouraged the commission to use email whenever possible to save on postage and paper. Forms and letters could be emailed to the industry, or information could be provided in letter-style rather than on printed forms. The speaker also asked if the commission, when it was delegated the authority several years ago for compressed natural gas (CNG) and liquefied natural gas (LNG) activities, had also received more funds to cover these new activities. The third suggestion was that an additional fee be charged for each outlet that a licensee operates; this would be fair to large and small dealers alike. The only problem might be for cylinder exchanges, which oftentimes are found at large retail stores; if a store had many different locations, a fee for each location might be too burdensome.

The commission generally agrees with these comments. A commission representative said that use of electronic filing is already being initiated at the commission. The suggestion regarding charging a fee for each outlet is also being developed as a proposal for the next legislative session; charging this kind of fee will require statutory authority before the necessary rule could be adopted. The commission is also planning to establish a cylinder exchange task force to examine this unique and fast-growing segment of the industry.

Another speaker questioned the necessity of having so many rules which are hard to understand and hard to enforce. Some dealers get frustrated and stop trying to abide by the rules. As a small dealer, this speaker asked if small dealers were included on the commission's LP-gas advisory committee. A commission representative explained that, as the commission adopts national standards such as those from the National Fire Protection Association (NFPA), the commission's rulebook will get smaller but the additional NFPA pamphlets will become part of the rules. Regarding enforcement of the rules, the commission representative said that the biggest problem is having the proper documentation to support an enforcement action for a rule violation. In appointing advisory committee members, the commission attempts to appoint members representing all types of businesses and all areas of the state.

The next speaker commented that larger dealers seem to have more influence with regard to the rules than smaller dealers. The speaker also said the current rules are not being followed and that the commission needs more inspectors. The commission representative said that the commission is interested in hearing from all segments of the industry and encouraged people to participate in the commission's business as performed in open meetings, summarized on the commission's web site, and published in the *Texas Register*.

Another speaker also stated that enforcement of the rules is a problem and believed the commission should not reduce the number of inspectors.

The last speaker stated that LP-gas dealers should be required to have service departments. Many companies only provide gas and do not have the expertise or equipment to perform maintenance and repairs. Another problem occurs when a dealer decides that a tank needs to be removed from service; the dealer often loses that customer to another dealer who will fill the tank even though it should be removed from service. The commission representative stated that a rule is being developed to require dealers to provide service, either through their own service department or by having one on retainer.

The commission received 11 written comments. TPGA's comments stated that the commission should attempt to take the burden for the increased fees off the bobtails; these trucks are regulated and levied fees by the federal government. TPGA encouraged the commission to proceed with the per-outlet fee, as well as increasing license fees to the statutory maximums. The comments also suggested that the commission streamline its activities as much as possible, proceed with the adoption of NFPA standards, and use email and the web site to provide information. TPGA also plans to work with the commission and the LP-gas advisory committee in preparing for the next legislative session. Comments from one individual essentially repeated TPGA's comments. Another individual supported TPGA's written comments, and added that truck fees should not bear such a disproportionate burden of the fee increases.

An individual commented against the fee increase. Another individual stated the commission should address the loss in state funds by cutting its expenses. Another individual reiterated concern about enforcement of existing rules, support for requiring service departments for each licensee, as well as stating that employee accountability is important. The supervisor cannot always be with the employee, so employees need to be responsible for performing their jobs safely.

One individual stated the commission should address the change in fee structure by reducing the scope and cost of current operations. In particular, the commenter questioned the need for the commission to inspect trucks because of the expanded role of the United State Department of Transportation (DOT). Inspectors could then spend more time on bulk storages and large installations. The commenter also questioned the need to require testing and certification for every type of LP-gas activity. Natural gas and electric utilities are not licensed this way.

The commission was already in the process of streamlining its operations before the legislative mandate regarding the fees was imposed. As part of this streamlining, inspectors will inspect fewer trucks and will concentrate more on public installations and vehicles such as school buses or mass transit vehicles. As far as testing and certification of each type of LP-gas activity, this authority is delegated to and required by the commission through its authorizing statutes. Ceasing the oversight of these activities would require legislative action to amend or repeal the statutes.

Another commenter opposed any increase in fees as well as any new fees and stated that the beneficiaries of the commission's programs, the general public, should be expected to help support these programs through taxes collected by the state. The commenter also requested that the commission identify areas of inefficiency that could be addressed in order to make the fee increases unnecessary.

The commission recognizes that the general public supports state government by paying taxes; however, the legislature directed the commission to increase fees so that the regulated

industries fund these programs. Unless changes are made during the next legislative session, the commission must follow its mandate. As already stated, the commission is in the process of streamlining its operations.

One commenter supported the idea that each retail office of an LP-gas company should pay an additional fee. Each office would submit its own license, employee, and truck renewals; this could assist the commission in maintaining accurate numbers. The commenter also suggested that cylinder exchange racks at each location have their own license. This would also help the commission maintain more specific records for each location.

The commission intends to examine these suggestions as it prepares the per-outlet fee proposal for the next legislative session, and to explore the cylinder exchange issues with the cylinder exchange task force.

Another commenter supported higher initial license fees, insurance requirements, and longer training seminars, stating that the commission would then need fewer inspectors to police the industry. The commenter also supported the adoption of NFPA standards.

An individual commented that the commission needs to provide better service in answering questions from dealers or the public, stating that more staff, better trained staff, or better paid staff is necessary. This individual also supports the adoption of NFPA standards.

Nearly all of the comments were general in nature and provided no specific suggestions regarding the proposed fee increases. Therefore, while the commission agrees with many of the comments and is already working towards resolving many of the issues presented, the commission makes no changes to the rules as a result of the comments.

The new section and amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §113.051, is affected by the adopted new section and amendments.

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 August 10, 1999.

TRD-9904988
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: August 30, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463–7008

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Chapter 13. Regulations for Compressed Natural Gas (CNB) and Liquefied Natural Gas (LNG)

The Railroad Commission of Texas adopts amendments to §§13.25, 13.61, 13.69, and 13.70, relating to filings required for stationary CNG installations; licenses, related fees, and licensing requirements; registration of CNG transports; and examination requirements and renewals, without changes to the proposed versions published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5105). These sections include various fees to be paid to the commission for licenses, renewals, examinations, transport registration, and other items.

The commission adopts the amendments in response to legislative directives that the commission recover its costs for providing various services. The amendments increase the current fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities. Some of the fees currently in effect are set at about half the statutory maximum, and most have not been increased in several years (in some cases, more than 14 years).

In §13.25, the nominal filing fees for certain forms, ranging from $6 to $26, are increased to $10 to $50. The commission adopts in §13.61 an increase in original and renewal license fees, currently ranging from $50 to $500, to a range of $100 to $1,000. The table is removed from the rule, and the text in the table concerning the fees added to the language about each specific license category. Also, in §13.69, the commission adds a new table to specify registration and transfer fees; these fees previously were not specified in the rule, but the newly adopted fees increase the current fees from $96 and $156 to $300 for all vehicle types.

New language in §13.70(a)(1)(A) and (B) raises the fees for management-level rules examinations, currently set at $26, to $50, and raises the employee-level examination fee from $11 to $20. Section 13.70(a)(4) is deleted; this language is being moved to a new rule, §13.73 relating to other fees for employee transfer and decal replacement, which will be adopted in a separate but concurrent rulemaking. The language in §13.70(b) concerning the general installers and repairman exemption also includes fees which are doubled. In the table, the employee's annual renewal fee increases from $10 to $20. Also in §13.70(e), late renewals increase from $10 to $20.

Other adopted amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period, including a public comment hearing held on July 27, 1999, was reasonable in order to comply with legislative directives to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

The commission received no comments on the proposal.

Subchapter B. General Rules for Compressed Natural Gas (CNG) Equipment Qualifications

16 TAC §13.25

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted amendments.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Subchapter C. Classification, Registration, and Examination

16 TAC §§13.61, 13.69, 13.70

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted amendments.

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

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Subchapter B. General Rules for Compressed Natural Gas (CNG) Equipment Qualifications

16 TAC §13.35

The Railroad Commission of Texas adopts amendments to §13.35, relating to application for an exception to a safety rule, and new §13.73, relating to other fees for employee transfers and decal replacement, without changes to the proposed versions published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5108). These sections include various fees to be paid to the commission for applications for exceptions to safety rules, transport registration, and other items.

The commission adopts the amendments and new section in response to legislative directives that the commission recover its costs for providing various services. The adopted amendments and new section add some new fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities.

In new §13.73, the commission adds a $50 decal replacement fee for truck decals which have been lost, damaged, or destroyed. A new §10 filing fee is also added for employee transfers. In §13.35, the commission adds a $50 application fee and a $30 resubmission fee for staff review of applications for an exception to a safety rule. These services require extensive staff time for research and processing. Other adopted amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period, including a public comment hearing held on July 27, 1999, was reasonable in order to comply with legislative directives to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

The commission received no comments on the proposal.

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted amendments.

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Subchapter C. Classification, Registration, and Examination

16 TAC §13.73

The new section is adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted and new section.

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

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Subchapter G. General Applicability and Requirements

16 TAC §§13.2013, 13.2016, 13.2019, 13.2040

The Railroad Commission of Texas adopts amendments to §§13.2013, 13.2019, 13.2040, and 13.2704, relating to licenses and related fees; examination and course of instruction; filings and notice requirements for stationary LNG installations; and registration of LNG transports, without changes to the proposed versions published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5109), and adopts §13.2016, relating to licensing requirements, with changes to the proposed version published in that issue. These sections include various fees to be paid to the commission for licenses, renewals, examinations, transport registration, and other items.

The commission adopts the amendments in response to legislative directives that the commission recover its costs for providing various services. The adopted amendments increase the current fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities. Some of the fees currently in effect are set at about half the statutory maximum, and have not been increased since these rules were first adopted effective October 1, 1996. The changed language adopted in the second sentence of §13.2016(f) retains the word "in" before the reference to §13.2013.

The commission adopts in §13.2013 an increase in original and renewal license fees, for the most part, to the current statutory maximum. The table is removed from the rule, and the text in the table concerning the fees added to the language about each specific license category. Section 13.2016 includes only a change to an internal reference. Section 13.2019(a)(4) is deleted; this language is being moved to a new rule, §13.2020 relating to employee transfers, which is adopted in a separate but concurrent rulemaking. New language in §13.2019(c) raises the fees for management-level rules examinations, currently set at $27, to $50, and raises the employee-level examination fee from $12 to $20. In §13.2040, the commission increases the filing fees for certain forms from $27 to $50 and from $17 to $30.

In §13.2704(a), the commission deletes language in the current table referring to proration of the transport registration fee. Also, in the table in §13.2704(a), the commission adds specific registration and transfer fees; these fees previously were not specified in the rule, but the new fees will be $270 for transport registration (all vehicle types) and $100 for transfer.

Other adopted nonsubstantive amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period, including a public comment hearing on July 27, 1999, was reasonable in order to comply with legislative directives and to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

The commission received no comments on the proposal.

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted amendments.

Issued in Austin, Texas, on August 10, 1999.

§13.2016. Licensing Requirements.

(a) Applicants for a license or license renewal shall file with the commission LNG Form 2001 designating a company representative who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising LNG operations of the licensee. A licensee may have more than one company representative.

(1) An applicant for license may not engage in LNG activities until its company representative has successfully completed the management examination administered by the commission.

(2) The licensee shall notify the commission in writing upon termination of its company representative and shall at the same time designate a replacement by submitting a new LNG Form 2001.

(3) The licensee shall cease LNG activities if, at the termination of its company representative, there is no other qualified company representative of the licensee acknowledged and recorded by the commission. The licensee shall not resume operation until such time as it has a qualified company representative, unless it has been granted an extension of time in which to comply as specified in §13.2052 of this title (relating to application for an exception to a safety rule).

(b) Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(c) Persons engaged in LNG activities, including licensees and nonlicensees, shall maintain a copy of the current version of the Regulations for Liquefied Natural Gas published by the commission and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours. Failure to maintain the required number of copies may result in enforcement action such as penalties or suspension of licenses.

(d) Licensees and operations supervisors at each outlet shall have all current licenses and certificates available for inspection during regular business hours.

(e) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the Regulations for Liquefied Natural Gas, applicants for license or license renewal in the following categories shall comply with the specified additional requirements:

(1) A Category 15 licensee shall file with the commission for each of its outlets legible copies of:

(A) its current DOT authorization. A licensee may not continue to operate after the expiration date of the DOT authorization; and

(B) its current ASME Code, Section VIII certificate of authorization. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the licensee may request in writing an extension of time from the commission not to exceed 60 calendar days past the expiration date. The licensee's request for extension shall be received by the commission prior to the expiration date of the ASME certificate of authorization and shall include a letter or statement from ASME that ASME is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A licensee shall not continue to operate after the expiration date of an ASME certificate of authorization until the licensee files a current ASME certificate of authorization with the commission, or the commission grants a temporary extension.

(2) A Category 15 or 20 licensee making repairs on ASME containers shall file with the commission a legible copy of its current "U" certificate of authorization for the repair of ASME containers by the National Board of Boiler and Pressure Vessel Inspectors.

(3) A Category 50 licensee shall file a properly completed LNG Form 2505 with the commission, certifying that the applicant will follow the testing procedures indicated. The LNG Form 2505 shall be signed by the company representative designated on LNG Form 2001.

(f) The commission shall notify the licensee at the last filed address on LNG Form 2001 of the impending license expiration at least 30 days prior to the expiration date. Renewals shall be submitted to the commission along with the renewal fee specified in §13.2013 of this title (relating to licenses and related fees) before the renewal date in order for the licensee to continue LNG activities. Failure to meet the renewal deadline shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LNG activities authorized by that license.

(1) If a person's license has been expired for fewer than 90 days, the person shall submit a late-filing penalty of one-half the amount of the renewal fee in addition to the required renewal fee. Upon receipt of the renewal fee and late-filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than two years. After verification, if the licensee has met all other requirements for licensing, the commission shall renew the license, and the person may resume LNG activities authorized by the license.

(2) If a person's license has been expired for 90 days but less than one year, the person shall submit a late-filing penalty equal to the amount of the renewal fee in addition to the required renewal fee. Upon receipt of the renewal fee and late-filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the person has met all other requirements for licensing, the commission shall renew the license, and the person may resume LNG activities authorized by the license.

(3) If a person's license has been expired for more than one year, that person may not renew, but shall comply with the requirements for issuance of a new license.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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Subchapter N. LNG Transports

16 TAC §13.2704

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted amendments.

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

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Subchapter G. General Applicability and Requirements

16 TAC §13.2020, 13.2052

The Railroad Commission of Texas adopts new §13.2020 and §13.2705 relating to employee transfers, and decals and fees, and amendments to §13.2052, relating to application for an exception to a safety rule, without changes to the proposed versions published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5112). These sections include various fees to be paid to the commission for transport registration, employee transfers, and applications for exceptions to safety rules.

The commission adopts the new sections and amendments in response to legislative directives that the commission recover its costs for providing various services. The adopted new sections and amendments add new fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities.

In new §13.2020, the commission adds a $10 filing fee for employee transfers. In §13.2052, the commission adds a $50 application fee and a $30 resubmission fee for staff review of applications for an exception to a safety rule. The commission adopts new §13.2705 to add a $50 decal replacement fee for truck decals which have been lost, damaged, or destroyed; the

text of new §13.2705 is being moved from current §13.2704 and the new fee added. These services require extensive staff time for research and processing.

The commission received no comments on the proposal.

The new sections and amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted new sections and amendments.

Issued in Austin, Texas, on August 10, 1999.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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Subchapter N. LNG Transports

16 TAC §13.2705

The new section is adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the adopted new section.

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

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Mary Ross McDonald
Deputy General Counsel
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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Subchapter D. Certification

16 TAC §23.38

The Public Utility Commission of Texas adopts the repeal of §23.38 relating to Standards for Granting of Certificates of Operating Authority and Service Provider Certificates of Operating Authority with no changes as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2560).

The repeal is necessary to avoid duplicative rule sections. The commission has adopted §26.109 relating to Standards for Granting of Certificates of Operating Authority (COAs), §26.111 relating to Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs), and §26.113 relating to Amendment of Certificates of Operating Authority (COA) or Service Provider Certificates of Operating Authority (SPCOA) to replace §23.38. This repeal is adopted under Project Number 19582.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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

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

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TRD-9905076
Rhonda Dempsey
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Public Utility Commission of Texas
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Proposal publication date: April 2, 1999
For further information, please call: (512) 936–7308

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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter E. Certification, Licensing and Registration

16 TAC §§26.109, 26.111, 26.113

The Public Utility Commission of Texas (commission) adopts new §26.109 relating to Standards for Granting of Certificates of Operating Authority (COAs), §26.111 relating to Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs), and §26.113 relating to Amendment of Certificates of Operating Authority (COAs) or Service Provider Certificates of Operating Authority (SPCOAs) with changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2586).

These sections establish commission rules as required by the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D. These sections are necessary to establish financial and technical standards for the award of certificates of operating

authority and service provider certificates of operating authority and will establish the procedure for amending certificates of operating authority and service provider certificates of operating authority. These new sections are adopted under Project Number 19582.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (section 167) §requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers.

The commission requested specific comments on the §167 requirement as to whether the reason for adopting or readopting the rule continues to exist. The commission received one comment regarding the §167 requirement. Southwestern Bell Telephone Company (SWBT) stated in its comments that the reason for adopting or readopting the rule exists today and will continue to exist into the foreseeable future because of the dynamic nature of the telecommunications industry at this time. The commission finds that the reason for adopting the rule continues to exist.

A public hearing on the proposed sections was held at commission offices on May 11, 1999, at 10:00 a.m. Representatives from AT&T Communications of the Southwest, Inc. (AT&T), Golden Harbor of Texas, Casey, Gentz & Sifuentes, and Lufkin-Conroe Telephone Exchange attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new sections from Southwestern Bell Telephone Company (SWBT), AT&T Communications of the Southwest, Inc. (AT&T), and the Office of Public Utility Counsel (OPC).

According to AT&T, §26.113(e) as proposed, addresses discontinuation of optional services and the relinquishment of certificates in a similar manner, even though there are different statutory standards for the two separate actions under PURA §54.252. AT&T purports that under PURA §54.252, the holder of a COA or SPCOA has an absolute right to discontinue an optional service after a 60-day notification period. AT&T further contends that in contrast, a certificate holder seeking to relinquish its certificate and cease all operations must obtain authorization from the commission before operations may cease. In order to maintain the statutory distinction between these two actions, AT&T requests that proposed §26.113(e) be divided into two sections. Under AT&T's proposal, the new sections should allow for the expedited discontinuation of optional services as allowed by statute.

PURA §54.252 involves grounds for reduction of service by a holder of a certificate of convenience and necessity, while PURA §54.253 actually considers the matter of discontinuation of service by certain certificate holders. Section 54.253(a) provides that a telecommunications utility that holds a COA or an SPCOA may: (1) cease operations in the utility's certificated area; or (2) discontinue an optional service that is not essential to providing basic local telecommunications service. Section 54.253(b) further specifies that before the telecommunications utility ceases operations or discontinues an optional service, the utility must give notice of the intended action to the commission and each affected customer in the manner required by the commission. Section 54.253(c) provides that the utility is entitled to discontinue an optional service on or after the 61st day the utility gives notice, while §54.253(e) similarly states that the commission may not authorize the utility to cease operations before the 61st day after the date the utility gives notice. The language relating to discontinuance of an optional service is very similar to the statute's language relating to ceasing of a utility's operations in a certificated area. Within the limitations as set out by the statute, the commission ultimately decides the specific manner in which a COA or SPCOA holder may cease operations or discontinue an optional service. The commission agrees to adopt AT&T's suggestion and splits proposed §26.113(e) into two subsections. The commission also adopts AT&T's suggestion that for consistency, the rule should refer to a "certificate holder," rather than to a "utility". The commission, however, rejects AT&T's suggested language for the new §26.113(g), and instead duplicates the language of proposed §26.113(e), with minor amendments, in a manner that is consistent with commission procedures.

Also in regards to §26.113, OPC requested that the commission require a utility discontinuing optional services or relinquishing an SPCOA to provide notice of this action to OPC. OPC further requested that the notice should include a copy of the notification letter to be sent to customers so that OPC may review the letter to insure that the rights of residential and small business ratepayers are adequately protected. Finally, OPC requested that the commission require an applicant to notify OPC of any application filed under this rule with the commission.

The commission agrees that a utility discontinuing optional services or relinquishing an SPCOA should also provide a copy of the notice to OPC, in order to insure that the rights of residential and small business rate payers are protected. However, the commission believes that it is not necessary to require an applicant to notify OPC of any application filed under this rule with the commission.

SWBT requested that §26.111(b)(1)(E) should be revised to clarify what "as appropriate" means. SWBT requested that the commission add the word "grant" to §26.111(b)(2). SWBT also suggested alternative language for §26.111(b)(2)(H) and §26.113, in order to clarify the commission's policy.

The commission disagrees with SWBT that there is a need for further clarification of the rule, and believes that the rule is clear as written.

At the public hearing, Casey, Gentz & Sifuentes asked for definitive language addressing what to file for an ownership structure change.

The commission modifies the proposed rule to add new §26.113(d), which allows the utility to file an abbreviated amendment.

The commission changed §26.109 and §26.111, to clarify that the commission needs information regarding telecommunications affiliates. The commission adds new §26.113(i), which clarifies when amendments should be filed. The commission clarifies §26.113(g)(2), which states the time limit for certificate holders to return customer deposits.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §§54.102-54.111, which grant the commission authority to determine the criteria for financial and technical qualifications of applicants for certificates of operating authority, and PURA §§54.152-54.159, which grant the commission authority to determine the criteria for financial and technical qualifications of applicants for service provider certificates of operating authority.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002, §§54.102-54.111, and §§54.152-54.159.

§26.109. Standards for Granting of Certificates of Operating Authority (COAs).

(a) Scope and purpose. This section applies to the certification of persons and entities to provide basic local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority established in the Public Utility Regulatory Act, Chapter 54, Subchapter C. Through this section, the commission strives to protect the public interest against entities that are not qualified to provide basic local exchange telephone service, basic local telecommunications service, and switched access service. The commission's overall goal is to encourage the development of a competitive marketplace for local exchange telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.

(b) Standards for granting certification to COA applicants.

(1) The commission shall consider the factors listed in subparagraphs (A)-(E) of this paragraph in deciding whether to grant a COA to an applicant proposing to serve an exchange of an incumbent local exchange company (ILEC).

(A) Whether the applicant has satisfactorily provided all of the information required in the Application for a Certificate of Operating Authority.

(B) Whether the applicant is financially qualified to be a facilities-based local service provider. To prove financial qualification as a facilities-based utility, an applicant shall provide evidence sufficient to establish that:

(i) Applicant possesses the greater of $100,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first two years of its Texas operations; or

(ii) Applicant is an established business entity and is able to demonstrate evidence of profitability in existing operations for two years preceding the date of application by submitting a balance sheet and income statement audited or reviewed by a certified public accountant establishing all of the following:

(I) A long-term debt to capitalization ratio of less than 60%;

(II) A return-on-assets ratio of at least 10%; and,

(III) The greater of $50,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for a minimum of the first two years of its Texas operations.

(C) Whether the applicant is technically qualified. The commission shall determine whether an applicant possesses sufficient technical qualifications to be awarded a COA based upon a review of the following information.

(i) Prior experience by the applicant or one or more of the applicant's principals or employees in the telecommunications industry or a related industry.

(ii) Any complaint history at the Public Utility Commission of Texas regarding the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals.

(iii) Any complaint history regarding the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals with Public Utility Commissions or Public Service Commissions in other states where the applicant is doing business. Relevant information shall include, but not be limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occur.

(iv) Any complaint history regarding the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals on file with the Office of the Texas Attorney General and the Attorney General in other states where the applicant is doing business.

(v) The compliance record of the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals at the Texas Comptroller's Office.

(vi) The compliance record of the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals at the Public Utility Commission of Texas.

(D) Whether the applicant is able to meet the commission's quality of service standards. Quality of service standards shall include, but not be limited to, 911 compliance, local number portability capability and Y2K compliance of all telecommunications equipment.

(E) Whether certification of the applicant is in the public interest.

(2) If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may limit the geographic scope of the COA.

(c) Financial instruments that will meet the cash requirements established in this section.

(1) Applicants for COAs shall be permitted to use any of the financial instruments set out in subparagraphs (A)-(F) of this paragraph to satisfy the cash requirements established in this rule to prove financial qualification.

(A) Cash or cash equivalent, including cashier's check or sight draft.

(B) A certificate of deposit with a bank or other financial institution.

(C) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission.

(D) A line of credit or other loan, issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission and payable on an interest-only basis for the same period.

(E) A loan issued by a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission, and payable on an interest-only basis for the same period.

(F) A guaranty issued by a shareholder or principal of applicant, a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond the certification of the applicant by the commission.

(2) To the extent that the applicant relies upon a loan or guaranty provided in paragraph (1)(E) or (F) of this subsection, the applicant shall provide evidence sufficient to establish that the lender or guarantor possesses sufficient cash or cash equivalent to fund the loan or guaranty.

(3) All cash and instruments listed in paragraph (1)(A)-(F) of this subsection shall be unencumbered by pledges as collateral and shall be subject to verification and review by the commission prior to certification of the applicant and for a period of 12 months beyond the date of certification of the applicant by the commission. Failure to comply with this requirement may void an applicant's certification or result in such other action as the commission deems in the public interest, including, but not limited to, assessment of reasonable penalties and all other available remedies under the Public Utility Regulatory Act.

(d) Name on certificates.

(1) All basic local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA shall be provided in the name under which certification was granted by the commission. The commission shall grant the certificate in only one name.

(A) If the applicant is a corporation, the commission shall issue the certificate in the corporate or assumed name of the applicant.

(B) If the applicant is an unincorporated business entity or an individual, the commission shall issue the certificate in the assumed name of the entity or the individual.

(C) Commission staff shall review the requested name to determine if the name is deceptive, misleading, vague, inappropriate, or duplicative of an existing certificated telecommunications utility. If the staff determines that the requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant and the applicant shall modify the name to alleviate the staff's concerns. If the name is not adequately modified, the application may be denied.

(2) The holder of a COA may request commission approval to change the name on the certificate by filing an application to amend its certificate with the commission.

(e) Reporting requirements

(1) All COA holders shall file updated information set forth in paragraph (2) of this subsection on an annual basis, by June 30 of each year.

(2) Annual reportable information shall consist of, but not be limited to the following:

(A) Changes in addresses, telephone numbers, authorized contacts and other information for contacting COA holders in Project Number 19421, *Notification of Changes in Address, Contact Representative, and/or Telephone Numbers, Pursuant to P.U.C. Substantive Rule §26.89;*

(B) A description of the type(s) of communications services being provided and the exchanges in which the services are being provided.

§26.111. Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs).

(a) Scope and purpose. This section applies to the certification of persons and entities to provide basic local exchange telephone service, basic local telecommunications service, and switched access service as holders of service provider certificates of operating authority, established in the Public Utility Regulatory Act, Chapter 54, Subchapter D. Through this section, the commission strives to protect the public interest against entities that are not qualified to provide basic local exchange telephone service, basic local telecommunications service, and switched access service. The commission's overall goal is to encourage the development of a competitive marketplace for local exchange telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.

(b) Standards for granting certification to SPCOA applicants.

(1) The commission may condition or limit the scope of a SPCOA's service in at least the following ways:

(A) Facility-based;

(B) Resale-only;

(C) Data-only;

(D) Geographic scope;

(E) Some combination of the above, as appropriate.

(2) The commission shall consider the following factors in deciding whether and how to condition or limit a SPCOA:

(A) Whether the applicant has satisfactorily provided all of the information required in the application for a SPCOA.

(B) Whether the applicant is financially qualified as a facilities-based SPCOA. To prove financial qualifications as a facilities-based SPCOA, the applicant shall meet the standards set forth in §26.109(b)(1)(B) of this title (relating to Standards for Granting Certificates of Operating Authority).

(C) Whether the applicant is financially qualified as a resale-only SPCOA. To prove financial qualifications as a resale-only

SPCOA, an applicant shall provide evidence sufficient to establish that:

(i) Applicant possesses the greater of $25,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first year of its Texas operations; or

(ii) Applicant is an established business entity and is able to demonstrate evidence of profitability in existing operations for two years preceding the date of application by submitting a balance sheet and income statement audited or reviewed by a certified public accountant establishing all of the following:

(I) A long-term debt to capitalization ratio of less than 60%;

(II) A return-on-assets ratio of at least 10%; and,

(III) The greater of $10,000 cash or cash equivalent or sufficient cash or cash equivalent to meet start-up expenses, working capital requirements and capital expenditures, liquid and readily available to meet the applicant's start-up expenses, working capital requirements and capital expenditures for the first year of its Texas operations.

(D) Whether the applicant is technically qualified. The commission shall determine whether an applicant possesses sufficient technical qualifications to be awarded a facilities-based SPCOA certification or whether applicant should be restricted to a resale-only SPCOA certification, based upon a review of the following information.

(i) Prior experience by the applicant or one or more of the applicant's principals or employees in the telecommunications industry or a related industry.

(ii) Any complaint history regarding the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals on file at the Public Utility Commission of Texas, the Texas Attorney General, or with the Public Utility Commissions, Public Service Commissions, or Attorneys General in other states where the applicant is doing business. Relevant information shall include, but not be limited to, the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints have occurred.

(iii) The compliance record of the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals at the Texas Comptroller's Office.

(iv) The compliance record of the applicant, applicant's telecommunications affiliates, predecessors in interest, shareholders, and principals at the Public Utility Commission of Texas.

(E) Whether the applicant is able to meet the commission's quality of service standards. The quality of service standards shall include, but not be limited to, 911 compliance, local number portability capability and Y2K compliance of all telecommunications equipment.

(F) Whether certification of the applicant is in the public interest.

(G) Whether the applicant, together with affiliates, had in excess of 6.0% of the total intrastate switched access minutes of use as measured by the most recent 12-month period preceding the filing of the application for which data is available.

(H) Whether the applicant has limited its operation to data-only services. If the applicant is limited to data-only services, the applicant will be eligible for a data-only SPCOA, and the applicant shall be waived from 911 and local number portability compliance as related to switched voice services. If the applicant intends to add voice services at a future date, the applicant must first file an amendment, subject to approval of the commission, which shows that the applicant is in compliance with all of the commission's quality of service standards.

(3) If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may limit the geographic scope of the SPCOA.

(c) Financial instruments that will meet the cash requirements established in this section.

(1) Applicants for SPCOAs shall be permitted to use any of the financial instruments set out in subparagraphs (A)-(F) of this paragraph to satisfy the cash requirements established in this rule to prove financial qualification.

(A) Cash or cash equivalent, including cashier's check or sight draft.

(B) A certificate of deposit with a bank or other financial institution.

(C) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission.

(D) A line of credit or other loan, issued by a bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission and payable on an interest-only basis for the same period.

(E) A loan issued by a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the commission, and payable on an interest-only basis for the same period.

(F) A guaranty issued by a shareholder or principal of applicant, a subsidiary or affiliate of applicant, or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond the certification of the applicant by the commission.

(2) To the extent that the applicant relies upon a loan or guaranty provided in paragraph (1)(E) or (F) of this subsection, the applicant shall provide evidence sufficient to establish that the lender or guarantor possesses sufficient cash or cash equivalent to fund the loan or guaranty.

(3) All cash and instruments listed in paragraph (1)(A)-(F) of this subsection shall be unencumbered by pledges as collateral and shall be subject to verification and review by the commission prior to certification of the applicant and for a period of 12 months beyond the date of certification of the applicant by the commission. Failure to comply with this requirement may void an applicant's certification or result in such other action as the commission deems in the public interest, including, but not limited to, assessment of reasonable penalties and all other available remedies under the Public Utility Regulatory Act.

(d) Name on certificates.

(1) All basic local exchange telephone service, basic local telecommunications service, and switched access service provided under an SPCOA shall be provided in the name under which certification was granted by the commission. The commission shall grant the certificate in only one name.

(A) If the applicant is a corporation, the commission shall issue the certificate in the corporate or assumed name of the applicant.

(B) If the applicant is an unincorporated business entity or an individual, the commission shall issue the certificate in the assumed name of the entity or the individual.

(C) Commission staff shall review the requested name to determine if the name is deceptive, misleading, vague, inappropriate, or duplicative of an existing certificated telecommunications utility. If the staff determines that the requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant and the applicant shall modify the name to alleviate the staff's concerns. If the name is not adequately modified, the application may be denied.

(2) The holder of an SPCOA may request commission approval to change the name on the certificate by filing an application to amend its certificate with the commission.

(e) Reporting requirements.

(1) All SPCOA holders shall file updated information set forth in paragraph (2) of this subsection on an annual basis, by June 30 of each year.

(2) Annual reportable information shall consist of, but not be limited to the following:

(A) Changes in addresses, telephone numbers, authorized contacts and other information for contacting SPCOA holders in Project Number 19421, *Notification of Changes in Address, Contact Representative, and/or Telephone Numbers, Pursuant to P.U.C. Substantive Rule §26.89;*

(B) A description of the type(s) of communications services being provided and the exchanges in which the services are being provided.

§26.113. Amendment of Certificate of Operating Authority (COA) or Service Provider Certificate of Operating Authority (SPCOA).

(a) A person or entity granted a COA or an SPCOA by the commission shall be required to file an application to amend the COA or an SPCOA in a commission approved format in order to:

(1) Change the corporate name or assumed name of the certificate holder.

(A) Name change amendments may be granted on an administrative basis, if the holder is in compliance with §26.109(b)(1)(C) of this title (relating to Standards for Granting Certificates of Operating Authority) or §26.111(b)(2)(D) of this title (relating to Standards for Granting Service Provider Certificates of Operating Authority), and no hearing is requested.

(B) Commission staff shall review the requested name to determine if the name is deceptive, misleading, vague, inappropriate, confusing or duplicative of an existing certificated telecommunications utility. If the staff determines that the requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant and the applicant shall modify the name to alleviate the staff's concerns. If the name is not adequately modified, the amendment may be denied.

(2) Change the geographic scope of the COA or SPCOA;

(3) Sell, transfer, assign, or lease a controlling interest in the COA or the SPCOA or sell, transfer, or lease a controlling interest in the entity holding the COA or the SPCOA.

(4) Remove the resale-only restriction on a resale-only SPCOA certificate.

(5) Remove the data-only restriction on a data-only SPCOA certificate.

(b) If a COA holder sells, merges, assigns, or leases its certificate or the entity holding the certificate to an SPCOA holder with an identical geographic scope, the surviving entity shall hold a COA certificate and shall have all the obligations of a COA holder set forth under state and federal law; the surviving entity shall also notify the commission within 30 days of the sale, merger, assignment, or lease.

(c) If the application to amend is for a name change of the certificate holder and is not a sale, transfer, assignment, or lease of the COA or the SPCOA or a sale, transfer, or lease of the entity holding the COA or the SPCOA, applicant will be required to provide a general description of the applicant, including the following:

(1) Legal name and all assumed names of the entity to which the commission issued the certificate.

(2) All other assumed names, if any, under which the certificate holder does business.

(3) Certificate number of the COA or SPCOA.

(4) Address and telephone number of the principal office of certificate holder.

(5) Name, address, and office location of each partner, officer, and the five largest shareholders of certificate holder.

(6) Proposed amendment to legal name or assumed name of certificate holder.

(d) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest change involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules from the information provided on the abbreviated amendment application, then a full amendment application will be required.

(e) If the application to amend requests any change other than a name change, the commission shall consider the factors set forth in §26.109 of this title and §26.111 of this title in determining whether to approve the amendment to the certificate.

(f) Standards for relinquishing certifications.

(1) A COA or SPCOA certificate holder relinquishing a certification shall comply with PURA §54.253. Notification to the commission shall consist of filing an amendment, which provides the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being relinquished;

(C) Commission docket number in which the COA or SPCOA was granted;

(D) A sworn statement stating the authority to relinquish certification, notification of customers, and that the information provided in the amended application is true and correct;

(E) Notification to each customer.

(i) The notification letter shall clearly state the intent of the certificate holder to cease operations and a copy of the letter shall be provided to the commission and to the Office of Public Utility Counsel (OPC);

(ii) The notification letter shall give customers a minimum of 61 days notice of relinquishment of certification;

(iii) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.

(2) All customer deposits and credits shall be returned within 60 days of notification to relinquish certification;

(3) Any switchover fees that will be charged to affected customers shall be paid by the certificate holder relinquishing the certification;

(4) If the relinquishing certificate holder has participated in the universal service fund (USF), it must obtain a letter of release from the USF Administrator.

(5) The relinquishing certificate holder shall maintain operations until it has obtained commission authorization to cease operations or services. Upon the certificate holder receiving commission authorization to cease operations, the relinquishing certificate holder shall void its existing interconnection agreement(s).

(g) Standards for discontinuing optional services.

(1) A COA or SPCOA certificate holder discontinuing optional services shall comply with PURA §54.253. Notification to the commission shall consist of filing an amendment, which provides the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being amended;

(C) Commission docket number in which the COA or SPCOA was granted;

(D) A sworn statement stating the authority to discontinue service options, notification of customers, and that the information provided in the amended application is true and correct;

(E) Notification to each customer.

(i) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and to OPC;

(ii) The notification letter shall give customers a minimum of 61 days notice of discontinuation of optional services.

(2) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.

(3) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.

(h) No later than five days after filing an application to amend, the applicant shall notify the Advisory Commission on State Emergency Communications and all affected 9-1-1 entities by providing a copy of the application to amend.

(i) All amendment filings shall be made within 30 days of the event requiring the amendment.

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 August 13, 1999.

TRD-9905075
Rhonda Dempsey
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Public Utility Commission of Texas
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Proposal publication date: April 2, 1999
For further information, please call: (512) 936–7308

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Part IX. Texas Lottery Commission

Chapter 402. Bingo Regulation and Tax

16 TAC §402.572

The Texas Lottery Commission adopts new section 16 TAC §402.572, relating to Temporary Capital Equipment Acquisition, without changes to the proposed text published in the July 9, 1999 issue of the *Texas Register*, (24TexReg5117).

The new section sets out the equivalent of a 25% increase in license application fees for conductor and lessor licenses, Classes E through J. The increased fee may be paid, at the licensee's option, either over two years at the rate of 12.5% per year or over one year at the rate of 25%.

Comments were received regarding the proposed section.

River City Bingo and Bingo is Good for Nonprofit Organizations (BIGNO) both suggested changes to the rule to require all bingo licensees, including license Classes A through D for charities and commercial lessors, as well as distributors, manufacturers, and system service provider licensees, pay the additional fee. River City Bingo and BIGNO believe the rule will directly reduce the amount of available funds for charitable distribution, since passing on the increase to their customers is unrealistic. Permian Basin B'nai B'rith Lodge 2409 believes that only funds currently collected should be used to upgrade equipment and is against the section as proposed. Deputy Reserve Constable Association, Pct. 4 opposes the section as proposed and believes that the Charitable Bingo Division should budget for the expense and pay for it by itself. Variety Club of North Texas, Variety Foundation of Texas, Variety Club (Sunshine Coach Program), Leukemia Association of North Central Texas and Women of the Motion Picture Industry believes that charities are having a hard time and cannot afford the new fee and are against the section as proposed. VFW Post 2549, Amvets Post 81 and Texarkana Sheltered Workshop, Inc. are against the section as proposed and believe that they should not have to pay for the capital expenditure because they do not believe they played a role in creating the problem. Heritage of Odessa Foundation, Keep Odessa Beautiful, Odessa Jaycees

and White-Pool House Friends are not in favor of the section as proposed because they believe they pay enough in fee money each year. Senior Citizens Services of Texarkana, Inc. is against the proposed section because they believe it is patently unfair. B'nai B'rith Men's Club, Midland, Texas is against the proposed section, believing that the Commission should use the money collected from the 5% prize fee and licensing fees to pay for the capital expenditures. Texas Friends for International Fencing, Military Order of the Cooties Auxiliary, Variety Wheelchair Arts & Sports Association, VFW Post 1837 Ladies Auxiliary, Bluebonnet Civitan Club, American Orthodox Catholic Church, Humane Society of Dallas County, Military Order of the Cooties, Dist. #3, Good News International, Inc., Amvets Post 10 Ladies Auxiliary and VFW 2494 Ladies Auxiliary are against the proposed section because they believe that the annual license fee currently being charged charities should be considered astronomical and they believe that there must be funds otherwise available to pay for the capital acquisition and suggest that the Commission does not want to support bingo. C. S. Lewis Center of Right Study of the Common Tradition, Inc., Cardinal Mindszenty Foundation, College of St. Thomas More, Highlands Educational Corporation, Highlands Parent Teacher Association, Low Birth Weight Development, Oakhill Incorporated, Quality of Life, Inc., Sacred Heart Educational Services, Inc., School of Faith of Texas, Inc., St. Anthony Home and School Association, St. Anthony School, St. Joseph's Helpers of Dallas, Texas, Inc., St. Stephen the Martyr Chapter, Truth, Incorporated, Plano Police Association, Knights of Columbus Council 7859, American Legion Post 321 are against the proposed section because they believe the increase will be a disaster for small charities and that the Commission should have funds otherwise available to pay for the capital expenditure. Garland Emergency Corps, Inc. is against the proposed section because they believe they already pay more in license fees now than should be allowed. An individual commenter is in favor of the rule, however suggests that the proposed section be changed to allow the increased fee to be applied toward the charitable distribution for whatever quarter the payment is to be paid.

A public hearing was held on July 21, 1999 to receive public comments on the rule. American Legion, Department of Texas, Texas Elks, River City Bingo, BIGNO, Trend Gaming, GameTech International and American Legion #292 provided public comment. American Legion, Department of Texas stated that the State should have provided appropriated state funds to cover the cost of the capital equipment, but otherwise was in favor of the section as proposed. Texas Elks stated that the State should have provided appropriated state funds to cover the cost of the capital equipment and was in favor of exempting the class A through D licensees, but otherwise was in favor of the section as proposed. River City Bingo and BIGNO stated that the State should have provided appropriated state funds to cover the cost of the capital equipment and that the fee increase should be imposed on all bingo licensees and were against the section as proposed. BIGNO also suggested that a surplus of funds was available to the Commission, through lottery activities that should be available to the Charitable Bingo Division to fund the capital expenditure. Trend Gaming and GameTech International stated that it supported the section as proposed. American Legion stated that it was in favor of exempting the class A through D licensees, because the imposition of the fee on those Classes of licensees would be too much of a burden and would put those charities out of business, but believed the class E through J licensees could tolerate the additional fee.

The Commission believes the choice to impose the fee on the specific class of licenses E through J is fair because these license classes represent the largest number of licensees. Due to their small number, the inclusion of license classes A through D would not significantly reduce the amount of the additional license fee. The inclusion of license classes A through D would only decrease the proposed fee increase from 25% to 24%. Additionally, the Commission believes that the imposition of the fee increase on license classes A through D could potentially represent a financial hardship on those license classes. Conductor license classes A through D have annual gross receipts of $100,000 or less. Lessor license classes A through D have annual gross rentals of $40,000 or less. Generally, conductor license classes A through D are organizations that only conduct bingo once or twice a week and are not located in a large commercial facility. In the case of lessor license classes A through D, these are usually organizations that have their own facility to conduct bingo and may lease their facility to an auxiliary or other affiliated organization for little or no rent. Conductor license classes E through J collect annual gross receipts in excess of $100,000 and Lessor license classes E through J collect annual gross receipts in excess of $40,000. The Commission agrees with the commenters who suggested that the fee increase could be detrimental to small charities and supported the exemption of license classes A through D.

The Commission can not agree with the commenters who suggest that funds should be made available through Lottery appropriations or Lottery funds, because it is believed that there is no authority for the Charitable Bingo Division to utilize those funds. The Commission can not agree with the commenters who suggest that distributors, manufacturers and system service provider licensees pay the additional fee because those fees are set by statute. The Commission can not agree with the commenters who suggest that funds currently collected should be used because it is believed that there is no authority for the Charitable Bingo Division to utilize those funds. The Commission can not agree with the commenters who suggest that charities are having a hard time and cannot afford the new fees because both gross receipts and charitable distributions have increased from 1997 to 1998. Additionally, there was a continued increase in both gross receipts and charitable distributions from the 1st quarter of 1998 to the 1st quarter of 1999. The Commission can not agree with the commenters who suggest they should not have to pay the increased fee because they had no role in creating the problem. The increased fee is not a form of punishment but a means to improve services. The Commission can not agree with the commenters who suggest that the Commission does not want to support bingo because it is believed that there is no authority for Lottery funds to be used by the Bingo Division. The Commission believes that the provisions of the Appropriation Act authorize the imposition of the fees versus utilizing other appropriated funds.

The Commission agrees with the commenters who suggested that the acquisition of the new system would be a benefit to the entire industry and that any further delay in obtaining the system would only put the Charitable Bingo Division further behind. The Commission agrees with the commenters who suggested that the acquisition of the new system is needed.

A needs assessment performed on the 18-year-old Charitable Bingo System (CBS) determined that the CBS needs to be replaced. The CBS has been converted twice in recent years causing degradation in the system performance. The aging technology used for the system has resulted in usability problems. The CBS does not adequately support all of the business requirements of the Charitable Bingo Division. The CBS does not provide users with adequate access to information that is critical in maintaining effective and efficient processes. Management reporting functions are constrained by inefficient database design and inflexible report generation tools. Reliance on paper-based data collection instruments and the lack of robust data entry edits and data integrity checking affects the overall quality and reliability of the system. The database does not adequately manage retention and archiving of historical information. Maintenance of the CBS is increasingly difficult and impractical.

The 76th Legislature, Regular Session, recognized the need to replace the CBS but made the appropriation of additional funds for this purpose contingent on the Lottery Commission covering the additional costs by assessing fees sufficient to generate increased revenues in excess of Bingo revenues estimated in the Comptroller's Biennial Revenue Estimate for 2000 and 2001. This rule carries out the language of Rider 11, Texas Lottery Commission bill pattern, General Appropriations Act, 76th Legislature, Regular Session

The new section is adopted under Texas Civil Statutes, Article 179d, §13(d) and §16(a), which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the Texas Government Code, §467.102 which provide the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the State Lottery Act and the laws under the Commission's jurisdiction, and the Texas Government Code, Chapter 2001, which provides for the adoption of administrative rules.

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

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905067
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TITLE 19. EDUCATION

Part VII. State Board for Educator Certification

Chapter 229. Accountability System for Educator Preparation

19 TAC §§229.1–229.4

The State Board for Educator Certification adopts amendments to §§229.1-229.4, concerning General Provisions and Purpose of Accountability System, Definitions, The Accreditation Process and Reporting Requirements, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4670) and will not be republished. The amendments address the use of performance data aggregated by demographic group, examinee's test performance from the initial year the test is taken, and the use of data for a small number of candidates.

Under the current rule, candidates' success on subsequent attempts during the first year are not included in ASEP until test results are used as cumulative data in the year following the initial attempt. This rule change allows the entity to receive credit for their students' success on any other attempts made during the same academic year. Amended §229.2 replaces "first-time pass rate" with "first-year pass rate," which uses performance from the last attempt made on the test during the academic year in which the test is first taken. Under the amendment, accreditation status for September 1999 will be based on the new first-year pass rate and the current two-year cumulative pass rate.

Another major amendment allows educator preparation programs to base accreditation on whether each demographic group meets either the first-year or cumulative standards. The current rule requires that all groups meet the 70% first time pass rate or that all groups meet the 80% cumulative pass rate.

It was recommended that §229.3 be revised to accredit entities demonstrating acceptable performance within each of the seven demographic groups (all students, African American, Hispanic, Other, white, male, female) based on either (1) a first-year pass rate of 70% or higher for each individual group OR (2) a two-year cumulative pass rate of 80% for the same group. Although the change allows for more flexibility in the reporting of each demographic group, each group will still need to be reported to receive an accreditation rating.

Another amendment addresses the concern associated with using data derived from fewer than 30 test takers. It was recommended that §229.3(e)(1) be amended to allow the performance of demographic groups with less than 30 test takers to be combined with same-group data from the previous one or two reporting periods. If the sum of test takers is 30 or more, the entity must meet the appropriate 70% first-year or 80% cumulative standard for that group in order to be accredited. If the sum is less than 30 after the numbers of test takers from three ASEP reporting periods have been combined and the entity would be "Accredited-Under Review" based on the performance of the combined group, then the entity may request that the executive director reconsider the status. The provision for combining test takers across years applies only to the ethnic and gender groups and does not apply to "all students" at the entity. The number of test takers in the "all students" group will not be combined over years, even if the number is less than 30. However, if the number of "all students" test takers for the reporting period is less than 10 and the entity would be "Accredited-Under Review" based on their performance, then the entity may request reconsideration of that status from the executive director. For the September 1999 ASEP ratings, it was also recommended for small group data (fewer than 30 test takers) that the current number be combined with data from the September 1998 ASEP reporting period.

Additionally, the amendment to §229.3(g)(2) modifies the definition for diversity so that the Board may recognize entities that either already recommend for certification a commendable level of diverse candidates or that have made substantial progress in increasing the number or percentage of recommended candidates. An additional amendment clarifies the methodology for comparing minority participation to the state and regional populations.

Another amendment to §229.3(c) excludes from ASEP the content-test data for a degreed individual enrolled in an educator preparation program at an institution of higher education who received their undergraduate degree from another institution. The entity will still be held accountable for these individuals' test performance on all attempts on the professional development tests, tests for delivery systems, and other tests as identified by the executive director.

The exclusion applies only to the individual's initial attempt on the content test for the certificate being sought; subsequent attempts on that test will be used in ASEP. Therefore, if the individual is not successful on the content test the first time it is taken, their second attempt is counted in ASEP. Additional attempts will be treated in ASEP in the same manner as retakes on all tests.

As with all tests taken by candidates, the entity must authorize the individual to take that content test. In order to exclude the individual's content-test performance from ASEP, the entity must inform SBEC that the individual is a post-baccalaureate student with a degree from another institution; as a result, ASEP will use their content-test performance according to the conditions described above. This change will begin with the 1999-2000 academic year and impact administrations after September 1, 1999.

Current ASEP rules require approval of the fields in which an entity may prepare candidates for certification (§229.3(f)); however, the rule does not specify an implementation date. It was recommended that the rule be amended with an effective date of September 1, 2002. Because approval of a field is based on performance for three consecutive years, the approval of fields in September 2002 would be based on pass rates during the 1999-2000, 2000-01, and 2001-02 academic years. Implementation in 2002 would coincide with the scheduled implementation of §229.3(e)(2), which requires that an acceptable proportion of certificate fields offered by a program meet the performance standards in order to be "Accredited."

The amendments maintain the intent of the Legislature to hold programs accountable for the performance of their candidates while recognizing the limitations of measuring performance based on small numbers of test takers.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code (TEC) §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the continuing accountability of all educator preparation 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.

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State Board for Educator Certification
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Proposal publication date: June 25, 1999
For further information, please call: (512) 469–3001

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Chapter 230. Professional Educator Preparation and Certification

Subchapter G. Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements

19 TAC §230.199

The State Board for Educator Certification (SBEC) adopts an amendment to §230.199, concerning Endorsements, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* and will not be republished (24 TexReg 4674). The amendment will align requirements for the endorsement with the standards for driver education teachers specified in 19 TAC Chapter 75, Subchapter AA, §75.1002 (relating to the Commissioner's Rules Concerning Driver Education Teachers).

The TEC (§29.902(a)) authorizes the Texas Education Agency (TEA) to regulate driver education programs in the public schools and (b) authorizes TEA to develop standards for certifying public school driver education instructors, but the language does not explicitly grant TEA authority to actually issue the certificate.

After discussions with TEA staff, it was agreed that SBEC should continue to be responsible for issuing the certificate to driver education teachers. This decision was based on concerns about the need to conduct duplicative disciplinary proceedings if TEA issued the certificate - SBEC would be required to take action against an educator's math certificate(s) and TEA would be required to proceed to revoke the same educator's driver education certificate.

The amendment adopts by the standards for driver education teachers specified in 19 TAC Chapter 75, Subchapter AA, §75.1002 (relating to Commissioner's Rules Concerning Driver Education Teachers). Adopting by reference the Commissioner's certification standards will allow individuals to seek employment in either a public or licensed private school after certification is obtained. Currently, individuals without the nine-semester hour certification must return for additional university training before they can teach in a licensed private school.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code (TEC), §21.041(b)(2) and (4) and §21.044 which require the Board to propose rules that specify the classes of certificates and the requirements for issuance and renewal of certificates; §29.902 which requires the Board to issue a certificate to

professional and paraprofessional personnel who conduct driver training programs in the public schools.

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 August 13, 1999.

TRD-9905085
Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469–3001

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Subchapter M. Certification of Educators in General

19 TAC §230.412

The State Board for Educator Certification adopts the repeal of §230.412, concerning Classes of Certificates, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4675) and will not be republished. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates. The repeal is necessary because the existing rule conflicts with the new requirements.

The repeal to Chapter 230, Subchapter M, §230.412 is deleted because the current listing of classes of certificates conflicts with those scheduled for implementation on September 1, 1999, under 19 TAC Chapter 232, Subchapter M.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469–3001

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Subchapter N. Certificate Issuance Procedures

The State Board for Educator Certification (SBEC) adopts amendments to §§230.431, 230.433, 230.434 and 230.437, concerning Procedures in General, Duplicate Certificates, Effective Dates of Certificates and Permit Issuance and Issuance of Certificates Based on Examinations, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4676) and will not be republished. The SBEC also adopts the repeal of §230.438, concerning General Provisions, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4677) and will not be republished. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates.

Section 230.431(a)(1), which requires that the level and specific areas for which the individual is certified be shown on an individual's certificate, is deleted. A new certificate is currently being designed to reflect the professional nature of the credential and will show the class of certificate that has been issued (classroom teacher, counselor, principal, etc.). A separate document will detail the grade levels and subject areas for classroom teachers, and will be amended each time a teacher adds a new grade level or subject area. Upon voluntarily entering the renewal process, educators holding lifetime certificates will receive the new certificate free of charge. Section 230.433 adds the word "Certification". Section 230.434(3) is also updated to include the word "certification". Section 230.437 is updated to reflect the new classes of certificates. Section 230.438 is deleted because it is no longer applicable.

No comments were received regarding adoption of the amendments and repeal.

19 TAC §§230.431, 230.433, 230.434, 230.437

The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(4) and (c), and §21.048 which require the State Board for Educator Certification to propose rules that specify the standards, assessments, and fees required for the issuance of an educator certificate. Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469–3001

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19 TAC §230.438

The repeal is adopted under the Texas Education Code (TEC), §21.041(b)(4) and (c), and §21.048 which require the State

Board for Educator Certification to propose rules that specify the standards, assessments, and fees required for the issuance of an educator certificate. Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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TRD-9905088
Pamela B. Tackett
Executive Director
State Board for Educator Certification
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Proposal publication date: June 25, 1999
For further information, please call: (512) 469–3001

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Subchapter O. Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States

19 TAC §§230.461–230.463

The State Board for Educator Certification (SBEC) proposes amendments to §§230.461-230.463, concerning General Provisions, Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States and Requests for Evaluation of College Credentials, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4677) and will not be republished. The amendments will continue the provision that allows out-of-state applicants to teach or serve in the Texas public schools for one-year before completing examination requirements.

Current rules provide for the issuance of a Texas educator certificate to a person holding a degree and standard certification issued by another state. Once SBEC staff completes a review of the out-of-state credentials, the applicant must then pass the appropriate certification examinations. A temporary certificate, valid for one year, may be issued to an individual who has completed all requirements except the appropriate certification examinations. An applicant who holds a standard professional service certificate, such as counselor, educational diagnostician, or principal, issued by another state may be issued the equivalent Texas certificate in the professional service area, provided the applicant completed requirements for a basic classroom teaching certificate.

Many states do not require certification as a classroom teacher as a prerequisite for certification as an administrator, counselor or other professional service areas. Individuals holding professional service certificates issued by states that do not require the classroom certificate encounter many problems upon coming to Texas. Most of these individuals hold graduate degrees and have many years of public school experience in their particular profession.

However, without evidence of a classroom certificate, SBEC is not able to reciprocate on the out-of-state professional service certificate. In order to qualify for a Texas certificate, these individuals must serve on an emergency permit as a classroom teacher and complete an educator preparation program for a classroom teaching certificate. Once the individual has been issued a Texas classroom certificate, SBEC can then reciprocate on the out-of-state professional service credential.

The amendments delete the classroom teaching certificate currently required for all professional service certificates based on certification from out-of-state. Applicants holding a professional service certificate issued by another state will be required to have three years of acceptable public or private school experience in the specific professional service area. The amendments also delete the provision that allows SBEC to evaluate an applicant's credentials for their initial assignment area in Texas that is outside of their certified area(s). The adoption will put into rule a policy that has been practiced for many years that allows SBEC to reciprocate on educator credentials from U.S. territories.

The amendments also delete the provision in current rule, §230.463, that allows a school district to request that SBEC evaluate an applicant's credentials for an area not listed on the certificate from outside the state, provided it is part of the applicant's initial assignment area in Texas. This provision has been in effect since April 12, 1980, prior to the availability of certification by exam. It was provided as a service to school districts to give another option to requesting college deficiency plans for their out-of-state teachers serving on permits in other areas. This option is not widely used. Most out-of-state applicants choose to add certification based on passing the appropriate exam rather than completing additional college coursework from a deficiency plan. The initial assignment evaluations prepared by SBEC staff require an extensive review of transcripts and are done at no additional charge if combined with the request for review of out-of-state credentials.

Since at least the late 1970s, applicants holding degrees and acceptable educator credentials issued by territories of the United States have been given the same status as certified applicants from other states. At the current time, this policy applies to certified applicants from the territories of Guam, Puerto Rico and the Virgin Islands. The amendments place this policy into rule and will allow SBEC to continue to reciprocate on appropriate educator credentials from U.S. territories in the same manner as those issued by other states.

The SBEC has discussed issues related to the requirement for a classroom teaching certificate. The discussion has centered on the knowledge and skills that a counselor should have to effectively serve students. The SBEC also discussed the current Counselor ExCET and the fact that it does not assess knowledge and skills of the teaching and learning process. Currently, the SBEC is working with an Advisory Committee for the Counselor Committee that is discussing the issue of whether a beginning counselor in Texas should be required to have a teaching certificate and teaching experience. Recommendations developed by the Advisory Committee for the Counselor Certificate will be considered by the Board and will drive the development of a new counselor assessment. However, based on the Board's discussion, staff has revised Subchapter O to delete the classroom teaching certificate requirement for all professional service certificates based on certification from other states. Applicants holding a professional

service certificate from outside the state will be required to have three years of experience in the specific professional service area in accredited public or private schools. Once the recommendations from the Advisory Committee are presented, the Board will modify counselor requirements as necessary.

The amendments provide more opportunities for out-of-state educators to become fully certified in Texas and will increase the number of educators available to school district, without comprising quality. In a time when the State of Texas is facing a serious shortage of individuals in education, SBEC believes this is a step towards increasing the number of qualified educators available for all school districts in Texas.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(5) and §21.052 which require the State Board for Educator Certification to propose rules that provide for the issuance of an educator certificate to a person holding a similar certificate issued by another state.

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 August 13, 1999.

TRD-9905089
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: September 2, 1999
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For further information, please call: (512) 469–3001

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Subchapter P. Requirements for Standard Certificate and Specialized Assignments or Programs

19 TAC §§230.481–230.484

The State Board for Educator Certification adopts amendments to §§230.481-230.484 concerning General Provisions, Specific Requirements for Standard Certificates and Endorsements, Specific Requirements for Standard Vocational Certificates Based on Experience and Preparation in Skill Areas and Eligibility Requirements for Specialized Assignments or Programs, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* and will not be republished (24 TexReg 4680). On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469–3001

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Subchapter U. Assignment of Public School Personnel

19 TAC §230.601

The State Board for Educator Certification adopts an amendment to §230.601, concerning Assignment of Public School Personnel, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4681) and will not be republished. The amendment Deletes Assignment Criteria for Administrators Other than Assistant Principals, Principals, and Superintendent. The amendment deletes criteria for assignment to administrative positions other than principal, assistant principal, and superintendent.

Current rules set criteria for all school district assignments of public school personnel including administrative positions such as administrative officer, instructional officer, supervisor, visiting teacher, and superintendent. Each school district must follow the current assignment table in employing all administrators.

The amendment deletes assignment criteria for Administrative Officer I-VIII, Instructional Officer I-VIII, Supervisor, Vocational, Administrator, Vocational Director, Vocational Supervisor, Visiting Teacher, Special Education Director and Special Education Supervisor. Each school district will be responsible for establishing requirements for administrative positions other than superintendent, principal, and assistant principal.

With the different employment needs and resources at all of the different school districts in Texas, this amendment gives flexibility to each school district to determine the requirements of employment for administrators other than principal, assistant principal, and superintendent. It is important to note that SBEC will continue establishing strict assignment criteria for the principal, assistant principal, and superintendent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code (TEC), §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be offered.

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 August 13, 1999.

TRD-9905091

Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3001

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Chapter 232. General Requirements Applicable to All Certificates Issued

Subchapter R. Certificate Renewal and Continuing Professional Education Requirements

The State Board for Educator Certification adopts amendments to §§232.800, 232.810, 232.830, 232.850, 232.860, 232.870, 232.880 and 232.890, concerning Certificate Renewal and Continuing Professional Education Requirements, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4682) and will not be republished. The SBEC also adopts the repeal of §232.900, concerning Effective Date and new §232.900, concerning Pilot Program without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4685) and will not be republished. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates.

Section 232.800(b) adds language indicating that renewal requirements apply to all individuals holding any class of Standard Certificate. Section 232.810(c) changes the words, "publish a report on" to "make available". The amendment to §232.830 removes an obsolete date and updates the rule. Section 232.850(a) changes restrictive language from "must" to "should" concerning the number of clock hours of continuing education to be completed each year. Section 232.860(d), (f), and (g) deletes restrictive language "each year" for the percentage of hours that can be accumulated for independent study, presenting a CPE activity, mentoring, or serving as a principal assessor. The limitation is applied to the full five-year renewal period. Section 232.870(a)(7) adds language to provide a means to designate professional associations as approved providers. Section 232.870(c)(4) deletes the requirement for providers to maintain documents. Section 232.880(c) changes language to allow the executive director to review the documentation required for renewal. The amendment to §232.890 removes an obsolete date. Section 232.900: adds a new section authorizing the executive director to approve school districts as pilot sites for alternative approaches to deliver required continuing education activities.

No comments were received regarding adoption of the amendments, repeal and new rule.

19 TAC §§232.800, 232.810, 232.830, 232.850, 232.860, 232.870, 232.880, 232.890

The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(4) and (9) which requires the State Board for Educator Certification to specify requirements for the renewal of an educator certificate, and TEC §21.045 which requires the Board to identify courses and programs that fulfill educators' continuing education requirements. The Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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Proposal publication date: June 25, 1999
For further information, please call: (512) 469-3001

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19 TAC §232.900

The repeal is adopted under the Texas Education Code (TEC), §21.041(b)(4) and (9) which requires the State Board for Educator Certification to specify requirements for the renewal of an educator certificate, and TEC §21.045 which requires the Board to identify courses and programs that fulfill educators' continuing education requirements. The Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: September 2, 1999
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For further information, please call: (512) 469-3001

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The new rule is adopted under the Texas Education Code (TEC), §21.041(b)(4) and (9) which requires the State Board for Educator Certification to specify requirements for the renewal of an educator certificate, and TEC §21.045 which requires the Board to identify courses and programs that fulfill educators' continuing education requirements. The Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3001

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Chapter 241. Principal Certificate

19 TAC §§241.1, 241.5, 241.20, 241.30, 241.35, 241.40

The State Board for Educator Certification adopts amendments to §§241.1, 241.5, 241.20, 241.30, 241.35 and 241.40, concerning Principal Certificate, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4686) and will not be republished. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates. The amendments delete language in existing rules that conflict with the new requirements.

Section 241.1 eliminates subsection (d). Section 241.5 eliminates subsection (a)(3). Section 241.5(a)(3) is deleted. The Board does not have statutory authority to conduct criminal history checks as a condition of admission to an educator preparation program. Section 241.30(a)-(c) has been rewritten to clarify that individuals employed as assistant principals or principals - whether before or after September 1, 1999 - must complete the assessment process and develop an individual growth plan. Section 241.35(c) adds language requiring each assessment provider to report to SBEC a list of individuals who have completed an assessment. Section 241.40(a)-(b) changes the implementation date for issuance of the Standard Principal Certificate, based on the last Board meeting. The Standard Mid-Management Certificate will be issued from September 1, 1999 through August 31, 2000.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements. TEC §21.054(b) requires that continuing education for principals be based on an individual assessment at least once every five years and that an individualized professional growth plan be developed based on the assessment results.

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 August 13, 1999.

TRD-9905095
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: September 2, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 469-3001

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Chapter 242. Superintendent Certificate

19 TAC §§242.5, 242.10, 242.15, 242.20, 242.25, 242.30

The State Board for Educator Certification adopts amendments to §§242.5, 242.10, 242.15, 242.20, 242.25 and 242.30, concerning Superintendent Certificate, without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register*(24 TexReg 4688) and will not be republished. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificate. The amendments also delete language in existing rules that conflict with the new requirements.

Section 242.5(b) changes the word "provisional" to "Conditional" while subsection (e) is rewritten. Section 242.10 deletes subsection (c). Section 242.15 adds the word "Standard" to "Superintendent Certificate". Section 242.20 changes the word "candidate" to "individual". Section 242.25 clarifies the mentoring requirements for first-time superintendents. Section 242.30(e) deletes the requirement that SBEC place a designation of "exemplary" on the certificate or service record of those superintendents who voluntarily comply with renewal requirements. This requirement is not contained in the rules governing teachers and principals. The Board recommends that consistent language be used in all three rules regarding placing a designation on the certificate of those educators that voluntarily comply with renewal requirements. Both the general Certificate Renewal rule and the Principal rule require that SBEC report voluntary compliance of educators, but neither require placement of a designation on the certificate. The Board recommends that this language be deleted from the Superintendent rule, with the understanding that the virtual certificate will be designed to clearly show when an educator has voluntarily complied with renewal requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements. TEC §21.054(b) requires that continuing education for principals be based on an individual assessment at least once every five years and that an individualized professional growth plan be developed based on the assessment results.

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 August 13, 1999.

TRD-9905096
Pamela B. Tackett
Executive Director

State Board for Educator Certification
Effective date: September 2, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 469-3001

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TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter B. Registration

22 TAC §1.27

The Texas Board of Architectural Examiners adopts an amendment to §1.27 concerning Continuance. The amendment to §1.27 is being adopted without changes to the proposed text as published in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1105) and the text will not be republished.

The amendment is being adopted in order to change the date when notices of annual record maintenance fees must be paid. The expected effect is that record maintenance fees will be paid by the end of each fiscal year.

No comments were received concerning the adoption of the amendment to §1.27.

The amendment is adopted pursuant to Vernon's Texas Civil Statutes, Article 249a, §5(b), which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding registration to practice architecture in Texas.

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

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905010
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: August 31, 1999
Proposal publication date: February 19, 1999
For further information, please call: (512) 305–8535

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Subchapter E. Fees

22 TAC §1.83

The Texas Board of Architectural Examiners adopts an amendment to §1.83 concerning Annual Record Maintenance Fees. The amendment to §1.83 is being adopted without changes to the proposed text as published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1298) and the text will not be republished.

The amendment is being adopted in order to change the date when notices of annual record maintenance fees will be sent to all approved candidates. The expected effect is that record maintenance fees will be paid by the end of each fiscal year.

No comments were received concerning the adoption of the amendment to §1.83.

The amendment is adopted pursuant to Vernon's Texas Civil Statutes, Article 249a, §5(b), which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding registration to practice architecture in Texas.

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

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905009
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: August 31, 1999
Proposal publication date: February 26, 1999
For further information, please call: (512) 305–8535

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Part IV. Texas Cosmetology Commission

Chapter 83. Sanitary Rulings

22 TAC §§83.1–83.5, 83.10, 83.13, 83.14, 83.17, 83.22, 83.23, 83.25, 83.29, 83.30

The Texas Cosmetology Commission adopts the amendments to §§83.1–83.5, 83.10, 83.13, 83.14, 83.17, 83.22, 83.23, 83.25, 83.29, 83.30 without changes to the proposed text as published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4523) and will not be republished. The amendments are made in accordance with House Bill 1 of the General Appropriations Act, §167.

The adoption of these amendments is to remove repetition and for easier comprehension.

No comments were received regarding the adoption of the amendments.

These amendments are adopted in accordance with Article 8451a, V.T.C.S., which provides the commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and safety.

Article 8451a, V.T.C.S., is affected by these adopted sections.

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 August 3, 1999.

TRD-9904771
Delores Alspaugh
Executive Director
Texas Cosmetology Commission
Effective date: October 15, 1999
Proposal publication date: June 18, 1999
For further information, please call: (512) 454–4675

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22 TAC §§83.15, 83.16, 83.18

The Texas Cosmetology Commission adopts the repeal of §83.15, concerning disinfecting facial implements, §83.16, concerning disinfecting manicure instruments, and §83.18, concerning sanitation requirements for independent contractors as proposed and published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4526).

The repeals are adopted as a result of a comprehensive review of all the commission's rules in accordance with House Bill 1, §167.

The repeal of these sections is to remove repetition.

No comments were received regarding the adopted repeals of these rules.

The adopted repeals are in accordance with House Bill 1, §167.

Article 8451a, Vernon's Texas Civil Statutes, is affected by these adopted repeals.

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 August 3, 1999.

TRD-9904770
Delores Alspaugh
Executive Director
Texas Cosmetology Commission
Effective date: October 15, 1999
Proposal publication date: June 18, 1999
For further information, please call: (512) 454–4675

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Chapter 89. General Rules and Regulation

22 TAC §§89.24, 89.29, 89.39, 89.54

The Texas Cosmetology Commission adopts the amendments to §§89.24, 89.29, 89.39, 89.54. The amendments to §89.29 as proposed and published in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1105) and §89.39 as proposed and published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4526) are adopted without changes. Therefore, the proposed text will not be republished. Sections 89.24 and 89.54 are adopted with changes to the proposed text as published in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1105) and will be republished.

The adoption of these sections is a result of a comprehensive review of all the commission's rules in accordance with House Bill (HB) 1, §167.

The amended rules are adopted to give all licensees and students guidelines for compliance.

COMMENTS:

One comment was received regarding §89.54. The "commentor" was in opposition to the precise amount of square footage.

RESPONSE:

The Commission amended the rule to allow for "minimum" square footage.

No other comments were received regarding the adoption of the remaining amendments.

The amendments are adopted in accordance with HB 1, §167.

Article 8451a, Vernon's Texas Civil Statutes, is affected by these adopted amendments.

§89.24. General Provisions Regarding Transfer of Hours.

(a) A student desiring to transfer from one school to another must withdraw from the first school prior to the transfer.

(b) A student transferring to a school who desires to claim hours and practical applications earned must inform the school transferred to prior to enrollment of his/her prior attendance and must furnish to that school and the executive director a record of hours claimed and practical applications completed. This record may be in the form of a transcript from the prior school or an extract from records of the commission.

(c) No school may graduate any student until all previously accrued hours, upon re-entry to that school or transferring from another school, have been reported on any monthly hour report, but in any event, no later than the month prior to graduation.

§89.54. Independent Contractor/Booth Rental License.

(a) Before an independent contractor may practice, he/she must make application and obtain a booth rental salon license, the current T.C.C. Rules and Regulations book, and have a minimum area of 30 sq. ft. clearly defined, not including the common area, that is his/her responsibility as far as sanitation is concerned.

(1) Independent contractor in a cosmetology salon requirements:

(A) one work station;

(B) one styling chair;

(C) one wet disinfectant soaking container;

(D) one dry storage container for disinfected implements;

(E) covered trash container.

(2) Independent contractor in a facial salon:

(A) one facial couch or facial chair;

(B) one wet disinfectant soaking container;

(C) one dry storage container for disinfected implements;

(D) one mirror, wall hung, or one hand held mirror;

(E) covered trash can.

(3) Independent contractor in a manicure salon:

(A) one manicure table with light;

(B) one manicure stool;

(C) one professional type chair;

(D) one wet disinfectant soaking container;

(E) one dry storage container for disinfected implements;

(F) covered trash can.

(b) Applicant must comply with all state and federal guidelines for independent contractors.

(c) An independent contractor may do any service in a licensed beauty salon, or specialties in a licensed specialty salon, provided they are properly licensed.

(d) The original and renewal Booth Rental license fee shall be $55 and shall be valid for two years from date of issue. If a booth rental license is delinquent for less than 30 days, the delinquency fee shall be $10, over 30 days the delinquency fee shall be $35.

(e) An independent contractor practicing cosmetology in more than one location must exhibit an original booth rental license or a duplicate issued by T.C.C. at each location.

(f) An independent contractor must post in a location visible at all times the following information. It must be posted on the outside of the booth or the door where it can be read by visitors or prospective clients:

(1) operator's name;

(2) operator's license number;

(3) hours of business.

(g) the lessor to an independent contractor must maintain a list of all renters that includes:

(1) name of renter;

(2) cosmetology license number of the renter;

(3) hours of business of the renter.

(h) The lessor must supply the inspector with a list of renters upon request. Failure to provide the list can result in a violation of such significance to require a hearing.

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 August 3, 1999.

TRD-9904769
Delores Alspaugh
Executive Director
Texas Cosmetology Commission
Effective date: October 15, 1999
Proposal publication date(s): February, 19, 1999 and June 18, 1999
For further information, please call: (512) 454–4675

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 19. Agent's Licensing

Subchapter I. Licensing Fees

28 TAC §19.802

The Commissioner of Insurance adopts amendments to §19.802 concerning the amounts of fees for original and renewal applications and examinations for various licensees. The amendments are adopted with changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5145).

The amendments to the fee schedule are necessary to update the examination fees for a Group II insurance agent license to accurately reflect the statutory ceiling on the examination fee, to delete the fee schedules for certain license types which the department no longer issues or which are provided for in other official publications and to conform the rule to the specialty agent licensing framework established by the 76th Legislature (1999) in Senate Bill 957.

The change to the text involves the addition of an appointment fee to the specialty license fee schedule. Following publication of the proposed rule, the Department recognized the specialty license appointment fee was inadvertently omitted. The appointment fee is necessary to the specialty license because license holders may solicit a broad range of insurance products underwritten by more than one insurer.

The amendments to §19.802 operate to decrease the amount of fees for a qualifying examination for a Group II insurance agent license. The fees in the rule were set at $50. The fees for a qualifying examination for a Group II license are subject to a statutory maximum of $20.

The Health Maintenance Organization agent license type was consolidated into the Legal Reserve agent license by the 75th Legislature. As a result, this license type no longer exists and the fee schedule for the license has been removed from the rule.

The fees for Title Agent, Escrow Officer and Direct Operation licenses were removed from the fee rule because these fees are provided for in the Title Manual. The Title Manual is adopted by the Department of Insurance in accordance with the Texas Administrative Procedures Act and contains the regulations applicable to persons engaged in the title insurance business in this state. As a result, the title agent, escrow officer and direct operation license fees in this rule are duplicative and were removed from the rule.

The 76th Texas Legislature created a new specialty license type and authorized the Department of Insurance to set the license fees in amounts necessary to administer the license. The rule contains provisions which add these new fees to the license fee schedule.

No comments were received.

The amendments are adopted under the Insurance Code, Articles 21.07-1 §15, 21.09 §6, and 1.03A. Article 21.07-1 §15 provides the commissioner may establish and amend reasonable rules for the administration of agent licensing. Article 21.09 §6 provides the commissioner may adopt rules as necessary to implement the specialty license. Article 1.03A provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§19.802. Amounts of Fees.

(a) With each application for original license or renewal, notice of appointment, or request for qualifying examination, the applicant or licensee shall submit the amount shown in this section. The fees for qualifying examinations and reexaminations only apply if the Texas Department of Insurance does not contract with a testing service for the provisions of these examinations.

(b) The amounts of fees are as follows:

(1) Group I, legal reserve life insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20;

(E) in addition to the original application fee listed in subparagraph (A) of this paragraph, an application filing fee for a temporary license of $100.

(2) Group II insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20;

(E) in addition to the original application fee listed in subparagraph (A) of this paragraph, an application filing fee for a temporary license of $100.

(3) Insurance adjuster:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$50.

(4) Insurance adjuster (emergency license): original application–$20.

(5) Local recording agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$16;

(D) qualifying examination–$50.

(6) Solicitor:

(A) original application–$20;

(B) renewal–$18;

(C) qualifying examination–$20;

(D) appointment of a currently licensed solicitor–$10.

(7) Insurance service representative:

(A) original application–$20;

(B) renewal–$18;

(C) qualifying examination–$20;

(D) appointment of a currently licensed insurance service representative–$10.

(8) Managing general agent:

(A) original application–$30;

(B) renewal–$48;

(C) additional appointment–$10.

(9) Prepaid legal:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20.

(10) Surplus lines agent:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$20.

(11) Specialty insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10

(12) Title attorney:

(A) original application–$50;

(B) renewal–$48.

(13) Variable contract agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10.

(14) Risk manager:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$50.

(15) Agricultural agent:

(A) original application–$50;

(B) renewal–$50.

(16) Life and Health insurance counselor:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$20.

(17) Nonresident property and casualty agent:

(A) original application–$50;

(B) renewal–$48.

(18) Reinsurance intermediary:

(A) original application–$500;

(B) renewal–$500.

(19) Utilization review agent:

(A) original application–$2,150;

(B) renewal–$545.

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 August 12, 1999.

TRD-9905074
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 1, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 7. Memoranda of Understanding

30 TAC §§7.121–7.123

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §§7.121- 7.123, concerning Memoranda of Understanding. Sections 7.121-7.122 are adopted with changes and §7.123 is adopted without changes to the proposed text as published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2162) and will not be republished.

EXPLANATION OF ADOPTED RULES

Section 7.121 concerning Adoption by Reference is adopted with changes to subsection (b) to reflect a recent name change of the division from Waste Policy and Regulations Division to Policy and Regulations Division. This section is an existing Memo of Understanding (MOU) and was formerly found in §330.732. The section refers to a MOU with the attorney general of Texas concerning intervention in the civil enforcement process. The MOU is more appropriately placed in Chapter 7 for organizational purposes. Other than the name change of the division and the name of the agency, no changes have been made to the content of the MOU. The MOU is merely being moved from Chapter 330 to Chapter 7 for organizational purposes. Grammatical changes have been made. Chapter 7 is the commission chapter that contains MOUs.

Section 7.122 concerning Adoption of MOU between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Health (TDH) Regarding Emissions Related to Asbestos Demolition and Renovation Activities is adopted. This section is an existing MOU and was formerly found in §330.733. This section refers to a MOU between TDH and TNRCC regarding inspection of solid waste facilities that accept asbestos. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 7.123 concerning MOU regarding Special Wastes from Health Care Related Facilities is adopted. This section is an existing MOU and was formerly found in §330.735. This section refers to MOU between the commission and the TDH regarding the way special waste from health care related facilities is managed. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

FINAL REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to the Texas Government Code (the Code), §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). Specifically, these administrative changes do not exceed a standard set by federal law. These changes will 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 that will be affected by these non-substantive changes. The changes are not being made under the general powers of the commission, but are being made under the requirements of specific state law that allows the commission to provide these waste management programs, and under a requirement of the General Appropriations Act, §167, which requires state agencies to review and consider for readoption the rules adopted under the Administrative Procedure Act. The existing rules are still needed because they implement critical portions of the state law concerning solid waste management.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no significant changes are being made regarding the procedures and criteria to be used by the commission and any regulated entities for regulated activities under this chapter. The changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and making the rules easier to understand. As the existing rules are protective of human health and the environment, this administrative rules change does not result in a decrease in the protection of the environment or human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under the Code, 2007.043. The following is a summary of that assessment. The specific purpose of these amendments to rules and repeals is to move existing MOUs from Chapter 330 to Chapter 7 for organizational purposes. Chapter 7 is the commission chapter that contains MOUs. Promulgation and enforcement of these amendments to rules and repeals will not create a burden on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies. The commission has determined that the rulemaking is consistent with each applicable CMP goal and policy, which are found in 31 TAC §§501.12 and 501.14. The rulemaking provides a clearer set of rules which will encourage safe and appropriate storage, management, and treatment of municipal solid waste, and which will result in an overall environmental benefit across the state, including coastal areas. The commission has also determined that these rules will not have a direct and significant adverse effect on Coastal Natural Resource Areas (CNRAs) identified in the applicable CMP policies. For example, these rules would clarify the commission's rules concerning municipal solid waste, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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.

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP

policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the rules will merely provide a clearer set of rules that currently encourage safe and appropriate storage, management, and treatment of municipal solid waste, which will result in an overall environmental benefit across the state, including coastal areas. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules will have no new impact upon the coastal area.

HEARING AND COMMENTERS

A public hearing was not held on these rules, and the public comment period closed on April 26, 1999. No written comments were submitted on the proposed rules.

STATUTORY AUTHORITY

The new sections are adopted under the authority of the Texas Water Code, §§5.103, 5.104, 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 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.

The new sections are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, concerning commission's Jurisdiction: Municipal Solid Waste and to implement §361.024, concerning Rules and Standards and §361.016, concerning MOU by commission, which provide the commission with the authority to adopt the MOU.

§7.121. Adoption by Reference.

(a) The Texas Natural Resource Conservation Commission adopts by reference a memorandum of understanding between the commission and the Attorney General of Texas. The memorandum contains the commission's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Solid Waste Disposal Act.

(b) Copies of the memorandum of understanding are available upon request from the Policy and Regulations Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

(c) The effective date of the memorandum of understanding is October 9, 1993.

§7.122. Adoption of Memorandum of Understanding Between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Health (TDH) Regarding Emissions Related to Asbestos Demolition and Renovation Activities.

(a) The Texas Natural Resource Conservation Commission adopts a memorandum of understanding (MOU) between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC). The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

(b) Need for agreement. Section 1 of HB 1680, passed by the 73rd Legislature, 1993, transferred responsibility for emissions related to asbestos demolition and renovation activities to the Texas Department of Health (TDH). It also required the TDH and the Texas Natural Resource Conservation Commission (TNRCC) to adopt, by rule, a joint memorandum of understanding concerning the inspection of solid waste facilities that receive asbestos.

(c) The TDH will:

(1) Maintain overall responsibility for the asbestos demolition and renovation activities related to 40 Code of Federal Regulations (CFR), Part 61, Subpart M, §§61.140, 61.141, 61.143, 61.145, 61.146, 61.148, 61.150, 61.152, and 61.157.

(2) Negotiate with the Environmental Protection Agency (EPA) on the work to be performed in agreement with TNRCC.

(3) Provide funding to pay for initial inspector training in Fiscal Year 1995.

(4) Report to the EPA on the number of asbestos disposal site inspections performed by TNRCC.

(d) The TNRCC will:

(1) Maintain an up-to-date listing of municipal landfills authorized to accept regulated asbestos and provide an up-to-date copy to the TDH.

(2) Inspect asbestos disposal sites for conformance with 40 CFR Part 61, Subpart M, §61.154. The TDH will be notified within 30 days that an inspection has been performed by TNRCC and will be provided a copy of the inspection results within 60 days.

(3) Perform the number of inspections negotiated between the TDH and the EPA related to 40 CFR §61.154.

(4) Pursue all enforcement action related to §61.154 violations and provide notification to the TDH within 30 days of the inspection if a violation will be issued and provide to the TDH a copy of the Notice of Violation within 60 days.

(5) Provide copies of all applicable documentation related to 40 CFR §61.154 to: Texas Department of Health, Division of Occupational Health, 1100 West 49th, Austin, TX 78756. The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

(e) The effective date of the MOU is May 3, 1995.

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 August 16, 1999.

TRD-9905137
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission

Effective date: September 5, 1999
Proposal publication date: March 26, 1999
For further information, please call: (512) 239–6087

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Chapter 106. Exemptions From Permitting

Subchapter V. Thermal Control Devices

30 TAC §106.494

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §106.494, Pathological Waste Incinerators. The amendment is adopted with changes to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3683).

EXPLANATION OF THE ADOPTED RULE

Pathological waste incinerators are authorized at animal feeding operations under Chapter 106, Exemptions from Permitting. Section 106.494(b)(1)(E) authorizes the construction and use of a dual- chambered incinerator with a minimum secondary chamber temperature of 1,400 degrees Fahrenheit and a minimum 1/4-second retention time, provided the unit is located 700 feet from the nearest property line. A significant number of poultry farm owners or operators cannot place incinerators with these specifications on their property and meet the required setback in the exemption. They would either be forced to obtain a permit for the unit, use a different method of disposal, or obtain an incinerator capable of higher secondary chamber temperatures and longer residence time.

The amendments to §106.494 are adopted concurrently with the adoption of amendments proposed by the commission on April 28, 1999, to 30 TAC Chapter 335, Industrial Solid and Municipal Hazardous Waste. The amendments to Chapter 335 implement the requirements of Senate Bill (SB) 1910 from the 75th Texas Legislature (1997) and specify acceptable disposal methods of poultry carcasses, including incineration, and prohibit on-site burial except in the event of a major die-off that exceeds the capacity of a facility to dispose of carcasses by the normal means used by the facility. The commission anticipates that with the prohibition against routine burial, incineration of carcasses will be the most widely used method of disposal. The commission reexamined the conditions of §106.494(b)(1)(E) to determine if the property-line setback could be reduced to allow smaller farms to use incinerators while still meeting the property-line particulate matter concentration standards in 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, and the National Ambient Air Quality Standards (NAAQS) for particulate.

The commission analyzed various setback scenarios using updated air dispersion modeling techniques to assess effects based on operating hours and stack height, given the prescribed hourly rated capacity, temperature, and retention time. The commission found that most incineration units currently available have a stack exit height that will allow proper dispersion of exhaust gases at a setback reduced from the current 700-foot requirement. Consequently, the commission retains the option of the current setback and is adding a range of reduced setback distance requirements depending on stack height and operating hours. The adopted amendments include a new table of allowable setback distances from property lines based on stack height.

The adoption also rearranges the language of the section to clearly differentiate definitions from the operational conditions of exempted incinerators and to locate definitions at the beginning of the section in accordance with the regulation format of the commission. A definition of "stack height" is also added to the section along with a statement concerning the general purpose of definitions according to *Texas Register* formatting rules.

FINAL REGULATORY IMPACT ANALYSIS

The intent of these amendments is to provide a greater range of flexibility for incineration authorized under §106.494 while still protecting human health. Operators may incur discretionary costs that are directly associated with exercising the flexibility that would be provided by these amendments. This discretion includes extending stack height so that operators may used a reduced setback based on the adopted table. The commission believes that the stack height of stock incinerators and the available land at most poultry farms will make stack extensions unlikely and isolated. This conclusion is based on information from the poultry industry concerning the size of poultry farms and the ability of operators to locate incinerators within the property and meet required setbacks. In the event individual operators choose to extend an incinerator stack, the commission estimates the cost to be approximately $300 per foot. The commission believes that the overall economic effect of these amendments on poultry farm operators will be positive. Therefore, this rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It does not meet the definition of a major environmental rule under Texas Government Code, §2001.0225(f)(3).

TAKINGS IMPACT ASSESSMENT

The adopted amendments are intended to provide greater flexibility for the use of incinerators at animal feeding operations as authorized under §106.494. The effect of the amendments will be to ease existing restrictions in the regulation regarding setback of incinerators from property lines while maintaining the ability to meet the particulate concentrations in Chapter 111 and the NAAQS for particulate. This action does not restrict or limit an owner's right to property that would otherwise exist in the absence of this action. This adoption, therefore, does not meet the definition of a takings under Texas Government Code, §2007.002(5).

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 Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, 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 action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the adopted action in §106.494, the commission has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31

TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The adopted amendments allow the option of relocating sources of emissions. They do not allow any new emissions over those currently allowed by the exemption from permitting. The sources that are the subject of this proposal are not addressed by 40 Code of Federal Regulations (CFR); therefore, this proposal is consistent with 40 CFR.

HEARING AND COMMENTERS

A public hearing on the proposal was held June 8, 1999. Three written comments were received during the public comment period which closed on June 14, 1999. An individual commenter questioned specific parts of the proposal as did Harris County Public Health and Environmental Services (Harris County). The commenter from the Texas Poultry Federation (TPF) supported the proposal as published.

ANALYSIS OF TESTIMONY

The individual commented that the amended section should contain a recordkeeping requirement to verify that incinerator operators are in compliance with the 200 pound/hour incinerator feed rate. The same individual is also concerned that improperly operated incinerators could smoke excessively and cause nuisance conditions, depending on land use in the area, if the incinerator were located at reduced setbacks down to a minimum of 90 feet. The individual also stated that improperly operated incinerators could release harmful substances, such as carcinogens from treated feed, as a result of incomplete combustion. The commenter suggested 300 feet as a minimum setback.

Incinerators authorized under this amended section must comply with the monitoring and recordkeeping requirements of 30 TAC §§111.121, 111.125, 111.127, and 111.129, concerning Single-, Dual-, and Multiple-Chamber Incinerators; Testing Requirements; Monitoring and Recordkeeping Requirements; and Operating Requirements. Incinerators burning more than 100 pounds per hour are required to be equipped with a monitoring device that continuously measures and records oxygen content and temperature of the exhaust gas. Additionally, operators of these incinerators must maintain records of monitoring and test results, hours of operation, and quantity of waste burned. These records are to be maintained for two years.

These requirements are not only a check on the quantity of waste burned, but also provide records on the efficiency of the incineration and promote efficient operation. The required oxygen and temperature monitoring equipment is a verification that the incinerator is operating with an excess of oxygen and is completely burning the poultry carcasses and destroying all harmful substances. The commission believes that, due to their small size and low emissions, incinerators burning 100 pounds per hour or less do not justify recordkeeping in this detail.

The commission conducted computer dispersion modeling using the conditions established by this adoption, and the results indicate that a properly operated incinerator will not cause a violation of property line standards for particulate matter as found in 30 TAC §111.155 at any of the setback distances and operating conditions established in this adoption. Therefore, the commission chooses to retain the property line setbacks as proposed. Historically, these incinerators have not been a source of nuisance or enforcement actions. The commission will address improperly operated incinerators with enforcement action where warranted.

Harris County supported the concept of adjusting setbacks based on stack height. It does not support differing setbacks based on time of day of incinerator operation and suggested that the minimum setbacks be available 24 hours per day. This will allow poultry farm operators increased flexibility to operate when necessary. It believes, that a minimum setback of 140 feet will accommodate all legitimate operations. Harris County also suggested this alternative to eliminate the difficulty of enforcing the requirements of the amended section during hours when state and local pollution control offices are not normally staffed. Harris County concluded its comments by stating that the commission estimates of $300 per foot for extending stacks is low.

The dispersion modeling used by the commission to support decreased setbacks demonstrates that greater dispersion of pollutants occurs during daylight hours when solar heating causes more vigorous vertical currents of air. This vertical mixing justifies the reduced setback for daylight hours, and the commission chooses to retain setbacks differentiated on operating hours as proposed. Through consultation with the affected industry, the commission is confident that this will provide sufficient flexibility to operators. Units operated at night are also currently required to have continuous monitors for carbon monoxide and opacity. This requirement will not change. The staff has modified the designation of day and night operation to be consistent with §111.29, Operating Requirements. Day operations would be designated as one hour after sunrise to one hour before sunrise. Additionally, the staff has corrected an existing error in §106.494(2)(C). The rule currently refers to an opacity observation averaged over a five-minute period. The correct interval as specified in EPA Method 9 is six minutes.

The consultations with the industry also indicate that a minimum setback of 200 feet from property lines would accommodate the majority of poultry farms with restricted space. The commission is retaining the minimum setback of 90 feet because modeling demonstrates that this distance may be used during daylight hours with the stack height specified in the adopted table and provides sufficient pollutant dispersal to meet particulate standards in Chapter 111.

The estimate of costs to extend stacks is based on similar stack extensions that have been accomplished as the result of amendments to other exemptions from permitting. The commission believes that the estimate of $300 per foot is reasonable.

The commission has deleted unnecessary references to §111.123 and §111.124 in subsection (b)(2)(F) because the sections do not apply to this exemption.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.057, which authorizes the commission to exempt certain sources from the requirement to obtain a preconstruction permit under TCAA, §382.0518, if it is found on investigation that such facilities will not make a significant contribution of air contaminants to the atmosphere.

§106.494. Pathological Waste Incinerators (Previously SE 90).

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

(1) Pathological waste (as defined in 25 TAC §1.132 (relating to Definitions))-Includes, but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, or biopsy, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, including body parts, tissues, fetuses, organs, and bulk blood and body fluids, regardless of the period of gestation;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(2) Human remains (as defined in Health and Safety Code (H&SC), §711.001)-The body of decedent.

(3) Carcasses-Dead animals, in whole or part.

(4) Crematory (as defined in the H&SC, §711.001)-A structure containing a furnace used or intended to be used for the cremation of human remains.

(5) Animal feeding operations-A lot or facility (other than an aquatic animal feeding facility or veterinary facility) where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.

(6) Non-commercial incinerator-An incinerator which does not accept pathological waste or carcasses generated off-site for monetary compensation.

(7) Stack height-Elevation of the stack exit above the ground.

(b) Conditions of exemption. Crematories and non-commercial incinerators used to dispose of pathological waste and carcasses which meet the following conditions of this section are exempt. Incinerators used in the recovery of materials are not covered by this section.

(1) Design requirements.

(A) The manufacturer's rated capacity (burn rate) shall be 200 pounds per hour (lbs/hr) or less.

(B) The incinerator shall be a dual-chamber design.

(C) Burners shall be located in each chamber, sized to manufacturer's specifications, and operated as necessary to maintain the minimum temperature requirements of subparagraphs (D) or (E) of this paragraph at all times when the unit is burning waste.

(D) Excluding crematories, the secondary chamber much be designed to maintain a temperature of 1,600 degrees Fahrenheit or more with a gas residence time of 1/2 second or more.

(E) In lieu of subparagraph (D) of this paragraph, incinerators at animal feeding operations that:

(i) are used to dispose of carcasses generated on-site; and

(ii) are located a minimum of 700 feet from the nearest property line, shall be designed to maintain a secondary chamber temperature of 1,400 degrees Fahrenheit or more with a gas residence time of 1/4 second or more. Alternatively, incinerators may be located in accordance with Table 494, provided the total manufacturer's rated capacity (burn rate) of all units located less than 700 feet from a property line shall not exceed 200 lb/hr. Setback distances shall be measured from the stack exit.
Figure: 30 TAC §106.494(b)(1)(E)(ii)

(F) There shall be no obstructions to stack flow, such as by rain caps, unless such devices are designed to automatically open when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstruction.

(2) Operational conditions.

(A) Before construction begins, the facility shall be registered with the commission using Form PI-7.

(B) The manufacturer's recommended operating instructions shall be posted at the unit and the unit shall be operated in accordance with these instructions.

(C) The opacity of emissions from the incinerator shall not exceed 5.0% averaged over a six-minute period.

(D) Heat shall be provided by the combustion of sweet natural gas, liquid petroleum gas, or Number 2 fuel oil with less than 0.3% sulfur by weight, or by electric power.

(E) Incinerators installed and operated in accordance with the conditions of this section shall not be used to dispose of any medical waste, other than pathological waste and/or carcasses.

(F) Incinerators installed and operated in accordance with the conditions of this section shall also meet the requirements of §§111.121, 111.125, 111.127, and 111.129 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators; Testing Requirements; Monitoring and Recordkeeping Requirements; and Operating Requirements).

(G) Crematories shall be used for the sole purpose of cremation of human remains and appropriate containers.

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 August 12, 1999.

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Director, Environmental Law Division
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Proposal publication date: May 14, 1999
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Chapter 328. Waste Minimization and Recycling

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new Chapter 328, concerning Waste Minimization and Recycling. The commission adopts new Subchapter A, §328.1, concerning Purpose; new Sub-

chapter B, §§328.6 - 328.9, concerning Recycling, Reuse, and Materials Recovery; new Subchapter C, §§328.11-328.19, concerning Management of Lead-Acid Batteries; new Subchapter D, §§328.21 - 328.30, concerning Used Oil Filter Collection, Management, and Recycling; new Subchapter E, §§328.41 - 328.47, concerning Grants Pertaining to the Collection, Reuse, and Recycling of Used Oil; new Subchapter F, §§328.51 - 328.71, concerning Management of Used or Scrap Tires; and new Subchapter G, §§328.100 - 328.105, concerning Newsprint Recycling. Sections 328.8, 328.14 - 328.18, 328.21 - 328.28, 328.30, 328.43, 328.47, 328.55, 328.60(b), 328.61(j), 328.62, 328.65, 328.68, 328.100 - 328.102, 328.104, and 328.105 are adopted with changes and §§328.1, 328.6, 328.7, 328.9, 328.11 - 328.13, 328.19, 328.29, 328.41, 328.42, 328.44 - 328.46, 328.51 - 328.54, 328.56 - 328.59, 328.63, 328.64, 328.66, 328.67, 328.69 - 328.71, and 328.103 are adopted without changes to the proposed text as published in the March 19, 1999 issue of the *Texas Register* (24 TexReg 1910) and will not be republished.

EXPLANATION OF ADOPTED RULES The commission adopts new Chapter 328, concerning Waste Minimization and Recycling, and consisting of new §§328.1, 328.6 - 328.9, 328.11 - 328.19, 328.21 - 328.30, 328.41 - 328.47, 328.51 - 328.71, and 328.100 - 328.105 which are being moved from existing sections in Chapter 330. The language in these rules is being moved because it is more appropriately placed in Chapter 328 where recycling related rules will be placed. No changes have been made to the substance of the previously existing rules. The sections are merely being moved from Chapter 330 to Chapter 328 for organizational purposes. Section 328.8 is adopted with changes to subsection (d) only to correct a reference number from §330.9 to 328.9. Section 328.14 is adopted with changes to subsection (2) merely to correct a reference number from §330.16 to §328.16. Section 328.15 is adopted with a change to subsection (3) to correct a reference number from §§330.16 to 328.16. Section 328.16 is adopted with changes to subsection (b) to only reflect that the size of the required sign shall be at least 8 and 1/2 inches by eleven inches instead of 8 inches by eleven inches. Section 328.30 is adopted with a change to subsection (3) to merely correct a reference number from §330.28 to §328.28. Section 28.55(6)(D)(iii) is adopted with a change to reflect the correct name of the Administrative Procedure Act. Section 328.60 is adopted with changes to subsection (b) to only to reflect that the correct name of the map to use is the United States Geological Survey 7 and 1/2 quadrangle sheet. Section 328.60 is adopted with changes to subsection (j) to reflect that the site entrance sign shall be at least 1 and 1/2 feet by 2 and 1/2 feet in size which was originally intended instead of 1 feet by 2 feet.

The following paragraphs describe the adopted language in Chapter 328 by subchapter.

SUBCHAPTER A: PURPOSE. The commission adopts new §328.1, concerning Purpose. This new section is created to outline the waste minimization and recycling chapter.

SUBCHAPTER B: RECYCLING, REUSE, AND MATERIALS RECOVERY. The commission adopts new §328.6, concerning Purpose. This section is being moved from currently existing §330.1051, concerning Purpose and Scope. No substantive changes are made to the previously existing language. One non-substantive change that is being made is to delete a reference to a date that has been superceded.

The commission adopts new §328.7, concerning Definitions of Terms and Abbreviations. This section is moved from currently existing §330.1052, concerning Definitions of Terms and Abbreviations. No changes have been made to the currently existing rules language. The section is merely being moved for organizational purposes.

The commission adopts new §328.8, concerning Recordkeeping and Reporting Requirements. This section is moved from currently existing §330.1053, concerning Recordkeeping and Reporting Requirements. The only language change made is to reflect the change in program administration from the Texas Department of Health (TDH) to the Texas Natural Resource Conservation Commission (TNRCC) and to correctly state the executive director rather than commission.

The commission adopts new §328.9, concerning Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates. This section is moved from currently existing §330.1054, concerning Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates. Only punctuation changes have been made to the language as originally adopted.

SUBCHAPTER C: MANAGEMENT OF LEAD-ACID BATTERIES. The commission adopts new §328.11, concerning Purpose. This section is being moved from currently existing §330.1101, concerning Purpose. No change to the language is being made.

The commission adopts new §328.12, concerning Applicability. This section is being moved from currently existing §330.1102, concerning Applicability. A change to a cite referencing the Texas Health and Safety Code is made to reflect an amended statute.

The commission adopts new §328.13, concerning Disposal of Batteries. This section is being moved from currently existing §330.1103, concerning Disposal of Batteries. No change to the language is made.

The commission adopts new §328.14, concerning Retail Sale of Lead-acid Batteries. This section is being moved from existing §330.1104, concerning Retail Sale of Lead-acid Batteries. The only language change made is to reflect the change in program administration from the TDH to the TNRCC and to correctly use the term executive director rather than the word commission.

The commission adopts new §328.15, concerning Wholesale Sale of Lead-acid Batteries. This section is being moved from currently existing §330.1105, concerning Wholesale Sale of Lead-acid Batteries. The only language change made is to reflect the change in program administration from the TDH to the TNRCC and to correctly use the term executive director rather than the commission.

The commission adopts new §328.16, concerning Notice Requirements. This section is being moved from existing §330.1106, concerning Notice Requirements. The only language change made is to reflect the change in program administration from the TDH to the TNRCC and to correctly use the term executive director rather than the commission.

The commission adopts new §328.17, concerning Recordkeeping. This section is being moved from currently existing §330.1107, concerning Recordkeeping. The only language change made is to reflect the change in program administration from the TDH to the TNRCC and to correctly use the term executive director rather than the commission.

The commission adopts new §328.18, concerning Inspection of Battery Retailers. This section is being moved from currently existing §330.1108, concerning Inspection of Battery Retailers. The only language change made is to reflect the change in program administration from the TDH to the TNRCC and to correctly use the term executive director rather than the commission.

The commission adopts new §328.19, concerning Penalties. This section is being moved from currently existing §330.1109, concerning Penalties. A change is adopted to reflect the change in program administration from the TDH to the TNRCC. The reference to existing §330.222 is being deleted because the section is obsolete.

SUBCHAPTER D: USED OIL FILTER COLLECTION, MANAGEMENT, AND RECYCLING. The commission adopts new §328.21 - 328.30, concerning Used Oil Filter Collection, Management, and Recycling. Existing §§330.1180-330.1189 are moved to Subchapter D with no substantive changes with the following exceptions. Existing §§330.1183(a), 1183(a)(1), and 330.1185(a)(1) are amended to reflect new registration form numbers and renumbered as new §§328.24(a), 328.25(a)(1), 328.26(a)(1). New language in §328.21 - 328.30 has been changed to correctly use the executive director rather than TNRCC.

SUBCHAPTER E: GRANTS PERTAINING TO THE COLLECTION, REUSE, AND RECYCLING OF USED OIL The commission adopts new §§328.41 - 328.47, concerning Grants Pertaining to the Collection, Reuse, and Recycling of Used Oil. Existing §§330.970 - 330.976 are moved to §§328.41 - 328.47 with changes described as follows. Section 328.43 is changed to reflect the proper use of the word agency rather than commission. Section 328.47 is changed to reflect the proper use of the word agency instead of commission and also to correctly use executive director rather than commission.

SUBCHAPTER F: MANAGEMENT OF USED OR SCRAP TIRES The commission adopts new §§328.51 - 328.71, concerning Management of Used or Scrap Tires. These sections will replace §§801 - 821 of Chapter 330 of this title with the following amendments.

Existing §330.805(6)(A)(viii), concerning Registration Requirements, is moved to §328.55(6)(A)(viii), and is amended to remove the reference to application fees which are no longer required. Punctuation has been changed in §328.56.

Existing §330.809(b)(5), concerning Storage of Used or Scrap Tires or Tire Pieces, is amended to correctly cite a reference and moved to §328.59(b)(5).

Existing §330.810(c), concerning Scrap Tire Storage Site Registration, is amended to remove the reference to application fees because application fees are no longer required. This section is moved to §328.60(c). Punctuation has been changed in §328.60.

Section 328.62 is changed to reflect the correct usage of the word agency rather than commission, §328.65 is changed to reflect the correct usage of the executive director rather than commission and §328.68 is changed to correctly use the word agency.

SUBCHAPTER G: NEWSPRINT RECYCLING. The commission adopts new §§328.100 - 328.105, concerning Newsprint Recycling. Existing §330.1200, concerning Purpose and Definitions, is moved to new §328.100 and existing §330.1200(a) is amended to delete inappropriate language that speaks to rules being guidelines. The definition of commission in §328.100 is deleted because it is redundant. Existing §330.1200(b), concerning Purpose and Definitions, is amended to change a reference from Texas Water Commission (TWC) to the TNRCC and is moved to new §328.100(b).

Existing §330.1201, concerning General Guidelines and Requirements, is moved to new §328.101 with a reference change and a change in the use of the word commission to agency.

Existing §330.1202, concerning Requirements, is moved to new §328.102 with a change to reflect the correct use of the word agency rather than commission and also a change in punctuation.

Existing §330.1203, concerning Reports, is moved to new §328.103, concerning Reports, and an obsolete date in existing §330.1203 is deleted.

Existing §330.1204, concerning Joint Review, is moved to new §328.104 with a change to reflect the correct use of the word agency rather than commission.

Existing §330.1205, concerning Enforcement, is moved to new §328.105 with a change to reflect the correct use of the word agency rather than commission.

STATUTORY AUTHORITY The sections are adopted under the authority of the Texas Water Code,§§5.103, 5.104 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; under 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; under Texas Health and Safety Code §371.023 which allows the commission to adopt standards for criteria for the award of grants for used oil; under the authority of the Texas Health and Safety Code, §371.024(c) which allows the commission to adopt standards for public used oil collection centers; under Texas Health and Safety Code, §371.026 which allows the commission to adopt rules governing used oil transporters, marketers, and recyclers; and under Texas Health and Safety Code, §371.028 which allows the commission to adopt rules concerning used oil collection management and recycling.

The sections are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

These new sections are adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, §361.112(b) which provides the commission with the authority to register a site to store more than 500 used or scrap tires, §361.112(e) which provides the commission with the authority to adopt forms and procedures for the registration and permitting, and §361.112(m) which provides the commission with the authority to adopt rules to regulate storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility.

FINAL REGULATORY IMPACT ASSESSMENT This rulemaking is not subject to the Texas Government Code (the Code),

§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). Specifically, these rules do not exceed a standard set by federal law. These rules do 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 that will be affected by these non-substantive changes. The changes are not being made under the general powers of the commission, but are being made under the requirements of specific state law that allows the commission to provide these waste management programs, and under a requirement of the General Appropriations Act, §167, which requires state agencies to review and consider for readoption the rules adopted under the Administrative Procedure Act. The existing rules are still needed because they implement critical portions of the state law concerning solid waste management.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no significant changes are being made regarding the procedures and criteria to be used by the commission and any regulated entities for regulated activities under this chapter. The changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and making the rules easier to understand. As the existing rules are protective of human health and the environment, these non-substantive changes do not result in a decrease in the protection of the environment or human health.

TAKINGS IMPACT ASSESSMENT The commission has prepared a takings impact assessment for these rules under the Code, 2007.043. The following is a summary of that assessment. The specific purpose of these rules is to organize a new chapter containing recycling requirements that were previously found in Chapter 330. Promulgation and enforcement of these rules will not create a burden on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies. The commission has determined that the rulemaking is consistent with each applicable CMP goal and policy, which are found in 31 TAC §§501.12 and 501.14. The rulemaking provides a clearer set of rules which will encourage safe and appropriate storage, management, and treatment of municipal solid waste, and which will result in an overall environmental benefit across the state, including coastal areas. The commission has also determined that these rules will not have a direct and significant adverse effect on Coastal Natural Resource Areas (CNRAs) identified in the applicable CMP policies. For example, these rules would clarify the commission's rules concerning municipal solid waste, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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.

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found this rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the modifications to these rules will merely provide a clearer set of rules that currently encourage safe and appropriate storage, management, and treatment of municipal solid waste, which will result in an overall environmental benefit across the state, including coastal areas. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules will have no new impact upon the coastal area.

HEARING AND COMMENTERS A public hearing was not held on these rules, and the public comment period closed on April 19, 1999. Only the Texas Department of Transportation (TxDOT) submitted written comments on the proposed rules.

TxDOT commented on §328.53(11) regarding land reclamation projects using tires (LRPUT) as follows: "TxDOT is presently exploring the possibility of expanding the use of shredded tires within our highway construction projects. We are concerned that future TxDOT projects utilizing shredded tires may, in some instances, be considered as a LRPUT under the proposed rules as written. The notification requirements listed in proposed new 30 TAC §328.66 are extensive and would require information both from TxDOT and the contractor performing construction associated with the contract. TxDOT would therefore be unable to prepare a complete notification document for TNRCC approval until after the contract award. An additional 60 days would then be needed to be allowed for TNRCC review. This requirement could delay project execution and, if the notification document is not approved by TNRCC, seriously impact contract completion. In order to avoid these concerns, we suggest revising the definition of a LRPUT as listed in proposed 30 TAC §328.53(11) to exclude TxDOT construction and maintenance projects."

The commission disagrees with TxDOT. Although the rules in Subchapter F regarding Management of Used or Scrap Tires are in the form of proposed new rules, they are simply the existing rules renumbered from existing §§801 - 821 of Chapter 330. No new provisions or requirements have been added to the rules. The commission disagrees with TxDOTs opinion that future TxDOT projects utilizing shredded tires within highway construction will be considered as a LRPUT. The definition of LRPUT is not considered to include highway engineering projects such as embankments, erosion control, and roadway pavement. TxDOT construction projects not involving the recovery of already excavated, deteriorated or disturbed land, in accordance with the terms of the definition would not meet the definition of LRPUT. LRPUT would include a project to fill, rehabilitate, improve and/or restore already excavated, deteriorated or disturbed land, which uses no more

than 50% by volume of tire pieces along with inert fill materials, for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use. However, in the event a TxDOT project should meet the definition of LRPUT, then there is no justification to treat the project other than as an LRPUT and TxDOT would be required to comply with the existing rules. No changes are made.

Subchapter A. Purpose

30 TAC §328.1

STATUTORY AUTHORITY The new sections are adopted under the authority of the Texas Water Code, §§5.103, 5.104 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 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. Additionally, Texas Health and Safety Code, §371.023 provides the commission with the authority to adopt rules to establish procedures for the application and criteria for the award of used oil grants.

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 August 16, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Proposal publication date: March 19, 1999
For further information, please call: (512) 469–3001

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Subchapter B. Recycling, Reuse, and Materials Recovery

30 TAC §§328.6–328.9

STATUTORY AUTHORITY The new sections are adopted under the authority of the Texas Water Code, §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 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. Additionally, Texas Health and Safety Code, §361.422 provides the commission with the authority to adopt rules regarding recycling goals, and Texas Health and Safety Code, §361.430 provides the commission with the authority to establish a newsprint recycling program.

§328.8. Recordkeeping and Reporting Requirements.

(a) Annual rates. Annually, the executive director shall determine the statewide recycling rate and, when possible, the waste stream reduction and per capita waste generation rates. Also, when possible, the executive director shall determine the rates for specific materials and for particular geographic areas of the state.

(b) Recordkeeping. Processors, handlers, and collectors of recyclable materials are encouraged to report and keep appropriate records to facilitate measuring recycling rates. The executive director shall protect confidential information received from these businesses to the extent authorized by law.

(c) Multiple counting. Diligence shall be practiced in collecting and reporting information to prevent multiple counting of any materials. Usually, materials will be counted as they are transferred to a recyclable material end-user or consumer in the state or as they are transferred out of state. The quantities of materials rejected and disposed of by the end-user shall be deducted from the quantities counted for recycling.

(d) Required minimum information for reporting. The following information at a minimum shall accompany the reporting of recycling rates for clarification:

(1) report area or geographic area covered by the report;

(2) reporting period–the year or portion of a year covered by the report;

(3) tons of each material, categorized per subsection (e) of this section, recovered or diverted for recycling from the total municipal solid waste stream generated within the report area during the report period;

(4) tons of municipal solid waste generated within the report area during the report period;

(5) tons of municipal solid waste generated during the report period within the report area but disposed of outside the report area;

(6) tons of municipal solid waste generated outside the report area but disposed of inside the report area during the report period;

(7) average populations within the report area during the report period and the base year, 1990; and

(8) the calculated recycling, waste stream reduction, and per capita waste generation rates using the formulas contained in §328.9 of this title (relating to Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates).

(e) Materials recovered or diverted for recycling. To the extent possible, materials recovered or diverted for recycling shall be reported according to the following categories, using the major categories when finer detail is not possible:

(1) food waste;

(2) glass:

(A) glass containers;

(B) plate glass; and

(C) other glass;

(3) leather and hides;

(4) metal:

(A) aluminum:

(i) cans and containers; and

(ii) other aluminum;

(B) ferrous metal:

(i) steel cans and containers; and

(ii) other ferrous metal;

(C) other nonferrous metal;

(5) paper and paperboard:

(A) computer printout;

(B) white ledger;

(C) colored ledger;

(D) old corrugated cartons/kraft;

(E) old newspaper;

(F) printers' waste;

(G) old magazines;

(H) mixed paper; and

(I) other paper and paperboard;

(6) plastic:

(A) plastic containers:

(i) polyethylene terephthalate (PET, or Code 1 plastic);

(ii) high density polyethylene (HDPE, or Code 2 plastic);

(iii) polyvinyl chloride (PVC, or Code 3 plastic);

(iv) low density polyethylene (LDPE, or Code 4 plastic);

(v) polypropylene (PP, or Code 5 plastic);

(vi) polystyrene (PS, or Code 6 plastic); and

(vii) other plastic containers (Code 7 plastic);

(B) mixed plastic; and

(C) other plastic;

(7) rubber;

(8) textiles and apparel;

(9) wood;

(10) yard debris; and

(11) other materials, not included elsewhere:

(A) asphalt pavement;

(B) appliances;

(C) batteries:

(i) household; and

(ii) lead-acid;

(D) construction-demolition debris;

(E) hazardous household materials;

(F) municipal sludge;

(G) tires;

(H) used oil and oil filters;

(I) other inorganic materials;

(J) other organic materials; and

(K) other municipal solid waste materials.

(f) Units. All materials shall be reported in dry tons. For those materials normally measured by volume, the report shall indicate the volumetric quantity and the multiplier used to convert to weight in dry tons.

(g) Recycling credit limits. Except for lead-acid batteries, only the amount recycled in addition to 1990 quantities can be credited toward the state recycling goal for materials with an individual recycling rate greater than 80% in the base year, 1990.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter C. Management of Lead-Acid Batteries

30 TAC §§328.11–328.19

STATUTORY AUTHORITY The new sections are adopted under the authority of the Texas Water Code, §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 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.

§328.14. Retail Sale of Lead-acid Batteries.

A battery retailer in Texas shall:

(1) accept from the customer, if offered by the customer, at the point of transfer, a used lead-acid battery of the type and in a quantity equal to the number of new lead-acid batteries sold; and

(2) post written notice, containing the universal recycling symbol, concerning the sale and disposal of lead-acid batteries. The written notice shall conform to the requirements of §328.16 of this title (relating to Notice Requirements) and shall be provided by the executive director.

§328.15. Wholesale Sale of Lead-acid Batteries.

A battery wholesaler in Texas shall:

(1) accept from the customer, if offered by the customer, at the point of transfer, used lead-acid batteries of the type and in a quantity equal to the number of new lead-acid batteries sold; or

(2) if accepting batteries in transfer from a battery retailer or retail facility, remove all used lead-acid batteries from the retail point of collection within 90 days after acceptance; and

(3) shall post written notice, containing the universal recycling symbol, concerning the sale and disposal of lead-acid batteries. The notice shall conform to the requirements of §328.16 of this title (relating to Notice Requirements) and shall be provided by the executive director.

§328.16. Notice Requirements.

(a) A battery retailer or wholesaler shall post in a place visible to all customers a conspicuous notice in both English and Spanish containing the universal recycling symbol concerning the sale and disposal of lead-acid batteries.

(b) The notice shall be a sign at least 8 1/2 inches by 11 inches in size and shall be provided by the executive director, and shall contain the following language:

(1) "It is illegal (Class C Misdemeanor) to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery";

(2) "Recycle your used batteries"; and

(3) "State law requires us to accept used motor-vehicle batteries for recycling in exchange for new batteries purchased."

§328.17. Recordkeeping.

(a) Battery retailers and battery wholesalers shall, as a minimum, maintain a record of the number of lead-acid batteries that are purchased, the number of lead-acid batteries that are accepted in return for new batteries sold (trade-ins), and the number of lead-acid batteries that are delivered to a disposal facility.

(b) The records required under this section shall be maintained on a monthly basis and shall be kept for a period of three years. These records shall be made available to any representative of the executive director upon request.

§328.18. Inspection of Battery Retailers.

A representative of the executive director may enter any place, building, or premise of a battery retailer for the purpose of inspecting the facility for compliance with this subchapter. The inspection or investigation will be made only during regular business hours or by appointment for any other time.

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

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Subchapter D. Used Oil Filter Collection, Management, and Recycling

30 TAC §§328.21–328.30

STATUTORY AUTHORITY The new sections are adopted under the authority of the Texas Water Code, §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 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. Additionally, Texas Health and Safety Code, §371.028 provides the commission with the authority to adopt rules to govern used oil filter collection, management, and recycling.

§328.21. Applicability.

(a) The sections in this subchapter are applicable to persons who are involved in generating, storing, transporting, handling, and processing used oil filters and their components. These sections do not apply to persons that are industrial generators and are registered with the executive director as Industrial/Hazardous waste facilities or that are under the waste management authority of a state agency other than the TNRCC, in which case the regulations of that state agency apply.

(b) Used oil filters that are regulated by the Railroad Commission of Texas under §91.101 of the Natural Resources Code shall not be subject to regulation under this subchapter. However, used oil filters regulated by the Railroad Commission of Texas under §91.101 of the Natural Resources Code may be delivered to a transporter, storer, or processor registered with executive director for the purpose of recycling if the requirements of §328.30 of this title (relating to Generators Regulated by the Railroad Commission of Texas) are met.

§328.22. Definitions.

The following words, terms, and abbreviations when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions pertinent to these and other sections are contained in Subchapter A, §328.5 of this title (relating to Definitions).

(1) Bill of lading - A document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(2) Do-it-yourself (DIY) used oil filter - Used oil filter that is generated by an individual who changes his/her own oil filter.

(3) Drained oil filter - A used oil filter which has been hot drained or otherwise processed to the standards set forth in §328.27 of this title (relating to Public Used Oil Filter Collection Centers and Used Oil Filter Generators) to remove all of the free-flowing oil.

(4) End user - Persons who utilize the processed used oil filter or its components as feedstock for the manufacturing of finished products; and, persons who in the opinion of the executive director recycle, as defined herein, the UOF or its components.

(5) Free-flowing oil - A noticeable stream of oil exiting the used oil filter at 60 degrees Fahrenheit when the filter is lifted by hand or by machinery.

(6) Generator - Person whose act or process produces used oil filters, excluding do-it- yourselfers.

(7) Hot draining - The process by which an oil filter is punctured and drained near engine operating temperatures and above room temperature (i.e., 60 degrees Fahrenheit) for a sufficient period of time to remove the free-flowing oil.

(8) Oil filter - An integral part of an oil-flow system, the purpose of which is to remove contaminants from the flowing oil contained within the system.

(9) Oil weight - The weight added to an oil filter through its use in an oil-flow system. Oil weight may be calculated by deducting the weight of a new or unused filter from the weight of a properly drained oil filter of identical style and type.

(10) Person - An individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any other interstate body.

(11) Processing - The act of preparing the used oil filter and its components for recycling. Processing must include a means of removing all free-flowing oil from the filter components, and must meet the processing standards set forth in §328.26 of this title (relating to Processors).

(12) Processor - A person who processes used oil filters, generated by others, for the purpose of preparing such filters for recycling.

(13) Public used-oil-filter collection center (Collection Center) - A facility which accepts do-it-yourself used oil filters. Such centers include, but are not necessarily limited to:

(A) automotive service facilities that in the course of business accept, for recycling, used oil filters from individuals;

(B) facilities that store used oil filters in above-ground containers and that in the course of business accept, for recycling, used oil filters from individuals; and

(C) publicly sponsored collection facilities that are designated and authorized by the executive director to accept, for recycling, used oil filters from individuals.

(14) Recycling - The legitimate use, reuse, or reclamation of a solid waste.

(15) Storage - The holding of used oil filters for a temporary period, at the end of which time the used oil filters are processed, recycled or disposed.

(16) Storage facility - A facility which is used to store more than six 55-gallon drums or containers, or the volumetric equivalent, of used oil filters.

(17) Terne - An alloy of tin and lead which may be used to plate oil filters. Terne- plating may cause sections of a used oil filter to exhibit the hazardous characteristic of toxicity for lead.

(18) Transporter - A person engaged in the off-site transportation of used oil filters.

(19) 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.

(20) Used oil filter (UOF) - A non-terne-plated oil filter that as a result of its use, storage or handling has become contaminated by physical or chemical impurities, and has been removed from service. This does not include a UOF which remains with an engine block which is recycled.

(21) UOF management plan - A description of a person's management practices pertaining to UOFs.

§328.23. General Requirements.

Any person generating, storing, transporting, processing or handling UOFs shall:

(1) Immediately remediate all spills and releases from UOFs. The facility shall have equipment sufficient to respond to a spill volume equivalent to 10 gallons for every 55-gallon drum or volumetric equivalent. If a facility has a Spill Prevention Control and Countermeasure Plan (See Clean Water Act, 42 U.S.C §112), or an equivalent Federal or State spill response plan approved by the executive director, it shall be deemed to be in compliance with this requirement. Such plan shall be retained on site and be available upon request by the executive director's staff.

(2) Not sell, convey, or otherwise transfer to an end user, a UOF which has not been processed to the processing standards set forth in §328.26(b) of this title (relating to Processors).

(3) Comply with all applicable federal, state and local regulations.

(4) Retain all required records on-site for a minimum of three years and make such records available for inspection on site by the executive director's staff upon request.

(5) Remove from service, or repair, any container used for storage of UOFs that is found to be leaking or in poor condition, ensuring that only nonleaking containers are provided for UOF storage.

§328.24. Storage Facilities.

(a) Any person storing more than six 55-gallon containers of used oil filters (UOFs), or the volumetric equivalent, must register with the executive director as a UOF storage facility using Form TNRCC-10062. Persons storing UOFs may store up to six 55-gallon containers, or the volumetric equivalent, of UOFs without registering as a storage facility.

(b) No storage facility may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure or any activity other than a discharge, in violation of the Texas Water Code, Chapter 26.

(c) The storage facility shall be required to provide evidence of financial responsibility as the commission deems necessary to assure the commission that the storage facility has sufficient assets to provide for the proper closure. Financial assurance for closure may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds guaranteeing payment or performance, letters of credit, insurance, or financial test and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director. Proof of compliance shall be submitted to the executive director with a completed UOF-storage- facility registration form.

(d) A person who owns or operates a storage facility:

(1) Shall register by January 25th of each year with the Automotive Waste Recycling Program as a UOF storage facility, utilizing registration forms prescribed by the executive director.

(2) Shall report by January 25th of each year the amount of UOFs received, sources of UOFs, and name and location of destinations and amounts shipped to those destinations during the previous calendar year.

(3) May not store a UOF for more than 90 days. At the end of such time, the stored UOFs must be either processed, shipped to a registered processor for processing or disposed. The executive director may, at his or her discretion, extend the 90-day time period upon a written request by the registered storage facility indicating just cause beyond the storage facility's control.

(e) Storage facilities must comply with the following standards:

(1) UOFs must be stored in a covered enclosure or in covered rainproof containers. All storage containers must be capable of containing any used oil that may be separate from the filters placed inside.

(2) UOFs must be stored in containers clearly labeled with the phrase "Used Oil Filters" in letters at least three inches high. The name of the owner of the container and the owner's phone number shall be imprinted on the container and clearly legible.

(3) Storage facilities must have a secondary containment system capable of containing an amount of oil equal to 10 gallons for every 55- gallon drum or volumetric equivalent. The containment system must be sufficiently impervious to prevent any used oil released into the system from migrating out of the system to the soil, groundwater or surface water, and must consist of, at a minimum:

(A) A dike, berm or retaining wall; and

(B) A floor which must cover the entire area within the dike, berm, or retaining wall.

(f) A storage facility may, as an alternative to meeting the standards delineated in subsection (e) of this section, submit to the executive director for approval a Used Oil Filter Management Plan (management plan) demonstrating to the satisfaction of the executive director the equivalency of an alternative method of storing UOFs. To be considered, the alternate method must meet the objective of protecting the environmental quality of the State of Texas at least as effectively as the management standards contained herein. An approved copy of the management plan must be retained on-site and must be available for inspection by the executive director's staff.

(g) In addition to complying with all the requirements delineated in this section, all storage facilities receiving UOFs generated off-site must ship only to a processor registered as a UOF processor with the executive director, an end user or a permitted disposal facility. This subsection does not apply to generators and/or public UOF collection centers that only accept UOFs from a DIYer.

§328.25. Transportation of Used Oil Filters.

(a) A person who transports Used Oil Filters (UOFs) shall:

(1) Register by January 25th of each year with the Automotive Waste Recycling Program as a UOF transporter, utilizing Form TNRCC-10062. Registrants shall provide proof of financial responsibility in a form and amount approved by the executive director. Proof of compliance shall be submitted to the executive director with a UOF transporter registration form.

(2) Report by January 25th of each year the amount of UOFs received, sources of UOFs, the name and location of storage facilities, processors, end users, and/or disposal facilities which receive the UOFs, and the amounts shipped to the processors or end user for the activities of the previous calendar year.

(3) Comply with all applicable Federal, State, and local regulations, including the United States Department of Transportation (DOT) regulations, such as placarding, insurance requirements and any necessary Federal, State, and local permits as required.

(4) Ensure that all UOFs are accompanied by a bill of lading demonstrating a transfer of custody of the UOFs from the shipping facility to the registered transporter, and from the transporter to a registered storage facility, registered (secondary) transporter, processor, end-user or permitted disposal facility. The bill of lading shall contain the date of such transfer, the name and physical address of the shipping facility, the name and address of the receiving facility, the name and address of the transporter, the quantity of UOFs removed and any other information which the executive director may deem necessary to protect the environmental quality of the State of Texas. The shipping facility must verify the information contained within the bill of lading, and demonstrate concurrence by the signature upon the bill of lading signature of an authorized representative of the shipping facility.

(5) Retain on-site, and make available for inspection by the executive director's staff upon request, copies of all bills of lading demonstrating transfer of custody of UOFs for a minimum of three years.

(A) For a transporter that does not have a structure capable of competently storing the required documents at the facility from which he operates his business (i.e. truck parking and/or UOF storage), a transporter may store the required documents at the local business office from which he conducts the administrative portion of his business.

(B) For a transporter operating multiple locations, the transporter may store two of the three years required at a central business location if such records will be made available to the executive director's staff, within five working days after such request; however, the most current year must be maintained at the transporter's operations facility, or at a local business office if no structure capable of competently storing exist at the transporter's operations facility.

(6) Ensure that all UOFs are delivered to a currently registered UOF processor, registered UOF storage facility, registered UOF (secondary) transporter, permitted disposal facility, or end user.

(7) Ensure that all accepted containers are properly labeled, sealed, and loaded in a manner which reduces shifting and loss of cargo.

(8) Have at least one "spill kit" and all necessary fire equipment on board. The spill kit must include the proper garments, instructions and tools needed in the event of a spill, fire, storm damage, or industrial accident.

(b) Persons transporting UOFs may transport up to two 55-gallon containers, or the volumetric equivalent, of UOFs without registering as a UOF transporter.

(c) In addition to complying with all the requirements delineated in subsection (a) (1)-(9) of this section, all transporters transporting UOFs generated by persons other than the transporter, or transporting UOFs received by the transporter from a DIY generator:

(1) May store collected UOFs for a period of 10 days or less without being required to register as a storage facility.

(2) Shall notify the generator and collection center of any changes to the shipping documentation, including, but not limited to, a change in destination. A written notification must be received by the generator and collection center within two weeks of such change(s).

§328.26. Processors.

(a) A person who processes UOFs shall:

(1) Register by January 25th of each year with the Automotive Waste Recycling Program as a UOF processor, utilizing Form TNRCC-10062.

(2) Report by January 25th of each year the amount of UOFs received, sources of UOFs, the name and location of end users, disposal facilities, or any other facility receiving UOFs from the processor for the previous calendar years' activities.

(3) Provide evidence of financial responsibility as the commission deems necessary to assure the executive director that the

processor has sufficient assets to provide proper closure. Financial assurance for closure may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds guaranteeing payment or performance, letters of credit, insurance or financial test and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director. Proof of compliance shall be submitted with a completed UOF processor registration form.

(b) A UOF must meet the following processing standards to be considered processed:

(1) the drained UOF has been compressed with a force sufficient to remove 80% of the oil weight remaining in the UOF; or

(2) the UOF has been separated by dismantling, shredding or any other acceptable procedure which separates the whole UOF into its components; or

(3) the UOF meets any standard which may be adopted by a recognized industry association and approved in writing by the executive director, so long as the industry standards requires the removal of free-flowing oil from the filter and prepares the filter for reuse by an end-user; or

(4) the UOF meets any other standard approved in writing by the executive director.

(c) In addition to complying with all the requirements described in subsections (a) and (b) of this section, a person processing UOFs generated off-site shall:

(1) Ensure that all UOFs are accompanied by a bill of lading documenting transfer of custody of UOFs to the processor. All bills of lading shall be retained on-site for a period of three years and be available for inspection by the executive director's staff upon request.

(2) Upon request by the generator or collection center originating a shipment of UOFs received by the processor, provide to the generator or collection center written documentation identifying the recipient of reclaimed materials or waste products resulting from the processing of the UOFs originating from the generator or collection center. Such written evidence shall clearly identify each component resulting from the processing and shall indicate the final destination of each such component.

(d) A processor may not store unprocessed UOFs longer than 30 days. The executive director may, at his or her discretion, extend this time period for an additional 30 days. A processor who is unable to comply with this storage requirement may apply to the executive director in writing for an extension of this storage period. A processor's storage time limits are initiated at the time the processor takes custody of the UOFs.

(e) A processor must determine the environmental risk associated with the storage of the materials resulting from the processing of the UOFs.

(1) For materials which can be shown to be free of residual oil, the agency places no further restrictions.

(2) For materials which are contaminated by used oil, the processor shall:

(A) make a hazardous waste determination in accordance with 40 Code of Federal Regulations Part 261 on all materials destined for disposal or incineration prior to shipment; and

(B) ship such material within 30 days of generation.

§328.27. Public Used Oil Filter Collection Centers and Used Oil Filter Generators.

(a) A generator shall ensure that all free-flowing oil as defined in §328.22 of this title (relating to Definitions) has been removed from UOFs stored on-site. Methods of removal of the free- flowing oil include, but are not limited to, the following:

(1) puncturing the filter anti-drain valve or the filter dome end and hot-draining;

(2) hot-draining and crushing;

(3) dismantling and hot-draining;

(4) flushing of the UOF; or

(5) any other equivalent method which will remove the free-flowing oil.

(b) For UOFs accepted from a DIY, the generator or public used oil filter collection center shall remove the free-flowing oil to the greatest extent feasible.

(c) A generator and a person owning or operating a collection center must obtain and keep copies of all UOF shipping documentation, documenting the transfer of custody of the UOFs. All documentation shall be retained on-site for a period of three years, except in cases where a person owns or operates multiple locations at which UOFs are generated or accepted from DIYers. In those cases records for two of the three years may be stored at a central facility if such records will be made available to the executive director's staff upon request, within five working days after notification by the executive director. Records for the most current year must be maintained at the physical location of the facility generating UOFs or accepting UOFs from the public. Persons who own or operate used oil filter collection centers which are unmanned, who only accept UOFs from DIY generators, and who operate multiple locations, may retain the required documentation at a central business location if the records are made available to the executive director's staff within five working days after being requested.

(d) All generators and persons owning or operating a UOF collection center shall arrange with a properly registered UOF transporter for the transport of UOFs to a registered UOF processor, registered UOF storage facility, permitted disposal facility, or an end user. The generator and persons owning or operating a UOF collection center (the shipper) must verify the information contained within the bill of lading, and demonstrate concurrence by the signature of an authorized representative of the shipper upon the bill of lading.

(e) Generators and persons owning or operating collection centers shall prepare each container for transport by assuring that the containers are sealed and an identifying label/number is evident on the container which relates to the bill of lading. This identification number shall be easily recognizable, enabling the executive director's staff to assign the container to the required paperwork.

(f) UOFs must be stored in containers clearly labeled with the phrase "Used Oil Filters" in letters at least three inches high. The name of the owner of the container and the owner's phone number shall be imprinted on the container and clearly legible.

(g) In addition to complying with all the requirements delineated in subsections (a)-(e) of this section, all UOF collection centers shall:

(1) Register by January 25th of each year with the Automotive Waste Recycling Program as a UOF collection center, utilizing registration form number TNRCC-0390. Temporary authorization to

collect UOFs for one-day events may be obtained through a written request for such authorization submitted to the appropriate Regional Office at least 30 days prior to the proposed date of the event. Registration as a UOF collection center is not required for one-day events which receive written approval from the Regional Office. Also, facilities granted temporary authorization are exempt from the yearly reporting requirement set forth herein.

(2) Report to the executive director by January 25th of each year the amount of UOFs received, the amounts shipped, the date of each shipment, the name of the transporter used for each shipment and any other pertinent information the executive director may require regarding the activities of the previous calendar year.

(3) Notify the executive director in writing within 30 days if the collection center ceases acceptance of UOFs from the public.

(h) A collection center may charge a reasonable fee sufficient to cover the cost of properly managing DIY-accepted UOFs.

§328.28. Shipping Documentation.

(a) Until such time as bills of lading are prescribed by the executive director, the information required herein must be retained on-site by the generator, collection center, transporter, storage facility and processor in a form easily discernable by the executive director's staff.

(b) The bill of lading will be a multi-part form used to document the transfer of custody of the UOFs between participating parties. It is the responsibility of the shipping facility to ensure that the bill of lading(s) are legible, complete and accurate as to the information entered thereon which is specific to the shipping facility, prior to release of the UOFs.

(c) The transporter shall transport the UOFs to the UOF facility identified on the bill of lading, and upon delivery to such facility shall retain the transporter copy of the bill of lading which has been signed by the receiver evidencing receipt of the UOFs by the receiver.

§328.30. Generators Regulated by the Railroad Commission of Texas.

UOFs described in §328.21 of this title (relating to Applicability) may be delivered to a UOF transporter, storer, or processor registered by the executive director for the purpose of recycling, provided that, at the time of delivery.

(1) the UOFs have been drained of free oil as provided in §328.27 of this title (relating to Public Used Oil Filter Collection Centers and Used Oil Filter Generators);

(2) the UOFs are contained and labeled in a manner that complies with the provisions of §328.27; and

(3) the generator complies with provisions of §328.28 of this title (relating to Shipping Documentation) regarding shipping documentation for shipments of UOFs that are transported by the UOF transporter registered by executive director.

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

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Subchapter E. Grants Pertaining to the Collection, Reuse, and Recycling of Used Oil

30 TAC §§328.41-328.47

STATUTORY AUTHORITY

The new sections are adopted under the authority of the Texas Water Code, §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 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. Additionally, Texas Health and Safety Code, §371.023 provides the commission with the authority to adopt rules to establish procedures for the application and criteria for the award of used oil grants.

§328.43. Authority.

The agency's authority to conduct and manage the activities described in this subchapter is derived from the Used Oil Collection, Management, and Recycling Act, Health and Safety Code, Chapter 371.

§328.47. Grant Announcement and Recipient Selection.

(a) The agency shall announce grant funds, select grant recipients, and award assistance grants under this subchapter utilizing a Request for Applications (RFA). Under the RFA process, the agency will:

(1) publish a formal notice in the *Texas Register* advising eligible applicants that the commission is accepting grant applications for household do-it-yourselfer used oil collection, reuse and recycling projects, and that the commission will make grant awards, on a first-come, first-served basis, to those entities whose applications and proposed projects meet certain RFA-specified minimum requirements;

(2) make available, upon request, application forms and instructions, together with the specific RFA document that sets forth the established minimum requirements and criteria for application acceptance and award of the grant;

(3) accept and process applications, on a first-come, first-served basis; and

(4) providing budgeted funds remain available, award grants to those local governments and/or private entities whose applications meet the minimum standards and criteria set forth in the RFA.

(b) All grant applications will be reviewed and processed by the executive director's staff to ensure compliance with the requirements of this subchapter, the appropriate RFA, and applicable requirements of Health and Safety Code, Chapter 371. The applications shall also be reviewed and considered by the advisory committee whose statutory duties include recommending grant recipients to the commission based on the used oil collection needs of the state and/or by other public agencies or organizations who have specific responsibilities to review, comment on, or coordinate the selection and/or awarding of state grants.

(c) Applicants selected to receive used oil collection, reuse and recycling assistance grants, or other used oil recycling program support under this subchapter, may be required, depending on the specific RFA, to enter into a written contract with the commission as a condition to receiving a grant. The contracts will indicate the amount and type of grant, establish time frames and/or deadlines for completing grant-supported activities and for expending grant-provided funds, describe reporting requirements and payment procedures, and contain standard contract conditions.

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Subchapter F. Management of Used or Scrap Tires

30 TAC §§328.51-328.71

STATUTORY AUTHORITY

The new sections are adopted under the authority of the Texas Water Code, §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 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. Additionally, Texas Health and Safety Code, §361.112 provides the commission with the authority to adopt rules to regulate storage, transportation, and disposal of used or scrap tires.

§328.55. Registration Requirements.

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(1) An application for a registration shall be made on a form obtained from the executive director, upon request. The applicant may deliver the completed application to any commission regional office or mail it to the following address: Texas Natural Resource Conservation Commission, P.O. Box 13087, Mail Code 125, Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

(A) the name, mailing address, county, and telephone and facsimile numbers of the applicant;

(B) the name, mailing address, and telephone number of the property owner where the scrap tire storage site, scrap tire facility, or transportation facility is located;

(C) the street location of the scrap tire storage site, scrap tire facility, or transportation facility, including county;

(D) the approximate number of used or scrap tires or tire pieces (in tons) that will be stored at the scrap tire storage site or the scrap tire facility;

(E) the existing land use surrounding the scrap tire storage site, scrap tire facility, or transportation facility; and

(F) the tax identification number.

(2) The application must be signed by the authorized representative and, if applicable, the professional engineer who assisted in its preparation.

(3) Entities that are registered by the executive director shall maintain a copy of their commission registration notice at their designated place of business.

(4) A registered entity shall provide written notice to the executive director, within 15 days, if:

(A) the mailing address or telephone number of the entity changes;

(B) the office or designated place of business is relocated;

(C) the applicant's registered name is changed; or

(D) the authorized representative has changed. If the authorized representative has changed, a registered entity shall provide a written, signed designation of the new authorized representative, including the representative's name, mailing address, and telephone and facsimile numbers.

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

(6) Annulment, suspension, revocation or denial of registration procedures are as follows:

(A) The executive director may annul, suspend or revoke a registration or deny an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this chapter;

(ii) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(iii) failure to maintain equipment in safe working order;

(iv) altering any record maintained or received by the registrant;

(v) delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration under §328.54 of this title (relating to General Requirements);

(vi) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(vii) failure to submit any applicable annual report;

(viii) failure to maintain financial assurance as required;

(ix) dumping of used or scrap tires or tire pieces illegally;

(x) collection, storage, transportation or processing of used or scrap tires or tire pieces without registration, as required in this section;

(xi) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section; or

(xii) failure to obtain and maintain necessary approvals or certifications from the Fire Marshal with jurisdiction over the facility location;

(B) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, an entity shall not collect, store, transport or process used or scrap tires or tire pieces regulated under this subchapter.

(C) The holder of a registration that has been revoked by the executive director may reapply for registration under this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the executive director a second time, the revocation shall be permanent.

(D) Appeal of annulment, suspension, revocation or denial of initial or renewal registration procedures are as follows:

(i) An opportunity for a formal hearing on the annulment, suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant, as shown in the records of the agency.

(ii) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address. If the registration is denied, a person shall not collect, store, transport or process used or scrap tires or tire pieces.

(iii) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 and the rules of the commission.

§328.60. Scrap Tire Storage Site Registration.

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers at a facility shall be required to obtain a scrap tire storage site registration for that facility from the executive director pursuant to §328.55 of this title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

(b) Application requirements.

(1) The application for a scrap tire storage site registration, amended registration, or renewal shall consist of: the application form; site and surrounding area information; engineering information, including a site layout plan and a site operating plan; and evidence of financial assurance as required under this section.

(2) Upon filing a registration application, the applicant shall mail a copy of the application to the appropriate county judge and shall mail notice that an application has been filed to the appropriate regional council of government and the appropriate mayor if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city. Proof of mailing shall be provided in the form of return receipts for registered mail.

(3) Upon filing a registration application, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notices shall specify that the registration application has been provided to the county judge and that it is available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. Notice shall be published in a newspaper of general circulation. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the facility; the health authorities of the city and county in which the facility will be located, if applicable; and the appropriate state senator and representative for the area encompassing the facility.

(4) Applications shall be submitted in triplicate.

(5) Preparation of the application shall be in accordance with the requirements of the Texas Engineering Practice Act, Article 3271a, Vernon's Annotated Texas Statutes. Each sheet of engineering plans, drawings, maps, calculations, computer models, cost estimates, and the title or contents page of the application shall be signed and sealed by a professional engineer in accordance with the Rules of the Texas Board of Professional Engineers.

(6) Drawings shall be legible and include a dated title block, scale, and responsible engineer's seal, if required. If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines. Drawings shall be submitted using a standard engineering scale.

(7) Each map or plan drawing shall have a north arrow, a legend and a reference to the base map source and date if the map is based upon another map. The latest revision of all maps shall be used. Maps shall show the following:

(A) all structures and inhabitable buildings within 500 feet of proposed site;

(B) location of all roads within one mile of the site that will normally be used to access the site;

(C) latitudes and longitudes;

(D) area streams;

(E) the property boundary of the site; and

(F) drainage, pipeline, and utility easements within or adjacent to the site.

(8) The applicant or an authorized representative shall provide a signed statement representing that he or she: is familiar with the application and all supporting data; is aware of all commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the scrap tire storage site in compliance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) Site and surrounding area information includes the following:

(A) Maps.

(i) Location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation. At least one general location map shall be at a scale of one-half inch equals one mile. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P.O. Box 5051, West Austin Station, Austin, Texas, 78763-5051;

(ii) Topographic maps. These maps shall be United States Geological Survey $7\frac{1}{2}$ -minute quadrangle sheets or equivalent, marked to show the storage site boundaries and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey, Federal Center, Denver, Colorado 80225;

(iii) Land ownership map and list. This map shall locate the property owned by potentially affected landowners. The map shall show all property ownership within 500 feet of the site. A list shall be provided that gives each property owner's and easement holder's name and mailing address. The list shall be keyed to the Land Ownership Map.

(iv) Floodplain maps. These maps shall be the appropriate Federal Emergency Management Agency maps or other demonstration acceptable to the executive director indicating the location of any 100-year flood plain which may exist within the property boundary or surrounding area.

(B) Legal description. A legal description of the storage facility and the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application.

(C) Property owner affidavit. A statement from the property owner shall be submitted on a form provided by the executive director; and shall be witnessed and notarized. The form shall include:

(i) the legal description of the site;

(ii) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the site;

(iii) acknowledgment that the owner has a responsibility to file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility, at the time as the site actually begins operating; and

(iv) acknowledgment that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than five years after closure for the purpose of inspection and maintenance.

(D) Fire marshal approval. The fire marshal with jurisdiction over the facility location shall approve the fire protection system. A letter from the fire marshal shall be included in the application stating that the fire marshal has reviewed and approved the fire protection aspects of the application as well as the design of the all-weather roads to accommodate fire fighting vehicles. The fire marshal shall sign and date the Site Layout Plan.

(10) Engineering information includes the following:

(A) Site layout plan. The site layout plan shall include:

(i) location of storage areas;

(ii) location of fire lanes and fire control facilities;

(iii) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with §328.61 of this title (relating to Design Requirements for Scrap Tire Storage Site);

(iv) location of buildings; and

(v) location and description of processing equipment.

(B) Drainage plan. A drainage plan showing drainage flow throughout the scrap tire storage site area, locations of streams and any other important drainage feature of the facility. Calculations shall be presented to show that normal drainage patterns will not be significantly altered. If the executive director determines that significant alteration will occur, the owner/operator shall design and provide additional surface drainage controls which shall be designed and provided to mitigate the effects of the altered watershed, as required by the executive director.

(C) Fire plan. The fire plan and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

(i) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(ii) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and state and local emergency response teams. In this regard, a letter from each of these entities shall be included in the fire plan, which letters shall acknowledge receipt of a copy of the fire plan, and agreement to participate as stated in the fire plan.

(iii) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are to be included in the plan. The fire plan must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.). The plan shall also include the best route for these emergency response teams to take from their location to the site location.

(iv) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(v) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes,

shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the fire plan) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(vi) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(vii) information about any insurance held by the company that would cover fire damage, loss, and cleanup.

(D) Cost estimate for closure. The applicant shall submit a cost estimate for closure costs in accordance with §328.71 of this title (relating to Closure Cost Estimate for Financial Assurance).

(E) Site operating plan. The Site Operating Plan shall include information to provide specific guidance and instructions for the management and operation of a scrap tire storage site and should include:

(i) information on security, facility access control, the hours and days during which tire-hauling vehicles will be admitted, traffic control and safety;

(ii) sequence of the development of the scrap tire storage site such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(iii) information on control of loading and unloading of used or scrap tires or tire pieces within designated areas, so as to minimize operational problems at the storage facility;

(iv) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(v) vector control procedures for any type of vector that may be found at the scrap tire storage site;

(vi) a procedure for removal of any waste material that is not a used or scrap tire or tire piece to a disposal facility permitted by the commission. This procedure must include the means to remove this illegally deposited waste material. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins, or shall be returned to the transporter's vehicle and removed from the scrap tire storage site. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(vii) the name of the facility employee who is designated by the owner or operator to inspect each load of used or scrap tires or tire pieces that is delivered to the scrap tire storage site. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel;

(viii) a procedure whereby the required transporter manifest, the daily log and other required documents shall be maintained at the scrap tire storage site for a period of three years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(ix) dust and mud control measures for access roads, fire lanes, and storage areas within the scrap tire storage site;

(x) posting of signs and enforcement of scrap tire storage site rules;

(xi) procedures for wet-weather operations;

(xii) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the scrap tire storage site in use during the active operating period of the scrap tire storage site. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(xiii) incorporation of other instructions as necessary to ensure that the scrap tire storage site personnel comply with all of the operational standards for the facility.

(11) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §328.71 of this title (relating to Closure Cost Estimation for Financial Assurance).

(c) Application processing. If an application for registration or amended registration of a scrap tire storage site is received that is not administratively or technically complete, the executive director shall notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant within 60 days of the receipt of the deficiency note that an adequate response cannot be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application or sufficient proof of inability within the time frames indicated, the application may be considered withdrawn without prejudice.

(d) Registration expiration. A scrap tire storage site registration shall expire 60 months from the date of issuance. A scrap tire storage site registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the scrap tire storage site registration. Failure to timely file an application for renewal shall result in automatic expiration of the registration.

§328.61. Design Requirements for Scrap Tire Storage Site.

(a) A scrap tire storage site shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the site are maintained.

(b) A registered scrap tire storage site may store scrap tires or tire pieces using outdoor or indoor tire piles or enclosed and lockable containers, or a combination of any of the aforementioned methods. Registered scrap tire storage sites shall be limited to a maximum of three piles of whole used or scrap tires on the ground.

(1) Tire piles consisting of scrap tires or tire pieces shall be no greater than 15 feet in height, nor shall the pile cover an area greater than 8,000 square feet. Existing storage sites with variances to the 8,000 square foot pile size limit may maintain the approved

pile size if approved in writing by the local fire marshal in the fire plan under the current registration. Approval from the executive director and the local fire marshal will be required to maintain existing pile sizes greater than 8,000 square feet with renewal or amended application requests.

(2) Scrap tires or tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Indoor storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(3) Scrap tires or tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable.

(c) There shall be a minimum separation of 40 feet between outdoor piles consisting of scrap tires or tire pieces. This 40-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be an all-weather road. Provisions shall be made for all-weather access from publicly- owned roadways to the scrap tire storage site, and from the entrance of the site to unloading and storage areas used during wet weather. The design (a cross-section), location, maintenance, and all- weather serviceability of interior access roads/fire lanes shall be addressed in the overall facility design and in the Site Operating Plan, and shall be indicated on the Site Layout Plan with appropriate design notes. At a minimum, these roadways shall have minimum 25-foot turning radii, shall be capable of accommodating firefighting vehicles during wet weather, and shall meet applicable local requirements and specifications. An estimate shall be provided of the number, size, and maximum weight of vehicles expected to use the site daily. The open space between buildings and outdoor tire piles consisting of scrap tires or tire pieces shall be a minimum of 40 feet; kept open at all times and maintained free of rubbish, equipment, tires, or other materials. In the event that a variance for supersize piles is approved by the executive director, the minimum fire lane separation shall be at least 40 feet. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(d) Outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces shall not be within 40 feet of the property line or easements of the scrap tire storage site. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 40-foot property line or easement if the setback line meets the other applicable requirements of this subchapter and the applicant provides a written statement to the executive director from the local fire marshal that the distance that is the subject of the variance is adequate for fire fighting purposes. In the event that a variance for supersize piles is approved by the executive director, the minimum setback from property lines or easements will be 40 feet. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(e) Scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the scrap tire storage site. The executive director may grant a variance from this requirement if the executive director finds that circumstances warrant the exception. Off-the-road tires that are used on heavy machinery, including earthmovers, loader/dozers, graders, agricultural machinery and mining equipment are exempt from this requirement. Truck tires shall not be classified as off-the-road tires and thus are not exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(f) Access to the facility shall be controlled to prevent unauthorized activities. The facility shall be completely fenced with a gate that is locked when the facility is closed. A scrap tire storage site shall be enclosed by a chain-link type security fence at least six feet in height.

(g) The scrap tire storage site shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements.

(h) The scrap tire storage site shall have large capacity dry chemical fire extinguishers located in strategically-placed enclosures throughout the entire site, equally spaced within the facility to provide quick access from any location within the facility. The minimum number of fire extinguishers or fire hydrants for each scrap tire storage site shall be one per acre.

(i) If necessary, suitable drainage structures or features shall be provided to divert the flow of rainfall runoff or other uncontaminated surface water within the scrap tire storage site to a location off-site.

(j) Each site shall conspicuously display at the entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using the words "scrap tire site," the commission registration number, and operating hours.

(k) A scrap tire storage site located within a designated 100-year floodplain area shall be designed with adequate environmental protection. The owner/operator shall demonstrate that the tire storage area will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or result in a washout of tires, tire pieces or other material so as to pose a hazard to human health and the environment.

(l) The scrap tire storage site shall be designed in accordance with all local building codes, fire codes, and other applicable local codes.

§328.62. Scrap Tire Storage Site Record Keeping.

(a) General requirements.

(1) The owner/operator shall maintain on site at all times: a copy of the registration application with all supporting data, including the approved scrap tire storage site layout plan; the approved scrap tire storage site engineering information; a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism, as filed with the commission; and a copy of the commission's current rules. The facility supervisor shall be knowledgeable of current commission rules; the contents of the approved scrap tire storage site application; and the approved scrap tire storage site in relation to the operational requirements.

(2) All drawings or other sheets prepared for revisions to a scrap tire storage site layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Daily log. Persons that store used or scrap tires or tire pieces under this subchapter shall maintain a record of each individual delivery and removal. The record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

(1) name and commission registration number of the scrap tire storage site;

(2) physical address of the scrap tire storage site;

(3) number of used or scrap tires or tire pieces received at the scrap tire storage site;

(4) number of used or scrap tires or tire pieces, removed from the scrap tire storage site (for disposal, resale, recycling, reuse or energy recovery);

(5) specific location in the scrap tire storage site (i.e., tire pile number, bin number, building number, etc.) where used or scrap tires or tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);

(6) description of specific events or occurrences at the scrap tire storage site relating to routine maintenance, spraying for vectors, observations of vectors, evidence of vectors, and fire or theft or other similar events or occurrences;

(7) number of used or scrap tires being held for resale, adjustments or other purposes;

(8) name and signature of facility representative acknowledging truth and accuracy of the daily log; and

(9) the name, address, telephone number, and date of the individual or company delivering or removing the used or scrap tires or tire pieces to or from the scrap tire storage site.

(c) Manifests. The scrap tire storage site operator shall retain all manifests received from a scrap tire facility or scrap tire transporter for used or scrap tires or tire pieces delivered to or removed from the scrap tire storage site. The scrap tire storage site shall ensure that the top original of the five- part manifest is returned to the generator completely filled out within 60 days of the date and time of collection as indicated in Section 1 of the manifest form. The scrap tire storage site shall follow the requirements in §328.58 of this title (relating to Manifest System).

(d) Annual report. Scrap tire storage site owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the scrap tire storage site;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a list of facilities where the scrap tire storage site owners or operators currently deliver used or scrap tires or tire pieces. Each scrap tire recycling or energy recovery facility listed shall include the following information:

(A) phone number of company and responsible person;

(B) physical address and mailing address of the scrap tire facility;

(C) detailed description of process to recycle, reuse or recover the energy from the used or scrap tires or tire pieces;

(D) exact quantities, by month, (in number of tires or weight of scrap tires or tire pieces) that the scrap tire storage site owner or operator delivered to the scrap tire facility.

(e) Local ordinances. Where local ordinances require controls or records more stringent than the requirements of this subchapter, the scrap tire storage site owner or operator shall use those criteria to satisfy the agency's requirements.

§328.65. Tire Monofill Permit Required.

(a) In accordance with §330.4(a) of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the underground disposal or placement of tires or tire pieces into a tire monofill unless that activity is authorized by a permit from the commission. No person may begin physical construction of a tire monofill without first having submitted a permit application in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures) and received a permit from the commission.

(b) A separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if the underground disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site. Such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

§328.68. Priority Enforcement List (PEL) Program.

(a) PEL program.

(1) Applicability. This section applies to the creation and maintenance of the PEL and the identification of illegal scrap tire sites, and the determination of a Potentially Responsible Party (PRP).

(2) PEL procurement. The executive director may issue contracts to procure cleanups for the removal of tires from such sites through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Chapter 2151, Texas Government Code) applicable to contract for services. The executive director may elect not to enter into contracts under this section. If no reasonable bids are submitted under the procurement process for the cleanup of PEL sites, or at the executive director's discretion, the executive director may rebid the PEL sites.

(b) PEL.

(1) The PEL shall be a list, maintained by the executive director, of piles of scrap tires or tire pieces in excess of 500 and defined as illegal scrap tire sites identified before December 31, 1997 and classified by the executive director. This list shall be used by the executive director for awarding site cleanups to successful contract bidders. The scrap tires or tire pieces obtained from the PEL sites are eligible for payment according to contract guidelines.

(2) The executive director may, on an as needed basis, and with notice, recontract or execute additional contracts for any PEL site identified and contracted in the state.

(3) Members of the commission, employees or agents of the commission, and authorized scrap tire facilities or their subcontractors are entitled to enter any public or private property at any reasonable time to inspect, investigate or remediate any condition related to illegal dumping of scrap tires.

(4) An authorized contractor or subcontractor is entitled to enter property only at the executive director's direction. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least 10 days before a commission member, commission employee or agent, or authorized contractor or subcontractor enters the property. A commission member, commission employee or agent, or authorized contractor or subcontractor who, acting under this subsection, enters private property shall:

(A) observe the establishment's rules concerning safety, internal security, and fire protection; and

(B) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(5) Authorized contractors and their subcontractors shall not be considered agents of the state and are solely responsible for their own actions and actions of their agents.

(6) Once a PEL site has been cleaned up, property owners shall not be eligible for future cleanup assistance as a result of further tire deposition on the owners' property.

(c) PEL scrap tire site cleanup contract.

(1) Authorized scrap tire facilities that intend to receive payment shall enter into a PEL scrap tire site cleanup contract as a guarantee of job performance.

(2) Should the authorized facility's registration to utilize scrap tires or tire pieces be suspended or revoked by the executive director pursuant to §328.55 of this title (relating to Registration Requirements), then the PEL sites remaining in the PEL Scrap Tire Site Cleanup Contract shall be rebid.

(d) Authority of agency personnel.

(1) The contractor shall report on the status of the cleanup activities at the PEL site to the executive director in the time frame and manner requested.

(2) The executive director shall have the authority to suspend cleanup activities at a PEL site following a determination of whether the conditions and/or activities at the PEL site or other circumstances warrant the temporary suspension of cleanup activities to ensure the protection of public health and safety or the environment.

(3) The executive director may undertake immediate remediation of a site if, after investigation, the executive director finds:

(A) that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(B) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to PRPs or until a judgment can be entered in an appeal of an administrative order.

(4) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the executive director, the executive director may implement a remedial program for the site.

(5) The commission or executive director may seek to bring suit against a PRP to recover reasonable expenses incurred in undertaking immediate removal of tires or in implementing a remedial action order. For purposes of this subchapter, the following three criteria shall be used to determine whether a person is a PRP.

(A) The person must be the property owner of record, the site operator or the depositor of the scrap tires on the site;

(B) The person must have benefitted financially from the disposition of the scrap tires on the site; and

(C) The person must be financially capable of paying all or part of the costs of the cleanup as determined by the commission.

(6) The commission or executive director shall seek to file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(7) The commission or executive director, in lieu of bringing suit to recover costs incurred under this subchapter, may seek to file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders of the property.

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

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Margaret Hoffman
Director, Environmental Law Division
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For further information, please call: (512) 239-6087

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Subchapter G. Newsprint Recycling

30 TAC §§328.100-328.105

STATUTORY AUTHORITY

The new sections are adopted under the authority of the Texas Water Code, §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 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. Additionally, Texas Health and Safety Code, §361.430 provides the commission with the authority to adopt rules to establish a newsprint recycling program for the state.

§328.100. Purpose and Definitions.

(a) Purpose. These sections set forth newsprint recycling requirements for newsprint manufacturers and newspaper publishers. The sections contain recordkeeping and reporting procedures with respect to the utilization of recycled-content newsprint in newspaper publishing operations. These sections are applicable to every newspaper printing and publishing operation in this state that publishes, sells, or distributes newspapers, as well as to those manufacturers and suppliers who provide newsprint for sale in Texas.

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

(1) Aggregate postconsumer recycled content–refers to the total amount of postconsumer recovered material by weight contained in total purchases of newsprint for a specified period. It is

arrived at by multiplying the percentage of postconsumer recovered fiber in each shipment of newsprint purchased by the percentage of total newsprint purchases that shipment represents and summing the products thus calculated for all shipments received during the specified time period.

(2) De-inked fiber–A fiber which has undergone the de-inking process.

(3) De-inking process–A process by which most of the ink, filler, coating, and other extraneous (non-cellulose) material is removed from printed or unprinted paper.

(4) Metric ton–1,000 kilograms. To convert pounds to metric tons the number of pounds should be divided by 2,204.6.

(5) Newspaper–A publication that is printed on newsprint and published, sold, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(6) Newspaper publisher–An individual or corporate group of newspaper publishers which uses newsprint in a newspaper publishing operation.

(7) Newsprint–Paper used for the printing of newspapers.

(8) Newsprint manufacturer–A business which makes newsprint.

(9) Overs–also known as "overruns," are newspapers printed for sale to distributors or the public which remain unsold. Overs include inserts such as magazines and advertising supplements.

(10) Postconsumer recovered material–Includes paper, paperboard, and other fibrous products that have completed their normal cycle of production and use, but excludes all papermaking waste and blank white news, which is diverted for recycling prior to printing. Postconsumer recovered material may also include any de-inked fiber, regardless of the source of such fiber except from sources specifically excluded previously. Overs are included within the definition of postconsumer recovered material.

(11) Postconsumer recycled content–That portion of manufactured newsprint that is comprised of postconsumer recovered material, usually expressed as a percentage of the total content.

(12) Recycled newsprint–Any newsprint certified by the manufacturer or supplier as containing at least 25% postconsumer recovered material, by fiber weight.

(13) Virgin newsprint–Newsprint which contains 100% new materials in its formation.

§328.101. General Guidelines and Requirements.

(a) Target recycling percentages. In order to bring about a significant state-wide increase in newsprint recycling, newspaper publishers are encouraged to take whatever measures may be necessary to ensure that their publishing businesses meet or exceed the target recycling percentages set forth in paragraph (1) of this subsection. In the event a newspaper publisher chooses to purchase newsprint with less than 25% postconsumer recycled content, the agency will consider legislative intent to be achieved if that publisher meets or exceeds the alternative aggregate recycling content standards set forth in paragraph (2) of this subsection.

(1) Newspaper publishers should obtain and utilize newsprint such that the percentage of "recycled newsprint," as defined in §328.100 of this title (relating to Purpose and Definitions), in the overall total amount of newsprint purchased each year is at least:

(A) 10% by the end of calendar year 1993;

(B) 20% by the end of calendar year 1997; and

(C) 30% by the end of calendar year 2000.

(2) In the alternative, newspaper publishers may obtain and utilize newsprint such that the aggregate postconsumer recycled content, by fiber weight, in the overall total amount of newsprint purchased each year is at least:

(A) 2.5% by the end of calendar year 1993;

(B) 12% by the end of calendar year 1997; and

(C) 18% by the end of calendar year 2000.

(b) Certification. Newsprint manufacturers and suppliers shall certify the average percentage, based on annual production, of postconsumer recovered material contained in any newsprint sold and/or delivered to Texas newspaper publishers.

(c) Recordkeeping. Newsprint purchase and delivery records shall be maintained by all newspaper publishers. In addition, mill certification records showing the average percentage of postconsumer recovered material in purchased and/or utilized newsprint should be kept by each publisher. Such records must contain sufficient information to enable the publisher to prepare those reports required under §328.103 of this title (relating to Reports). An official Texas Daily Newspaper Association (TDNA) Newsprint Order Form may be used to maintain and verify required records. Newspaper publishers shall retain required records for three years.

(d) Notice of postconsumer content and labeling.

(1) Newsprint manufacturers or suppliers shall indicate, on invoices provided to newspaper publishers, suppliers, or commercial printers, or through another form of written notice to such consumers, the average postconsumer recycled content of each roll of newsprint which is the subject of such invoice or notice, and the amount of newsprint purchased from such newsprint manufacturer or supplier containing the minimum postconsumer recycled content required to meet the definition of "recycled newsprint" under §328.100 of this title (relating to Purpose and Definitions).

(2) Newsprint which contains less than the minimum percentage of postconsumer recovered material required to qualify it as recycled newsprint may be identified as follows: "this product contains an average of ____% postconsumer recycled fiber, based on annual production" with the percentage indicated.

(e) Comparable price, quality, and availability. Texas newspaper publishers are urged to voluntarily increase utilization of "recycled newsprint" or other newsprint, that has been certified as containing postconsumer recovered material, beyond the target recycling percentages set forth in subsection (a) of this section in those instances where:

(1) availability of such products exist;

(2) the net cost of utilizing such products is comparable to that of utilizing virgin newsprint; and

(3) the quality of such products (considering such factors as brightness, opacity, and cross machine tear strength) is similar to that of virgin newsprint.

§328.102. Requirements.

The agency shall assure easy access of information among all parties affected by these sections and shall establish a data filing system that will allow all parties to easily monitor the progress of the recycling program set forth in these sections. Specifically, the agency shall:

(1) maintain up-to-date listings of, and data from, municipalities, towns, local organizations, and other generators of recyclable paper and newsprint, concerning both present and planned newsprint recycling and collection activities and the overall availability of such recyclable material within the state;

(2) provide, to recyclers of old newspapers and other recyclable paper materials, acceptability requirements and specifications with respect to materials destined for de-inking plants and recycled paper mills;

(3) maintain a roster of current newspaper publishers, wastepaper dealers, commercial printers, as well as paper and paperboard mills who buy, sell, recover or consume wastepaper in Texas and in other states;

(4) in cooperation with various state agencies and officials, publishers, and other parties, assist in the development of those education strategies and market development programs described in §361.423 of the Health and Safety Code, which are designed to promote newsprint recycling; and

(5) work closely with Texas Daily Newspaper Association, the Texas Press Association, manufacturers of newsprint containing postconsumer recovered material, and citizen groups concerned with recycling, to monitor problems and issues regarding newsprint quality and the availability of "recycled newsprint."

§328.104. Joint Review.

The agency shall schedule periodic meetings with representatives from the newsprint manufacturing and newspaper publishing industries to evaluate the effectiveness of the requirements set forth in these sections, to compare the newspaper recycling progress in Texas with that in other states, and to consider whether revisions to these sections may be warranted.

§328.105. Enforcement.

If the agency finds that, on a state-wide basis, voluntary actions alone on the part of newsprint manufacturers, newsprint suppliers, and newspaper publishers fail to achieve the target recycling percentages set forth in §328.101 of this title (relating to General Guidelines and Requirements), the commission may, after considering all relevant factors, including but not limited to function, availability and cost, adopt mandatory enforcement measures designed to further increase the amount of newsprint recycling in the state and to ensure that the state-wide goals are achieved.

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

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Chapter 330. Municipal Solid Waste

Subchapter M. Solid Waste Technician Training and Certification Program

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to Subchapter M, §330.381; Subchapter N, §§330.401, 330.407, 330.408, and 330.416; Subchapter P, §330.601; Subchapter S, §§330.890-330.891, 330.893- 330.895, and 330.897; the repeal of Subchapter M, §§330.382-330.391; Subchapter P, §§330.621-330.623 and 330.631-330.633; Subchapter Q, §§330.701-330.706, 330.721, 330.731-330.733, and 330.735; Subchapter R, §§330.801-330.821; Subchapter U, §§330.970-330.976; Subchapter V, §§330.980-330.989; Subchapter Z, §§330.1051-330.1054, 330.1101-330.1109, 330.1180-330.1189, and 330.1200-330.1205; and new Subchapter M, §§330.382-330.389, concerning municipal solid waste (MSW). Amended §§330.381, 330.401, 330.407, 330.601, 330.890, 330.894, and 330.895, and new §§330.382, 330.383, 330.385-330.387, are adopted with changes; repealed §§330.382-330.391, 330.621-330.623, 330.631-330.633, 330.701-330.706, 330.721, 330.731-330.733, 330.735, 330.801-330.821, 330.970-330.976, 330.980-330.989, 330.1051- 330.1054, 330.1101-330.1109, 330.1180-330.1189, and 330.1200-330.1205; and amended §§330.408, 330.416, 330.891, 330.893, and 330.897; new §§330.384, 330.388 and 330.389 are adopted without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1939) and will not be republished.

The commission has also conducted its review of the rules in 30 TAC Chapter 330, Subchapters M - V, and Y - Z as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this issue of the *Texas Register.*

EXPLANATION OF ADOPTED RULES Changes were made throughout Subchapters M, N, P, and S, and changes were not necessary for Subchapters O, T, and Y. The changes to the rules are the result of ongoing efforts by the commission for regulatory reform. The commission does not currently have a Subchapter W or X. These changes are for purposes of simplification and clarification only and do not involve substantive changes in the requirements of this chapter. In general, these changes involve editorial changes, reorganizing requirements into a more logical sequence, and correcting cross references. Specific changes to each subchapter are discussed in the following paragraphs. Subchapters A - L are not included in this adoption. These remaining Subchapters A - L will be reviewed at a later date for purposes of regulatory reform and rules review.

The following paragraphs describe the adopted amendments to Chapter 330 by subchapter.

SUBCHAPTER M: SOLID WASTE TECHNICIAN TRAINING AND CERTIFICATION PROGRAM.

The commission adopts amendments to §330.381(a) and (b), concerning Purpose and Applicability, for a grammatical correction of the word "rule" to "subchapter".

The commission adopts an amendment to §330.381(b), concerning Purpose and Applicability, to correct the reference from Texas Department of Health (TDH) to Texas Natural Resource Conservation Commission (TNRCC).

The repeal of existing §330.382, concerning General, and §330.383, concerning Classification of Municipal Solid Waste Sites, are adopted because they contain redundant information available in the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act, and in this Chapter.

Existing §330.384, concerning Definitions, is adopted as a renumbered §330.382. The following changes to definitions in new §330.382 are adopted. The amended definition of Approved Technical Institute is adopted to correct a reference from TDH to TNRCC. The amended definitions of Engineering Extension Service; Processing; and Sanitary Landfill are adopted to correct typographical errors. The repeal of the definition of Board of Health is adopted. The definition of commission referring to TNRCC is deleted because it is redundant, and the change to the definition of Commissioner referring to the Commissioner of Health is adopted. The change to the definition of Department referring to TDH is adopted. The repeal of the definitions of Disposal, Hazardous Waste, and Municipal Solid Waste are adopted because they are redundant and are found in existing §330.2, concerning Definitions. The repeal of the definitions of Site Operator, Solid Waste, Solid Waste Facility, Solid Waste Technician, and Storage are adopted because they are redundant and are found in existing §330.2, concerning Definitions, or they are found in the Texas Health and Safety Code, Solid Waste Disposal Act, Chapter 361. Grammatical and punctuation changes are made throughout.

Existing §330.385, concerning Administration, is renumbered as §330.383. Existing §330.385(a)(1) is modified to reflect the change from TDH to TNRCC. Existing §§330.385(a)(4)(C) and (D) is amended to correct a reference from TDH to TNRCC. Section 330.385(a)(6) is adopted with a change in sentence construction merely for the sake of clarification by moving the word "letter." Existing §§330.385(b)(1) - (3) is changed to reflect the change of jurisdiction of the Municipal Solid Waste Program from TDH to TNRCC and to reflect the duties of the executive director. Existing §330.385(d) language containing obsolete dates is deleted. Readability language, grammatical, and punctuation changes have been made.

Existing §330.386, concerning Application for Letter of Competency, is amended and is renumbered to §330.384. Existing §330.386(a) is amended to correct a reference from TDH to TNRCC. Readability language has been changed.

Existing §330.387, concerning Qualification, is amended and is renumbered to 330.385. Section 330.385 is adopted with a change to state the correct name of the Administrative Procedure Act, and sentence structure is modified for readability. Sections 330.387(a), (b), (c), and (d) are amended to correct several references from TDH to TNRCC.

Existing §330.388, concerning Renewal, is amended to correct a reference from TDH to TNRCC and is renumbered to §330.386. Additionally, the sentence structure has been modified for readability and punctuation has been changed.

Existing §330.389, concerning Revocation, is amended to reflect the change of jurisdiction of the Municipal Solid Waste Program from TDH to TNRCC and is renumbered as §330.387. This change will replace a reference to the TDH "commissioner" with a reference to the TNRCC "executive director." Additionally, the sentence structure has been modified for readability and punctuation has been changed.

Existing §330.390, concerning Recommendations for Solid Waste Facility Owners/Operators, is renumbered as §330.388. Existing §330.390(a) is deleted because it is obsolete language from a statute that has been revised. An amendment to existing §330.390(b) is adopted to delete the definition of commission because it is redundant An amendment to existing §330.390(c) corrects a reference from TDH to TNRCC.

Existing §330.391, concerning Fees, is renumbered as §330.389.

SUBCHAPTER N: LANDFILL MINING The commission adopts language to amend §330.401, concerning Definitions, to make the definition of Recyclable Material consistent with the definition of Recyclable Material found in Chapter 332, concerning Composting. Also §330.401, concerning Definitions, is amended to correct a reference made in the definition of Recycling.

Changes to §330.407, concerning Registration Application Processing, remove redundant language relating to public meeting requirements and provide a reference to the subchapter where public notice and public meeting requirements are specified (§39.101(d)). The deleted language was duplicative of specific information contained in Chapter 39 of this title (relating to Public Notice), and the replacement language is the same as that included in the new transfer station language in 330.65. A change is made to §330.407(b) to correctly state that the executive director's staff rather than the commission will be involved in the public meeting. Also language in §330.407 has been rewritten to be gender neutral.

Section 330.408(5), concerning Location Standards, corrects a reference regarding the Edwards Aquifer rules in Chapter 213 of this title.

Section 330.416(a), concerning Registration Application Preparation, is amended to update a reference to the term Professional Engineer as contained in 22 TAC §131.166. Sections 330.416(m)(1)(D)(v)(V) and 330.416(m)(1)(F)(v) are amended to correct two misspelled words. Punctuation is changed.

SUBCHAPTER P: FEES AND REPORTING The commission adopts an amendment to §330.601 in Subchapter P, concerning Fees and Reporting and the repeal of §§330.621-330.623 and §§330.631-330.633.

The repeal of §§330.621, 330.622, and 330.623, concerning annual registration fees and annual reports for transporters of sludge, septic tank wastes, grease/grit trap wastes, and other similar wastes, is necessary because the regulation of municipal-type sludges and similar wastes is now under Chapter 312 of this title, concerning Sludge Use, Disposal and Transportation. Section 330.445(b), concerning recordkeeping by transporters of sludges, referenced in §330.622, and §330.448, concerning transporter fees, which are referenced in §330.622 and §330.623 respectively, were previously repealed and the corresponding requirements incorporated in Chapter 312, concerning Sludge Use, Disposal, and Transportation.

The repeal of §§330.631, 330.632, and 330.633, concerning annual registration fees and annual reports for transporters of used or scrap tires, is necessary because of the expiration of the waste tire recycling fund program under the Health and Safety Code, Chapter 361, Subchapter P, on December 31, 1997. Section 330.815(b), concerning recordkeeping by transporters of used or scrap tires, referenced in §330.632, and §330.817, concerning transporter fees, which are referenced in §330.632 and §330.633 respectively, were repealed by commission rules effective July 7, 1998.

Amendments to §330.601, concerning purpose and applicability, are adopted to add a sentence discussing the purpose of the section, and to delete an obsolete reference containing fee requirements for persons who collect and/or transport municipal wastewater treatment plant sludges, water supply treat-

ment plant sludges, grit trap waste, grease trap waste, and septage. The amended language had references §330.448, a previously repealed section. These sludges are now regulated under Chapter 312 of this title, concerning Sludge Use, Disposal and Transportation.

SUBCHAPTER Q: MEMORANDA OF AGREEMENT AND JOINT RULES WITH OTHER AGENCIES. The commission adopts the repeal of §§330.701-330.706, 330.721, 330.731-330.733, 330.735, concerning Memoranda of Agreement and Joint Rules with Other Agencies. This will repeal the entirety of Subchapter Q. Three Memoranda of Understanding (MOU) in Subchapter Q will be moved to Chapter 7 of this title, concerning Memoranda of Understanding. Other portions of Subchapter Q are repealed and are not replaced because they are obsolete.

Sections 330.701 - 330.706 relate to certain responsibilities between the Texas Water Commission (TWC) and Texas Air Control Board (TACB) regarding municipal solid waste facilities and include the responsibility of each agency in the review of a MSW facility that burns or incinerates solid waste. These sections became obsolete upon creation of the TNRCC (1993). These issues are now addressed internally through policy or rules.

The following sections are repealed and will not be replaced: §330.701, concerning Definitions; §330.702, concerning Applicability; §330.703, concerning Permit Conditions; §330.704, concerning Representations in Applications for Permits; §330.705, concerning Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility Units that Burn or Incinerate Solid Waste; and §330.706, concerning Air Emissions Requirements for Municipal Solid Waste Facility Units That Burn or Incinerate Solid Waste.

Section 330.721, concerning Adoption by Reference, is repealed and not replaced because it is duplicative of an updated MOU contained in Chapter 7 of this title relating to Memoranda of Understanding. The MOU in §330.721 refers to an agreement between TDH, TWC, and the Railroad Commission regarding jurisdiction of each agency over wastes associated with oil and gas exploration, production, and refining, and wastes which result from geothermal resource development activities. The MOU in Chapter 7 was updated on May 31, 1998. This MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 330.731, concerning Adoption by Reference, is repealed and not replaced because it contains obsolete language. Section 330.731 refers to a Memorandum of Understanding (MOU) between the TDH, TWC, and TACB regarding regulatory jurisdiction over activities relating to sludge generated by municipal wastewater treatment plants. The MOU became obsolete upon creation of the TNRCC.

Section 330.732, concerning Adoption by Reference, is repealed and is moved to Chapter 7 of this title. The section refers to a MOU with the attorney general of Texas concerning intervention in the civil enforcement process. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 330.733, concerning Adoption of Mou by Figure, is repealed and is moved to Chapter 7 of this title. This section refers to a MOU between TDH and TNRCC regarding inspection of solid waste facilities that accept asbestos. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

Section 330.735, concerning Adoption of MOU between the TNRCC and the TDH Concerning Special Wastes from Health Care Related Facilities, is repealed and is moved to Chapter 7 of this title. This section refers to a MOU between the TNRCC and the TDH concerning special wastes from health care related facilities. The MOU is more appropriately placed in Chapter 7 for organizational purposes.

SUBCHAPTER R: MANAGEMENT OF USED OR SCRAP TIRES The commission adopts the repeal of Subchapter R, concerning Storage of Used or Scrap Tires or Tire Pieces, and moves it to Chapter 328, concerning Waste Minimization and Recycling. Existing Subchapter R pertains to recycling and reuse which is the subject of new Chapter 328 where other rules regarding waste minimization and recycling are located.

SUBCHAPTER S: ASSISTANCE GRANTS AND CONTRACTS Amendments are necessary to §§330.890, 330.891, 330.893 - 330.895, and 330.897 to reflect the transfer of regulatory responsibility from the TDH or the TWC to the TNRCC, and to correct typographical errors. In addition to these editorial changes, other non-substantive changes are made to the sections listed below.

Amendments to §330.890(c)(6) and (k), concerning General Program Information, are adopted to provide the current citation for Chapter 783 of the Government Code, the Uniform Grant and Contract Management Act of 1981. Additionally an amendment to subsection (k) is adopted to indicate that copies of the rules promulgated under 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4, concerning Uniform Grant and Contract Management Standards, may be obtained from the executive director as provided in the rules. Amendments to §§330.890(g), 330.894, 330.895, and 330.897 are made to correct references regarding the commission.

SUBCHAPTER U: GRANTS PERTAINING TO THE COLLECTION, REUSE, AND RECYCLING OF USED OIL The commission adopts the repeal of Subchapter U and moves it to Chapter 328, concerning Waste Minimization and Recycling. Subchapter U pertains to recycling and reuse which is the subject of new Chapter 328 where other rules regarding waste minimization and recycling are located.

SUBCHAPTER V: WASTE TIRE RECYCLING AND ENERGY RECOVERY GRANTS The commission adopts the repeal of §330.980, concerning Purpose and Scope; §330.981, concerning Applicability; §330.982, concerning Authority; §330.983, concerning Definitions of Terms and Abbreviations; §330.984, concerning Eligible Grant-Supported Activities; §330.985, concerning Eligible Applicants; §330.986, concerning Additional Recycling Facility Construction Grant Requirements; §330.987, concerning Additional Requirements for Waste Tire Energy Recovery Facility Grants for Tire Shred Users; §330.988, concerning Additional Requirements for Waste Tire Energy Recovery Facility Grants for Whole Tire Users; and §330.989, concerning Grant Announcement and Recipient Selection. This will repeal all sections in Subchapter V. These sections are repealed and are not replaced due to the sunset provisions of Texas Health and Safety Code Chapter 361, Subchapter P.

SUBCHAPTER Z: WASTE MINIMIZATION AND RECYCLABLE MATERIALS The commission adopts the repeal of Subchapter Z and moves it to Chapter 328, concerning Waste Minimization and Recycling where other rules regarding waste minimization and recycling are located.

FINAL REGULATORY IMPACT ASSESSMENT The rulemaking is not subject to the Texas Government Code (the Code), §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). Specifically, the rules do not exceed standards set by federal law, and the rules do 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 that will be affected by these non-substantive changes. The changes are not being made under the general powers of the commission, but are being made under the requirements of specific state law that allows the commission to provide these waste management programs, and under a requirement of the General Appropriations Act, §167, which requires state agencies to review and consider for readoption the rules adopted under the Administrative Procedure Act. The existing rules are still needed because they implement critical portions of the state law concerning solid waste management.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no significant changes are being made regarding the procedures and criteria to be used by the commission and any regulated entities for regulated activities under this chapter. The minor changes made to these rules should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and making the rules easier to understand. As the existing rules are protective of human health and the environment, these minor rule changes will not result in a decrease in the protection of the environment or human health.

TAKINGS IMPACT ASSESSMENT The commission has prepared a takings impact assessment for these rules under the Code, 2007.043. The following is a summary of that assessment. The specific purpose of the amendments to these rules and repeals is to repeal obsolete language; implement the commission's guidelines on regulatory reform as well as to provide clarifications to languages in existing rules; make these rules consistent with other commission rules; and, meet the statutory requirement for the commission to review its rules every four years as stated in the General Appropriations Act. Promulgation and enforcement of the amendments to these rules and repeals will not create a burden on private real property because no new requirements are being added.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies. The commission has determined that the rulemaking is consistent with each applicable CMP goal and policy, which are found in 31 TAC §§501.12 and 501.14. The rulemaking provides a clearer set of rules which will encourage safe and appropriate storage, management, and treatment of municipal solid waste, and which will result in an overall environmental benefit across the state, including coastal areas. The commission has also determined that the rules will not have a direct and significant adverse effect on Coastal Natural Resource Areas (CNRAs) identified in the applicable CMP policies. For example, this rulemaking would clarify the commission's rules concerning municipal solid waste, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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.

The commission has prepared a consistency determination for these rules pursuant to 31 TAC §505.22 and has found the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to these rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to these rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the modifications to these rules will provide a clearer set of rules that currently encourage safe and appropriate storage, management, and treatment of municipal solid waste, which will result in an overall environmental benefit across the state, including coastal areas. In addition, these rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules will have no new impact upon the coastal area.

HEARING AND COMMENTERS A public hearing was not held on these rules, and the public comment period closed on April 19, 1999. Only the Texas Comptroller of Public Accounts (TCPA) submitted written comments on the proposal.

TCPA commented that "It is our opinion that this is an advisory committee as defined by the Texas Government Code, Chapter 2110. TCPA commented that "It is our opinion that this is an advisory committee as defined by the Texas Government Code, Chapter 2110. A state agency may not pay or reimburse expenses, including travel expenses, to a member of an advisory committee unless the committee has received the appropriate reimbursement authority. Because TNRCC does not have specific reimbursement authority in the current General Appropriations Act for the Committee, TNRCC must receive reimbursement approval through the budget execution process before any Committee members' expenses are paid or reimbursed."

The commission agrees with the TCPA. The commission believes that in accordance with the Texas Government Code, §2110.004, "None of the funds appropriated by this Act may be expended to reimburse members of a state agency advisory committee for expenses associated with conducting committee business, including travel expenses, unless such expenditures for an advisory committee are specifically authorized by this Act, or approved by the Governor's Office of Budget and Planning and the Legislative Budget Board subsequent to the effective date of this Act pursuant to V.T.C.S. Article 6252-33, §4(a)(2)." No appropriations have been specifically made to reimburse this committee. Consequently, the commission has revised the rule by deleting the reimbursement provision. The following language in §330.383(a)(5) referring to the reimbursement of members of the Advisory Committee for the Solid Waste Technician Training and Certification Program will be deleted: "Re-

imbursements. Members of the committee may be reimbursed for travel, lodging, and meals when expenses are incurred in connection with the performance of duties of the committee. Reimbursement will be in accordance with established travel and per diem rates for state employees." By deleting this language from §330.383(a)(5) the question of reimbursement authority will be resolved, and the committee members will not be allowed reimbursements from the commission for travel, lodging, and meals when expenses are incurred in connection with the performance of duties of the committee in accordance with the Code, §2110.004.

30 TAC §§330.381–330.389

STATUTORY AUTHORITY The amended sections are adopted under the authority of the Texas Water Code, §§5.103, 5.104 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 pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §§361.011 and 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.

§330.381. Purpose and Applicability.

(a) The purpose of this subchapter is to establish a procedure and requirements for training and certification of solid waste technicians who are or who may become engaged in the management and/or operation of a municipal solid waste management facility and for training and certification of solid waste technicians who are or who may become engaged in the collection or transportation of municipal solid waste.

(b) This subchapter is applicable to persons who wish to be provided a Letter of Competency by the executive director that recognizes that the solid waste technician meets or exceeds the standards established in this section.

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

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Margaret Hoffman
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30 TAC §§330.382–330.391

STATUTORY AUTHORITY The repeals are adopted under the authority of the Texas Water Code, §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 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.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal 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.

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Subchapter N. Landfill Mining

30 TAC §§330.401, 330.407, 330.408, 330.416

STATUTORY AUTHORITY The amended sections are adopted under the authority of the Texas Water Code, §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 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.

The amendments are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is adopted under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

§330.401. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions that are applicable only to this subchapter and which supersede definitions in §330.2 of this title (relating to Definitions) where those terms appear in this subchapter. As used in this subchapter, words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this subchapter, shall have the following meanings.

(1) Closed municipal solid waste landfill (CMSWLF) - A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator hazardous waste, and industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pit as those terms are defined by 40 CFR §257.2.

(2) Landfill mining - The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

(3) Nuisance - Nuisances as set forth in the Texas Health and Safety Code, Chapter 341 and 382; the Texas Water Code, Chapter 26; and §101.4 of this title (relating to Nuisance), and any other applicable regulation or statute.

(4) Permitted landfill - Any type of municipal solid waste landfill that received a permit from the state of Texas to operate and has not completed post closure operations.

(5) Recyclable material - For purposes of this subchapter, a recyclable material is a material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, or a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced from raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Protection Act. Recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) Recycling - A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes the composting process if the compost material is put to beneficial reuse as defined in §332.2 of this title (relating to Definitions) and as specified in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product).

§330.407. Registration Application Processing.

(a) An application shall be submitted to the executive director. When an application is administratively complete, the executive director shall assign the application an identification number.

(b) The applicant and the executive director's staff shall conduct a public meeting in the local area, when the application is administratively complete, to describe the proposed action to the general public. Notice of public meeting shall be as specified in §39.101(d) of this title (relating to Notice of Public Meeting).

(c) The executive director or his designee shall, after review of any application for registration of a landfill mining facility, determine if the application will be approved or denied in whole or in part. The executive director shall base his decision on whether the application meets the requirements of this subchapter and the requirements of §330.403 of this title (relating to General Requirements).

(d) At the same time that the executive director's final decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all adjacent landowners and to other affected landowners as directed by the executive director.

(e) In regard to motions for reconsideration, notwithstanding §50.31(c)(8) of this title (relating to Purpose and Applicability), applications for registration under this subchapter are governed by §50.39(b)-(f) of this title (relating to Motion for Reconsideration). The applicant or a person affected may file with the chief clerk a motion for reconsideration under §50.39(b)-(f) of this title of the executive director's final decision.

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

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Subchapter P. Fees and Reporting

30 TAC §330.601

STATUTORY AUTHORITY The amended section is adopted under the authority of the Texas Water Code, §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 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.

The amendment is also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

§330.601. Purpose and Applicability.

(a) Purpose. The purpose of this section is to address fees for Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility.

(1) Fees. The commission is mandated by the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.32 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) Industrial solid waste and hazardous waste fees. The assessment of fees for the generation, treatment, storage, or disposal of industrial solid waste or hazardous waste is governed by regulations contained in Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility, and Disposal Fees System).

(3) Reports. The commission requires reports in order to track the amount of waste being stored, treated, processed, or disposed of in the state, to track the amount of processing and disposal capacity and reserve (future) disposal capacity, and to enable equitable assessment and collection of fees.

(b) Applicability.

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the commission based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.603(a)(3) of this title (relating to Reports)) received by a disposal facility at the gate, excluding only those wastes which are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations which has been separated and has not been commingled with any other waste material at the point of generation. The commission will credit any fee payment due under this subchapter for any material received and converted to compost product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill or used as landfill daily cover is not exempt from the fee.

(2) Industrial solid waste and hazardous waste fees. A fee for disposal of an industrial solid waste or hazardous waste in a municipal solid waste disposal facility shall be assessed at the rates prescribed under the authority of Chapter 335, Subchapter J, of this title (relating to Hazardous Waste Generation, Facility, and Disposal Fees System). If no fee under Chapter 335, Subchapter J, is applicable to the disposal of an industrial solid waste or hazardous waste, then such waste shall be assessed a fee under this chapter for the disposal of solid waste in a municipal solid waste facility.

(3) Reports. All registered or permitted facility operators are required to submit reports to the commission covering the types and amounts of waste processed or disposed of at the facility or process location; other pertinent information necessary to track the amount of waste generated and disposed of, recovered, or recycled; and the amount of processing or disposal capacity of facilities. The information requested on forms provided by the commission shall not be considered confidential or classified information unless specifically authorized by law, and refusal to submit the form complete with accurate information by the applicable deadline shall be considered as a violation of this section and subject to appropriate enforcement action and penalty.

(4) Interest penalty. Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

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

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30 TAC §§330.621–330.623, 330.631–330.633

STATUTORY AUTHORITY The repeals are adopted under the authority of the Texas Water Code, §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 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.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

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Subchapter Q. Memoranda of Agreement and Joint Rules with Other Agencies

30 TAC §§330.701–330.706, 330.721, 330.731–330.733, 330.735

STATUTORY AUTHORITY The repeals are adopted under the authority of the Texas Water Code, §§5.103, 5.104 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 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.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal 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.

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Subchapter R. Management of Used or Scrap Tires

30 TAC §§330.801–330.821

STATUTORY AUTHORITY The repealed sections are adopted under the authority of the Texas Water Code, §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 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.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal 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.

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Subchapter S. Assistance Grants and Contracts

30 TAC §§330.890, 330.891, 330.893–330.895, 330.897

STATUTORY AUTHORITY The amended sections are adopted under the authority of the Texas Water Code, §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 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.

The amendments are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal Act.

The review of the commission's rules is adopted under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

§330.890. General Program Information.

(a) Objective. The objectives of the financial assistance programs described in this subchapter are to promote good municipal solid waste management practices within the State of Texas. Through the procedures contained in this subchapter, the commission intends to provide funding for applied research, demonstration and pilot projects, feasibility studies, technical assistance, public education and awareness, information exchange, and local government programs designed to enhance solid waste management and litter abatement enforcement.

(b) Scope. The sections contained in this subchapter identify various kinds of solid waste management assistance grants available, in addition to those described in Subchapter O of this chapter (relating to Guidelines for Regional and Local Solid Waste Management Plans); describe procedures utilized by the department in advertising and awarding such grants; and contain pertinent application instructions for prospective recipients.

(c) Definitions of terms and abbreviations. The following words, terms, and abbreviations, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Local government–A county, incorporated city or town, or any political subdivision of the state which has jurisdiction over two or more counties or parts of two or more counties, and which has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction.

(2) Public agency–A city, county, or a district or authority created and operating under the Texas Constitution, Article III, §52(b)(1) or (2), or Article XVI, §59, or a combination of two or more of these governmental entities acting under an interlocal agreement and having authority under state law to own and operate a solid waste management system.

(3) Research–Studious inquiry or examination and usually critical and exhaustive investigation or experimentation having for its aim the discovery of new facts and their correct interpretation; the revision of accepted conclusions, theories, or laws in the light of newly discovered facts; or the practical application of such new or revised conclusions.

(4) State fiscal year–A period of time which begins September 1 of a given year and ends August 31 of the following year.

(5) UGCMS - Uniform Grant and Contract Management Standards, consisting of a set of rules set forth in 1 TAC, Chapter 5, Subchapter A, promulgated pursuant to the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code.

(d) Authority. The department's authority to conduct and manage the activities described in this subchapter is derived from the Solid Waste Disposal Act, Health and Safety Code, Chapter 361; the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Health and Safety Code, Chapter 363; and the Litter Abatement Act, Health and Safety Code, Chapter 365.

(e) Eligible recipients. Entities eligible to apply for the various assistance grants described in this subchapter, except as provided for under §330.895 of this title (relating to Information Exchange Program) and §330.897 of this title (relating to Supplemental Funding for the Enforcement of the Solid Waste Disposal Act and the Litter Abatement Act) may include:

(1) local governments;

(2) public agencies;

(3) schools and universities;

(4) research institutions;

(5) scientists, professors, and researchers associated with accredited universities or research institutions;

(6) environmental protection groups, and/or nonprofit service organizations having a record of active involvement in municipal solid waste management or public health enhancement activities within the State of Texas; and

(7) in certain instances, businesses and/or corporations having a record of active involvement in municipal solid waste management.

(f) Public notice. The commission's notice of funding availability for the grant programs identified in this subchapter, except as provided for under §330.895 of this title (relating to Information Exchange Program) shall be in the form of published requests for proposals (RFP) in the Texas Register. The commission may also, at its discretion, advertise funding availability and specific RFPs by other means. The published RFPs will outline the work to be performed, establish appropriate deadlines, identify recipient qualifications, matching-fund requirements, and funding limitations. Submitted proposals shall be reviewed only if they satisfy the criteria as set forth in the appropriate RFP.

(g) Application forms and submittal procedures. Applications shall be submitted on forms provided by the executive director. The necessary forms, as well as written instructions concerning their completion and submittal, may be obtained from the executive director. All forms submitted for funding consideration, except as provided for under §330.895 of this title (relating to Information Exchange Program), must be in response to an RFP issued by the executive director. Unless indicated otherwise on the forms or accompanying instruction sheets, applicants shall submit five copies of the appropriate application forms and all supplementary application materials.

(h) Preapplication conferences. Except in those cases where the published RFP does not specify or recommend participation in a preapplication conference, prospective applicants shall, prior to submitting the required application forms, contact the staff of the executive director and either make arrangements to participate in a preapplication conference, or explain why it is impractical to attend such a conference. While participation in an RFP recommended preapplication conference is not mandatory, such participation is strongly recommended. Such conferences provide a means to:

(1) determine eligibility of potential recipient organizations;

(2) confirm the availability of funds;

(3) examine proposed activities to insure conformance, where applicable, with regional and/or local solid waste management plans;

(4) examine proposed activities to insure conformance with current commission issued RFPs;

(5) identify topics or projects the department views as a priority when applicable;

(6) determine any special procedures likely to be required with respect to a particular type of grant; and

(7) otherwise assist and advise potential recipients.

(i) Review and selection procedures.

(1) Except as provided in paragraph (2) of this subsection, all applications for solid waste management assistance grants to be awarded under this subchapter shall be processed as follows.

(A) Within 45 days of receipt, all original, corrected, and revised applications shall be reviewed for completeness and compliance with the requirements of this subchapter, and the applicant shall be advised in writing concerning any determined deficiencies.

(B) Correspondence advising applicants of deficiencies in submitted applications may establish deadlines for the receipt of a complete and compliant application. Failure to comply with such deadlines may result in the executive director rejecting the application.

(C) Once an application is determined to be complete and in compliance with all application submittal requirements, the applicant shall be notified in writing and advised concerning the time schedule the executive director intends to follow in reaching a final decision regarding issuance or denial of an assistance grant.

(2) Applications for funding of information exchange activities, as described in §330.895 of this title (relating to Information Exchange Program), shall be evaluated within 30 days of receipt and the applicant advised either by telephone or in writing as to the status of the request. A final decision concerning all such requests shall be transmitted to the applicant by letter.

(3) Applicants denied an award shall be notified of the denial and the reason(s) therefor in writing.

(4) The department shall not be liable for any expense incurred by an applicant if funding for the proposed project is denied.

(j) Selection criteria. Criteria utilized in the selection process for solid waste management assistance grants may include, but are not limited to, the:

(1) availability of state funds and, where required by the RFP, sources of matching funds;

(2) degree to which the proposal is responsive to the purpose and funding criteria identified in the appropriate commission-issued RFP;

(3) compliance or compatibility with approved or potential regional and local solid waste management plans;

(4) qualifications and experience of project staff members;

(5) quality of previous work submitted to the executive director by the applicant, if any;

(6) reasonableness of the proposed budget and time schedules;

(7) project organization and management, including project monitoring procedures;

(8) technical, economic, and environmental merit of the proposal; and

(9) any other information as may be required for the specific project.

(k) UGCMS requirements. Applications must comply with all requirements set forth in the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code, and the rules promulgated thereunder in 1 TAC, Chapter 5, Subchapter A. Copies of the Act and the rules may be obtained from the commission.

(l) Contracts. Except for recipients of funds awarded under §330.895 of this title (relating to Information Exchange Program), all approved grantees will enter into a contract with the commission prior to being allocated funds. Such contracts shall:

(1) contain provisions requiring the grantee to comply with the requirements in this chapter;

(2) require, where appropriate, that work performed by the grantee be in accordance with the applicable regional or local solid waste management plan which has been adopted in accordance with Subchapter O of this chapter (relating to Guidelines for Regional and Local Solid Waste Management Plans);

(3) require that the grantee comply with the fiscal requirements relating to the administering, accounting, auditing, and fund-recovering procedures as set forth by the Uniform Grant and Contract Management Act of 1981;

(4) require that program and fiscal deficiencies documented in monitoring or other reports be cleared in accordance with provisionscontained in UG&CMS, within specified time frames; and

(5) be concurrent with the state fiscal year or biennium.

(m) Solid waste disposal fees. To be eligible for any funding described in this subchapter, eligible recipients must not be delinquent in solid waste disposal fees owed the commission.

(n) Time extensions. The department may, for good cause, grant an extension of time for the completion of work required under a contract. Recipients who have determined that an extension of time is necessary to satisfactorily complete a contracted project shall make a written request to the department no later than 60 days before the contract expiration date. The request must indicate the amount of additional time needed and the reason such extension of time is required.

(o) Grant programs suggestions. The commission encourages the public to submit for consideration ideas and suggestions for municipal solid waste topics that warrant funding under the grant programs identified in this subchapter. In addition to the assistance grants and contracts programs identified in this subchapter, the commission may periodically make available for limited terms additional types or forms of assistance grants. Individuals or organizations with suggestions for grant topics and/or additional assistance grants and contracts programs are encouraged to identify them in writing to the commission.

§330.894. Technical Assistance Grant Program.

(a) Program description. Technical assistance grants awarded under this section shall provide supplementary funding to aid recipients in achieving self-identified municipal solid waste management goals, which will serve to benefit public health; safeguard the environment; save or recover valuable resources; minimize solid waste generation; improve facility operating efficiency; or reduce nuisances. This assistance may be, but is not limited to, engineering, scientific, financial, or mechanical evaluations and analyses and/or the purchasing of materials and supplies that are necessary for the enhancement of a solid waste management program.

(b) Eligible projects. Eligible projects shall be those which address any issue of municipal solid waste management as related to the description mentioned in subsection (a) of this section. Usual and normal expenses associated with maintaining a compliant solid waste facility or operation are not eligible for funding under the Technical Assistance Grant Program.

(c) Participation frequency. Recipients shall be limited to one technical assistance grant, issued under this section, during any specific contract performance period.

§330.895. Information Exchange Program.

(a) Program description. The intent of the Information Exchange Program (program) is to facilitate the exchange of current municipal solid waste management information by providing supplementary travel expense monies. Eligible organizations shall determine their solid waste management needs and associated information requirements, and shall contact the executive director for assistance regarding these information requirements. The executive director shall determine if staff or resources can provide the necessary assistance. If the assistance of another organization is determined to be appropriate, the executive director may identify a willing advisor or facility with relevant, verifiable municipal solid waste experience. The matching of information recipients to information providers shall be done in a manner designed to maximize the amount and quality of information exchanged while minimizing the expense incurred by the state and the recipient organization. In cases where information providers are located within the state, travel to or from out-of-state locations will be approved only where such is shown to be the most cost-effective. The requesting organization, or potential recipient, may then submit a program application. It is anticipated that typically the recipient will send an individual or group of individuals to the advisor so that an actual operational technology or process may be reviewed. However, the executive director recognizes that, to maximize the information exchanged, the recipient may wish to have an advisor or advisors travel to the recipient's location or some other agreed-upon location. This may be appropriate; however, the recipient will be responsible for reimbursing the information providers, in full, for the appropriate travel expenses. The recipient may, in turn, submit the appropriate reimbursed advisor(s) expenses along with their own expenses, for reimbursement by the executive director.

(b) Eligible recipients. Eligible recipients shall only be local governments, public agencies, and public and private primary and secondary schools.

(c) Eligible projects. Eligible projects must use advisors with a relevant, established, verifiable municipal solid waste management process or program experience. Advisors may represent any political subdivision, educational organization, or private organization. Potential exchange topics can be, but are not limited to:

(1) waste stream minimization;

(2) recycling and recycling material markets;

(3) composting;

(4) educational programs and curriculum development;

(5) transfer station operations;

(6) waste-to-energy incineration;

(7) water and sewage treatment sludge use and disposal;

(8) landfill – leachate recovery and treatment;

(9) landfill – gas recovery and treatment;

(10) post-closure alternative land uses;

(11) small and rural community municipal solid waste management; or

(12) litter reduction and enforcement programs.

(d) Funding limitations. Eligible travel expenses shall be those incurred while traveling within the United States. Travel expenses shall be limited to vehicle mileage, air or bus fare, food, and lodging. Recipient and/or information providers' salaries or fees are not eligible expenses. The Texas State Travel Allowance Guide will provide the guidelines for the determination of acceptable expenses. Expenses shall be eligible for repayment only if the travel was conducted after executive director approval and shall be limited to trips of six nights or less in duration.

(1) Recipient organizations must provide matching expense contributions.

(2) The maximum contribution from the executive director shall be $500 per exchange.

(3) The executive director will not accept contribution requests of less than $100.

(e) Participation frequency. Recipient agencies or organizations shall be eligible for reimbursement under this program one time per state fiscal year.

(f) Final reporting procedures. Post-informational exchange reports shall be submitted to the executive director by both the recipient and the information provider. The recipient shall also complete and submit a follow-up questionnaire form provided by the executive director within approximately 12 months after the informational exchange has occurred.

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 August 16, 1999.

TRD-9905145
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 5, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 239–6087

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Subchapter U. Grants Pertaining to the Collection, Reuse, and Recycling of Used Oil

30 TAC §§330.970–330.976

STATUTORY AUTHORITY The repealed sections are adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rules; and §26.011, which requires the commission to control the quality of water by rules. The repealed sections are also adopted under Texas Health and Safety Code Chapter 371.028, concerning Rules.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal 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.

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Subchapter V. Waste Tire Recycling and Energy Recovery Grants

30 TAC §§330.980–330.989

STATUTORY AUTHORITY The repealed sections are adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rules; and §26.011, which requires the commission to control the quality of water by rules. The repealed sections are also adopted under Texas Health and Safety Code, Chapter 361, §361.112, relating to Storage, Transportation, and Disposal of Used or Scrap Tires.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal 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.

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Subchapter Z. Waste Minimization and Recyclable Materials Recyling Rates and Reporting Requirements

30 TAC §§330.1051–330.1054, 330.1101–330.1109, 330.1180–330.1189, 330.1200–330.1205

STATUTORY AUTHORITY The repealed sections are adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rules; and §26.011, which requires the commission to control the quality of water by rules.

The repeals are also adopted under the commission's authority to control the management of municipal solid waste under Texas Health and Safety Code, §361.011, and §361.024, Chapter 361, Solid Waste Disposal 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.

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

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

30 TAC §§335.1, 335.2, 335.25

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.1, concerning Definitions, and §335.2, concerning Permit Required; and a new §335.25, concerning Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses. New §335.25 is adopted with changes to the proposed text as published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3832). Amended §335.1 and §335.2 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES

The adopted amendments and new section implement Senate Bill (SB) 1910, relating to Management of Poultry Carcasses, which was passed during the 75th Texas Legislative Session. Senate Bill 1910 added Subchapter H to Chapter 26 of the Texas Water Code (TWC). The amendments and new section establish requirements for the safe and adequate handling, storage, transportation, processing, and disposal of poultry carcasses in accordance with Subchapter H.

Section 335.1 was amended to include definitions for "extrusion," "poultry," "poultry carcasses," and "poultry facility".

Section 335.2 was amended to reference new §335.25 to show the relationship between the two sections with regard to requirements for permits or other authorizations.

New §335.25 identifies acceptable methods for processing and disposal of poultry carcasses; limits the storage of poultry carcasses to 72 hours before processing or disposal; requires that storage of carcasses be in a freezer, or a refrigeration unit at a temperature of 40 degrees Fahrenheit or less, if on-site storage is necessary for longer than 72 hours; and prohibits on-site burial of carcasses unless a major die-off of poultry exceeds the normal storage and processing capability of a poultry facility. The new section supersedes any provision of a permit or other authorization previously issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses.

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, while it may be a major environmental rule, it does not meet the applicability criteria of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Since the rule will protect the environment and reduce risks to human health from environmental exposure and affect in a material way a sector of the economy, it meets the definition of a major environmental rule. However, §2001.0225 applies only to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The intent of these amendments is to establish requirements for the safe and adequate storage, processing, and disposal of poultry carcasses. The elimination of on-site burial as a normal method for poultry carcass disposal is contained in state law. This rulemaking does not meet the applicability criteria of a "major environmental rule" because the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the changes are not adopted solely under the general rulemaking authority of the commission but are adopted to comply with the requirements of SB 1910, enacted by the 75th Legislature. No comments on the proposed regulatory impact analysis were received.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule amendments and new rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the amendments and new rule is to implement new statutory requirements under SB 1910, 75th Legislature, for the safe and adequate management of poultry carcasses. The rule amendments and new rule will substantially advance the specific purpose by requiring persons who own or operate a poultry facility to have acceptable

methods for the storage, processing and disposal of poultry carcasses. This rule establishes more stringent requirements than existing rules because the existing rules do not specifically pertain to some of the facilities covered under this rule. Promulgation and enforcement of this rule will not pose any burden, limitation or restriction beyond that which is required by state law. Property owners who raised poultry may still do so under this rule. The agency interprets existing law to prohibit poultry carcasses from being washed away during a storm event or otherwise managed in a manner which creates a nuisance. This rule provides property owners with greater information on how a poultry operation needs to manage its carcasses in order to comply with state law. In addition, this rule is needed in response to SB 1910 and provides the needed clarification to the agency's rules in order to continue to protect human health and the environment.

In view of the previously mentioned assessment, the commission has determined that this rulemaking does not constitute a taking.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that it is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code (TAC) §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore required that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission prepared a consistency determination for the rule amendments and new rule pursuant to 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are §501.12(1) ("to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs)") and §501.12(2) ("to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone"). The CMP policy applicable to the rulemaking is §501.14(d)(1)(I) ("New solid waste facilities and areal expansion 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 these rules will not violate any standards identified in the applicable CMP goals and policy because the rules are designed to be protective of public health and the environment, and comply with applicable standards established under the Solid Waste Disposal Act. No comments were received on the consistency of the rule amendments and new rule with the goals and policies of the CMP.

HEARING AND COMMENTERS

A public hearing was held on June 10, 1999, in Austin. The comment period closed June 21, 1999.

The Texas Poultry Federation (TPF) presented testimony at the hearing and subsequently submitted its comments in writing.

ANALYSIS OF COMMENTS

Ninety-seven commenters submitted comments on the proposal. The Texas Agricultural Extension Service (TAES) and the TPF were generally supportive of the proposal; however, each recommended a similar change. The Northeast Texas Municipal Water District commented concerning the failure of the proposed rule to address or clarify several issues. The Texas State Soil and Water Conservation Board expressed concern with the threshold for determining a major die-off. An individual recommended a change, and 91 other individuals and R & G Petty Farms commented in support of the proposal.

The TAES commented that it was well documented that microbial growth is controlled by temperatures below 40 degrees Fahrenheit and recommended that refrigeration below 40 degrees Fahrenheit be allowed for storage of carcasses instead of requiring freezing. TAES referenced United States Food and Drug Administration (FDA) regulations which required the storage of potentially hazardous foods below 40 degrees Fahrenheit to limit microbial growth. The contention is that this temperature would still meet the criteria of SB 1910 in establishing requirements for safe and adequate storage of poultry carcasses. The TPF commented that refrigeration that chills to 40 degrees Fahrenheit will not allow for odors or pathogens to grow and recommended that consideration be given for this.

The commission notes that current FDA regulations require that potentially hazardous food be maintained at 41 degrees Fahrenheit or less. Therefore, in consideration of the FDA regulations and the recommendations of the commenters, the commission believes that storage of carcasses at a temperature of 40 degrees Fahrenheit or less, will provide safe and adequate storage of poultry carcasses. Storage at a temperature of 40 degrees or less, without freezing, will not only prevent odors and the growth of pathogens, but will also facilitate rendering and incineration. Accordingly, this option has been added to §325.25.

In response to the proposal to define a major die-off as a mortality rate of 0.3% or more per day of a facility's total poultry inventory, the TAES and TPF agreed that a mortality rate of 0.3% per day was an appropriate level for determining a major die-off. Their conclusions were based on a consideration that a poultry farm with six houses of 25,000 birds each would generate 450 carcasses at 0.3%, and if these were at a full-grown weight of 5.2 pounds each the total weight would be 2340 pounds which could be accommodated in an incinerator in 23.4 hours. This amount could also be accommodated in a composting facility. These numbers are only applicable to the last day of a flock's life. Younger birds would weigh less and thus there would be less pounds of carcasses to incinerate.

The commission appreciates the information provided which confirms the validity of using a mortality rate of 0.3% as the threshold for declaration of a major die-off. Although the commenters indicate that all mortality could be incinerated during a 24-hour period, it is not necessary to do so with the ability to store dead birds for up to 72 hours. Larger facilities may need to install additional or larger incinerators.

The Texas State Soil and Water Conservation Board commented that a mortality rate of 0.3% per day for a major die-off appeared to be excessive considering that the normal daily mortality in a typical broiler house of 16,000 birds with which its regional offices work is about 0.1%, equating to about a 20-bird-per-day mortality. The board further commented that using a rate of 0.3% per day for a 16,000-bird house would equate

to 48 birds per day or 12.6% of the total original house inventory during the flock cycle, and this appears to be excessive for "normal" daily mortality.

The commission does not believe that a mortality rate of 0.3% per day is excessive as the threshold for a major die-off. It is not intended that the 0.3% be considered as a normal daily mortality, but as an infrequent, non-routine event. Other commenters consider this rate to be acceptable. Therefore, no change to the proposed rate has been made.

The Northeast Texas Municipal Water District (NETMWD) commented about the lack of proposed rules on the proper disposal of poultry litter, citing an immediate and ongoing threat to the water quality of the state due to runoff from areas where poultry litter has been improperly land- applied. NETMWD urges the commission to adopt rules providing for best management practices (BMPs) for the disposal of poultry litter under the authority of Chapters 5 and 26 of the TWC and Chapter 361 of the Health and Safety Code.

The commission believes that management of poultry litter was not intended by the Legislature to be within the scope of this rulemaking. Subchapter B, Concentrated Animal Feeding Operations, of Chapter 321, Control of Certain Activities by Rule, of the commission's rules, already addresses concentrated animal feeding operations and contains adequate direction for land application of poultry wastes in connection with pollution prevention plans and best management practices. The commission's Regulatory Guide 326, Poultry Carcasses: Proper Disposal Under SB 1910, 75th Legislature, which was distributed to operators of poultry facilities, advises poultry operators of their responsibilities under SB 1910 and refers them to Subchapter B of Chapter 321 among other pertinent references. The commission therefore considers that no further action is necessary.

NETMWD commented that the proposed rules fail to set out the standards to be followed in burying poultry carcasses that result from a major die-off and urges the commission to adopt BMPs that must be followed when on-site burial is allowed.

The commission agrees that some guidance for on-site burial of poultry carcasses should be provided, and this will be provided in the updating of Regulatory Guide 326 which is in process.

NETMWD commented that the proposed rules appear to create an ambiguity as to whether a permit is required for a poultry facility to dispose of poultry carcasses. NETMWD notes that proposed §335.25 does not specify what type of authorization is required but does provide some sort of executive director approval for alternative methods of carcass disposal. However, NETMWD does not believe that delegation of commission authority to the executive director under §5.122 of the TWC is authorized in this case.

The commission believes that the cross-referencing of §335.2, relating to Permit Requirements, and §335.25, relating to Handling, Storing, Processing, Transporting, and Disposal of Poultry Carcasses, is appropriate and adequate. Section 335.2(d) advises that no permit is required to store, process or dispose of nonhazardous industrial (which includes agricultural) solid waste on property owned or effectively controlled by the owner or operator of the operation. However, subsection (d) further advises the owner and operator that notification to the executive director of the planned on-site activity is required under §335.6, relating to Notification Requirements. Section 335.6(a) requires written notification to the executive director of the planned activity, and the executive director may request additional information, including waste management methods, to enable him to determine whether such activity is compliant with the terms of Chapter 335, relating to Industrial Solid Waste and Municipal Hazardous Waste. Section 335.6(b) establishes a continuing requirement to provide notice to the executive director of any change in waste management methods. Proposed §335.25 advised what types of activities are acceptable on site, with the stipulation that others may be acceptable if determined to be appropriate by the executive director. In view of the commenter's concern regarding the propriety of delegating to the executive director the responsibility for approving alternative methods for processing and disposal of poultry carcasses under authority of TWC, §5.122, the commission withdraws the proposed delegation and retains the responsibility for such approvals.

One individual recommended that the 72-hour limit for on-site non-refrigerated storage of poultry carcasses be increased to 96 hours in order to facilitate a more orderly twice-a-week routine. The proposed twice-a-week schedule would actually result in 72 hours between two disposal days, and 96 hours for the other period.

The commission has not been provided the flexibility in the statute to vary the storage limitation. Therefore, no change to the 72-hour storage limit has been made.

R & G Petty Farms and 85 individuals commented in support of the proposed amendments and new section.

The commission acknowledges their comments.

STATUTORY AUTHORITY

The amendments and new section are adopted under TWC, §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 TWC or other laws of this state; TWC, §26.303, which directs the commission to adopt requirements for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses; and 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.

§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).

(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).

(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) Extrusion - A process using pressure to force ground poultry carcasses through a decreasing- diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(48) 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 (Corrective Action).

(49) 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).

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

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

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

(53) 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.

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

(55) 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.

(56) 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.

(57) 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.

(58) 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.

(59) 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.

(60) 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.

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

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

(63) 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.

(64) 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.

(65) 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.

(66) 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.

(67) 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.

(68) 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.

(69) 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.

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

(71) 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.

(72) 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.

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

(74) 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.

(75) 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.

(76) 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.

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

(78) 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.

(79) 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.

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

(81) 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.

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

(83) 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).

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

(85) 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.

(86) 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.

(87) 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.")

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

(89) 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.

(90) 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.

(91) 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.")

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

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

(94) 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.

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

(96) 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.

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

(98) 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.

(99) Pesticide - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(100) 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.

(101) 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.

(102) 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.

(103) Poultry - Chickens or ducks being raised or kept on any premises in the state for profit.

(104) Poultry carcass - The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(105) Poultry facility - A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(106) 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.

(107) 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.

(108) 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.

(109) 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.

(110) 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).

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

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

(113) 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 (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 (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).

(114) 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.

(115) 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.

(116) 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.

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

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

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

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

(121) 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.

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

(123) 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 (CFR) §261.4(a)(1)-(14), as amended through August 6, 1998, at 63 FedReg 42110, by 40 CFR §261.4(a)(16), as amended through May 26, 1998 at 63 FedReg 28556, by 40 CFR §261.4(a)(18)-(19), as amended through August 6, 1998, at 63 FedReg 42110, 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 CFR §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 CFR §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 (except as provided under 40 CFR §261.4(a)(16)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16).

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

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §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. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(16) apply rather than this provision.

(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 CFR §§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 CFR §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).

(124) 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.

(125) 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.

(126) 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.

(127) 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.

(128) 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.

(129) 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.

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

(131) 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.")

(132) Thermostat - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(133) 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.

(134) 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.

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

(136) 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.

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

(138) 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.

(139) 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.

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

(141) 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.")

(142) 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.

(143) 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.

(144) Universal waste - 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).

(145) Universal waste handler - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(146) Universal waste transporter - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

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

(148) 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.

(149) 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 (Standards for Management of Used Oil).

(150) 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.

(151) 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.

(152) 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.

(153) 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) Except with regard to storage, processing, or disposal to which subsections (c)-(h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Natural Resource Conservation Commission or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Natural Resource Conservation Commission (commission) approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361

(Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 et seq., that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply 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), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the United States Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit, or a wastewater treatment unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of 10 days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment; or

(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, §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) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b)-(d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 Code of Federal Regulations §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, which are adopted herein by reference.

(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 Subpart 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) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) PCB wastes subject to regulation by 40 Code of Federal Regulations, Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

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

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.136(b)(6)(B)-(E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance 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), or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 Code of Federal Regulations, §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 40 Code of Federal Regulations, §270.1(c)(5) and (6). If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations, Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions relating to Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(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).

§335.25. Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses.

(a) Acceptable methods for disposal of poultry carcasses include the following storage, processing, and disposal methods:

(1) placement in a landfill permitted by the commission to receive municipal or industrial solid waste;

(2) composting, as defined in §332.2 of this title (relating to Definitions), and as further described in §332.23 of this title (relating to Operational Requirements);

(3) cremation or incineration;

(4) extrusion;

(5) rendering;

(6) cooking for swine food; and

(7) any other method the commission determines to be appropriate.

(b) Prior to disposition by any method listed in subsection (a) of this section, poultry facilities may:

(1) store poultry carcasses on site for no more than 72 hours provided that storage is in a varmint- proof receptacle to prevent odor, leakage, or spillage, but

(2) shall freeze, or refrigerate at a temperature of 40 degrees Fahrenheit or less, any poultry carcasses which require on-site storage for more than 72 hours.

(c) Poultry carcasses may not be disposed of by burial on-site except in the event of a major die-off that exceeds the capacity of a poultry facility to store and process poultry carcasses by the normal means used by the facility. A mortality rate of 0.3% or more per day of the facility's total poultry inventory shall be deemed a major die-off for the purposes of this section. This subsection supersedes any provisions of a permit or other authorization issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses. This section does not authorize violation of any applicable regulations or laws.

(d) Transportation of poultry carcasses to an off-site location for final disposition shall be in accordance with applicable local, state or federal regulations or laws.

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 August 16, 1999.

TRD-9905123
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 5, 1999
Proposal publication date: May 21, 1999
For further information, please call: (512) 239–6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office (Land Office) adopts an amendment to §15.11, relating to the Certification Of Local Government Dune Protection And Beach Access Plans (plan). The amendment is being adopted to certify the establishment of a beach user fee in the Matagorda County plan. The Land Office adopts this amendment without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4178). The text will not be republished.

On March 15, 1999, the Matagorda County Commissioners Court adopted by order the inclusion of a $6.00 annual beach user fee to the county's plan. In the amendment to §15.11(a)(6), the Land Office certifies that the county's initiation of the beach user fee is consistent with state law in that the county will have sufficient funds in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of the public beaches by the public.

The adopted amendment to certify the county's beach user fee is subject to the Texas Coastal Management Program (CMP), §505.11(a)(1)(J) of this title, relating to the Actions and Rules Subject to the Coastal Management Program, and must be consistent with the applicable CMP goals and policies under §501.14(k) of this title, relating to Construction in the Beach/Dune System. The Land Office has reviewed this action for consistency with the CMP goals and policies in accordance with the Coastal Coordination Council. The action is consistent with the Land Office beach/dune regulations that the council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies.

No comments were received regarding the proposed amendment to this rule.

The Land Office has prepared a takings impact assessment for the adoption of this amendment and has determined that adoption of this amendment will not result in a taking of private property. To receive a copy of the takings impact assessment, please send a written request to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78707-1495, facsimile number (512) 463-6311.

The amendment is adopted under Texas Natural Resources Code, §§61.011, 61.015(b) and §61.022(c) which provide the Land Office with the authority to preserve and enhance the public's right to use and have access to and from Texas' public beaches.

Texas Natural Resources Code, Chapter 61, Subchapter B, §61.011, §61.015(b), and §61.022(c) are affected by the adoption of the amendment.

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

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TRD-9905122
Larry R. Soward
Chief Clerk
General Land Office
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For further information, please call: (512) 305–9129

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter A. General Rules

34 TAC §3.10

The Comptroller of Public Accounts adopts a new §3.10, concerning taxpayer's bill of rights, with changes to the proposed text as published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4539).

The section is intended to establish standards which will ensure that taxpayers dealing with the office of the Comptroller of Public Accounts will receive treatment and service of the highest caliber.

No comments were received regarding adoption of the new section.

Paragraph (f)(3) has been deleted from this section because the subject to which it relates will be addressed in more detail in another section.

This new section is adopted 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 new section implements the Tax Code, §111.001.

§3.10. Taxpayer's Bill of Rights.

(a) Taxpayer bill of rights. The goal of this bill of rights is not limited to protecting taxpayers and ensuring they receive the treatment and service to which they are entitled. The objective is to also strike a balance and find ways of protecting taxpayers without interfering with the government's responsibility to collect taxes and assess the accuracy of returns.

(b) Prompt and accurate responses to requests for information.

(1) The comptroller's staff will respond promptly to requests for information. Phone calls from taxpayers will be returned within 48 hours. Taxpayers can expect a response to letters, faxes, and emails within a maximum of 10 days. If the information is not available, comptroller staff will notify the taxpayer, give a reason for the delay, and set a deadline for the material or information to be available. Comptroller staff will keep track of these requests and timeliness of responses.

(2) The comptroller will give relief to a taxpayer who follows erroneous advice given by an agency employee. The taxpayer, however, must have provided complete and accurate information to the agency employee. Relief will be provided only if that taxpayer, and not a third party, was harmed by following the erroneous advice.

(3) Annual staff performance reviews will include an assessment of how well an individual employee deals with the public

and meets agency goals. Good communications with the public is one of the measures that will be used to determine merit pay increases.

(4) In addition, the comptroller will consult with companies experienced at establishing employee performance audits. Surveys and "mystery shoppers" will be used to identify weaknesses and weak links in the system.

(c) Rules and regulations that are readily available and easy to understand.

(1) Rules and tax forms published by the comptroller will be written in simple, clear English without jargon and with judicious use of acronyms. A taxpayers' liaison committee will be created to critique these materials and ensure they meet these requirements.

(2) Rules will be readily available at comptroller offices throughout the state and at other agencies. They also will be made available through the comptroller's Internet site.

(3) Tax and regulatory information will be available at comptroller offices statewide. Taxpayers can obtain information and assistance from comptroller staff.

(d) A complaint system that is fair and timely.

(1) The comptroller will appoint an ombudsman to handle complaints by taxpayers, excluding issues being considered in the hearings process. The ombudsman will have the power to determine if the complaint is valid and whether it stems from dissatisfaction with the law, rather than the way the rules are being enforced.

(2) The name, address, email, and phone number of the ombudsman will be prominently displayed on comptroller materials and in telephone directories statewide.

(3) Taxpayers will also have recourse to the Governor's Citizens Assistance Office. The office notifies agencies when the complaint appears valid and concerns their employees, operations, or services. The comptroller's ombudsman will be notified whenever the assistance office receives a complaint about this agency.

(4) The ombudsman's annual report will be used by the agency to track systemic problems and identify areas that can be improved. That report will be part of the agency's performance report to the legislature.

(e) A tax process that is fair, timely, and confidential.

(1) Taxpayers will be allowed to challenge estimates of tax liabilities and request a review of assessments and penalties.

(2) Taxpayers who have never been audited and who come forward voluntarily to disclose their liability and pay taxes due will not be charged penalties. Interest may also be waived, except on taxes that were collected from others but were not paid over when due.

(3) Information provided by taxpayers will be kept confidential, to the extent allowed by law. Confidential information will be removed from private taxpayer rulings, which should become available to the public within 60 days after they are issued.

(4) Taxpayers can bring an attorney, accountant, or other representative to an audit conference and may also record the proceedings.

(5) When cases are disputed, clear deadlines will be established, both for the state and the taxpayer.

(f) A tax system that is equitable.

(1) The same rate of interest will be paid to taxpayers who overpay their taxes, starting in January 2000, as is required of taxpayers who underpay their taxes. Refund requests that include all necessary information and do not require audit review are refunded within 30 days of receipt.

(2) Taxpayers may request administrative tax hearings at locations in Texas close to their primary place of business.

(3) The comptroller will expand the use of managed self-audits to allow certain businesses to audit their own records to determine if they have a sales tax liability. Direct payment permit holders will be allowed to sample and review a percentage of their purchase transactions to calculate their sales tax liability for reporting purposes. In addition, businesses will be allowed to use comptroller approved sampling methods to substantiate their claim for a sales tax refund.

(g) A closer working relationship with the business community.

(1) The comptroller will continue to convene focus groups with business people from specific industries to determine their needs and problems. Efforts will be made to obtain input from business people affected by rules, in addition to industry association representatives.

(2) Recommendations made by these focus groups will be circulated to appropriate divisions within the agency so that they are considered, and when appropriate, incorporated in rules and regulations. In addition, focus groups will be invited to provide comments on the need and cost- efficiency of rules that already are on the books.

(3) The comptroller will assign staff to follow up with participants of focus groups so that they know what happened to the ideas and information they provided.

(4) Business people will be encouraged to write to the comptroller with suggestions for ways of improving existing and proposed rules. The comptroller will acknowledge and consider all suggestions received.

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

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TRD-9905164
Martin Cherry
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For further information, please call: (512) 463-4062

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 142. Investigations and Hearings

40 TAC §142.22, §142.31

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §142.22 and §142.31 concerning Investigations and Hearings without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4752).

These sections contain the procedures concerning investigations of abuse or neglect of children, the elderly, or the disabled by chemical dependency counselors or facilities funded or licensed by the commission and describe the procedures for facility and chemical dependency counselor disciplinary hearings.

These amendments are adopted to update organizational references and provide consistency with the Government Code regarding minimum amount of notice that must be given regarding the date, time and place of administrative hearings.

No comments were received regarding adoption of the amendments.

These amendments are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities and under Texas Occupations Code, Chapter 504, which provides the commission with the authority to establish procedures for the licensure of chemical dependency counselors.

The codes affected by the adopted amendments are the Texas Health and Safety Code, Chapter 464 and Texas Occupations Code, Chapter 504.

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

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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Chapter 144. Contract Requirements

Subchapter B. Contract Administration

40 TAC §144.101

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §144.101 concerning Contract Administration. This section is adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4760).

This section contains information regarding contract acceptance and legal precedence.

These amendments are adopted to require that providers carry a fidelity bond or insurance coverage equal to the amount of funding provided under the commission contract or $100,000, whichever is less; to mandate that this fidelity bond or insurance must provide for indemnification of losses due to fraudulent or dishonest acts committed by any of the provider's employees or volunteers who have access to funds; and to state the required order of legal precedence that must be followed by providers. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from individuals.

Comment: The proposed rule requires a fidelity bond or insurance coverage equal to the amount of funding under the commission contract or $100,000, whichever is less. Previous rules only required bonding for the executive director and chief financial officer. This will result in greater cost for providers. The level of coverage required is excessive, as it is highly unlikely that a fraudulent act would result in the loss of the entire amount of the grant. It seems overkill to provide a bond for all employees and volunteers when they have no access to funds.

Response: The commission acknowledges that the cost may be somewhat higher in some instances, but believes the expanded coverage is necessary to protect the provider and the commission against general malfeasance and acts of fraud that may be committed by other staff in the organization. The rule has been revised to only mandate coverage for individuals with access to funds.

These amendments are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments is the Texas Health and Safety Code, Chapter 461.

§144.101. Contract Acceptance and Legal Precedence.

(a) To execute a contract, the provider shall submit an original acceptance notice signed by an official authorized to enter into such agreements on behalf of the governing body within 14 calendar days of the contract's postmark date. If board approval is required and cannot be obtained within 14 days, the provider must submit a written extension request before the deadline which includes the date of the scheduled board meeting.

(b) Changes in state or federal laws and regulations may affect contract provisions. Any modifications resulting from such changes are automatically made part of the contract and go into effect on the date set by the law or regulation.

(c) The provider shall have insurance or other provisions to ensure that assets purchased with commission funds will be replaced if lost, destroyed, damaged, or stolen.

(d) The provider shall carry a fidelity bond or insurance coverage equal to the amount of funding provided under the commission contract(s) or $100,000, whichever is less. The fidelity bond or insurance must provide for indemnification of losses due to fraudulent or dishonest acts committed by any of the provider's employees or volunteers who have access to funds, either individually or in concert with others.

(e) Providers shall follow this order of legal precedence:

(1) federal and state laws (including, but not limited to the federal block grant found at United States Code, Title 42, §300x);

(2) rules adopted by the commission and applicable federal regulations;

(3) terms and conditions of the contract;

(4) requirements stated in the request for proposals; and

(5) the application as amended or adjusted by 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.

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Mark Smock
Deputy for Finance and Administration
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For further information, please call: (512) 349-6733

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40 TAC §§144.105, 144.122, 144.125

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.105, 144.122 and 144.125 concerning Contract Administration without changes to the proposed text as published in the June 25, 1998, issue of the *Texas Register* (24 TexReg 4763).

These sections contain the requirements for legal precedence, double billings, and Medicaid.

These sections are repealed because the requirements in these sections have been incorporated into other sections.

No comments were received regarding the adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeals is the Texas Health and Safety Code, Chapter 461.

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

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For further information, please call: (512) 349-6733

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Subchapter C. Program Oversight

40 TAC §§144.201, 144.203, 144.204, 144.211-144.216

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§144.201 and 144.211-144.216 and adopts new §144.203 and §144.204 concerning Program Oversight. Section 144.201 is adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4764). Sections 144.203, 144.204, 144.21-144.216 are adopted without changes and will not be republished.

These sections contain information regarding commission oversight, on-site contract reviews, on-site compliance reviews, independent audit report, auditor qualifications, independent audit report requirements, independent audit report submission, corrective action plan, and audit report desk reviews.

These amendments and new sections are adopted to clarify how the commission may provide oversight to funded providers; to describe the purpose of and process for on-site contract reviews and inform providers of their responsibilities for responding to identified issues; to outline the on-site compliance review process including provider response and corrective action; to clarify the rules regarding required single audits and program audits; to specify that auditors must be licensed in the state in which the audit is performed at the time the audit is performed; to clarify what requirements must be included in the audit report; to specify that the rules regarding audit submission refer to independent audit reports; to clarify that the corrective action plan relates to the independent financial audit report and management letter; and to more accurately name and describe the audit report desk review process.

Comments were received from the Association of Substance Abuse Programs and individuals.

Comment received regarding §144.201: We strongly oppose this addition because it appears to allow TCADA to remove original documents from facility premises to make copies. This is unacceptable, the loss of these original documents would make it impossible for the facility to defend themselves in the event that legal or audit issues arose.

Response: This is not a change from current rules. The commission does not, under normal circumstances, remove any records from the provider's site. This provision is included for those very rare occasions when removing a document might be necessary to remove a document for a short period of time to protect its integrity during an investigation.

Comment regarding §144.203 and §144.204: These appear to be new terms and have caused confusion. What is the difference between the two? If they are replacing old terms such as monitoring visits, please clarify and highlight in the Provider Bulletin or Handbook. I am also concerned about the statement that the results of the on-site contract review will be used by the commission in future funding decisions.

Response: The on-site contract review is what has been called a monitoring visit. This function is conducted by staff in the commission's program branch. On-site compliance reviews are also referred to as compliance visits, or audits. They are conducted by staff in the commission's quality assurance branch. The commission believes it is necessary to consider past provider performance in funding decisions, and the on-site contract review is one indicator of performance.

These amendments and new sections are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of

the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.201. Commission Oversight.

(a) All commission-funded providers, regardless of the level of funding, are subject to periodic reviews by the commission for adherence with applicable federal, state and commission statutes and regulations and contract requirements. These include contract desk reviews, on-site contract reviews, and compliance reviews.

(b) The commission shall determine the extent of the review.

(c) The commission may conduct a scheduled or unannounced on-site reviews or request the provider to submit materials for desk review.

(d) The applicant shall allow commission staff to access the facility's grounds, buildings, and records and to interview members of the governing body, staff, and clients.

(e) The provider shall allow commission staff to examine all property and examine or copy all books, recordings, client records, and documents related to the contract or a commission requirement on or off the premises.

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

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Deputy Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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40 TAC §144.202

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §144.202 concerning Program Oversight without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4766).

This section contains the requirements for organization response.

The section is repealed because the requirements in this section have been incorporated into other sections.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeal is the Texas Health and Safety Code, Chapter 461.

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

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Subchapter D. Organizational

40 TAC §§144.312, 144.313, 144.321, 144.322, 144.324, 144.325, 144.327

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§144.312, 144.313, 144.322, 144.324, and 144.325 and adopts new §144.321 and §144.327 concerning organizational requirements. Section 144.313 and §144.322 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4766). Sections 144.312, 144.321, 144.324, 144.325, 144.327 are adopted without changes and will not be republished.

These sections contain information regarding organizational structure, governing body and chief executive officer, policies and procedures, records, limiting barriers, complaints and reports, and standards of conduct.

These amendments and new sections are adopted to expand these rules to make them comparable to facility licensure standards (which apply only to treatment providers) so that prevention providers are held to the same organization standards as treatment providers; to replace the term executive director with chief executive officer; to require providers to maintain documentation signed by each employee that policies and procedures have been read and understood; to replace the term governing authority with governing body; to ensure that members of the governing body are aware of their responsibilities and liabilities as well as the program's target populations and their particular cultural needs; to specify the minimum requirements for and responsibilities of a chief executive officer; to establish requirements for policies and procedures; to clarify that providers must maintain current personnel documentation on each employee and to list the minimum items that must be included; to clarify the retention requirements for contract related records; to require a written policy prohibiting discrimination; to mandate that providers retain documentation of formal agreements and contracts to address identified problems with program service access by people with disabilities; to expand the requirements for handling complaints to include complaints from clients, participants and their families; to state that reports of abuse, neglect or exploitation must be made verbally to the commission's investigation department; and to establish standards of conduct for the program and its personnel.

Comments on 144.321 were received from the Association of Substance Abuse Programs and individuals.

Comment: This rule references TCADA Workplace and Education Guidelines for HIV and Other Communicable Diseases.

Is this different from what is currently required and should programs already have a copy of this? Why is this being changed?

Response: The current rule references workplace guidelines published by the Texas Department of Health. TCADA developed its own workplace guidelines because the TDH guidelines did not focus on communicable diseases (hepatitis and tuberculosis) encountered by TCADA providers and the populations they serve. The TDH guidelines also lack the Center for Disease Control's standard precautions for infection control. The new TCADA guidelines will be mailed to all funded providers with the revised rules.

These amendments and new sections are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.313. Governing Body and Chief Executive Officer.

(a) All entities shall have a governing body that is legally responsible for the integrity of the fiscal and programmatic management of the organization.

(b) The governing body shall be a separate business entity with legal authority to operate in the State of Texas.

(c) Staff members, including the chief executive officer, of a public or nonprofit entity shall not serve on their employer's governing board.

(d) The governing body shall appoint a chief executive officer to manage the day-to-day operations of the organization and ensure that the organization has the programmatic, managerial, and financial capability to ensure proper planning, management, and delivery of funded services.

(e) The governing body shall meet at least quarterly and maintain minutes that include:

(1) date, time, and place of the meeting;

(2) names of members present and absent; and

(3) summary of discussion and action taken.

(f) The governing body shall provide all members with information about the responsibilities and liabilities of the governing body and its individual members.

(g) The governing body shall ensure that all of its members are familiar with the program's target population and sensitive to the needs of the different cultures represented.

(h) The chief executive officer shall:

(1) have documented education and/or experience in financial, administrative, and personnel management, and other areas needed to manage the facility effectively;

(2) ensure compliance with applicable laws and rules;

(3) ensure that all staff are competent and trained;

(4) establish mechanisms to ensure quality of services; and

(5) maintain adequate financial records according to generally accepted accounting principles.

§144.322. Records.

(a) The provider shall maintain current personnel documentation on each employee. Training records may be stored separately from the main personnel file, but shall be easily accessible upon request. Required documentation includes, as applicable:

(1) a copy of the current job description signed by the employee;

(2) application or resume with documentation of required qualifications;

(3) documentation that required credentials were verified directly with the credentialing body;

(4) annual performance evaluations;

(5) personnel data that includes date hired, rate of pay, and documentation of all pay increases and bonuses;

(6) documentation of appropriate screening and/or background checks;

(7) signed documentation of initial and other required training; and

(8) records of any disciplinary actions.

(b) The provider shall maintain all records relating to the contract for at least three years from the date the independent financial audit is due (when required) or would have been due (when not required) as stated in §144.214 of this title (relating to Independent Audit Report Submission). If any litigation, audit, or other action is in process at the end of three years, the records must be kept until the action is resolved. If a provider closes business operations, it shall ensure that records relating to the contract are securely stored and accessible for at least three years. The provider shall provide the commission with the name and address of the responsible party.

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

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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40 TAC §144.321

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §144.321 concerning organizational responsibilities without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4768).

This section contains the requirements for HIV policies.

The section is repealed because the requirements in this section have been incorporated into a new section that addresses all required policies.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeal is the Texas Health and Safety Code, Chapter 461.

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

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40 TAC §144.326

The Texas Commission on Alcohol and Drug Abuse adopts new §144.326 concerning organizational requirements. This section is adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4769).

This section contains information regarding staffing.

This new section is adopted to establish minimum requirements related to staffing. This entire subchapter is being expanded to make these rules comparable to the facility licensure standards (which apply only to treatment providers). This expansion ensures that prevention providers are held to the same organization standards as treatment providers. Thus, this new section will ensure that prevention providers are held to the same staffing standards as treatment providers. There is one new requirement included in this new section which is that providers must obtain the results of a criminal background check for each staff person who has contact with adolescents and/or children.

Comments were received from individuals.

Comment: The language in this section can be very open to interpretation. For example "suitability of staff members" - how do we define "suitability"? We would like to have more objectivity for monitoring purposes.

Response: Given the immense diversity in programs, it is not feasible to provide concrete and specific standards for staffing. Furthermore, we believe programs should have the responsibility and authority to determine the details of their program design and staffing. As far as contract reviews ("monitoring") are concerned, the provider is expected to provide clear justification for its staffing decisions.

Comment: We oppose this standard as written, because the initial orientation requirements in Chapter 144 should be consistent with §148.113(b).

Response: The rule was written to parallel the licensure requirements. Although the wording is slightly different, the only content difference is the exclusion of emergency and evacuation procedures. This topic was not included because chapter 144 does not require providers to adopt emergency and evacuation procedures. The rule has been revised to make the wording as similar as possible.

This new section is adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by this section is the Texas Health and Safety Code, Chapter 461.

§144.326. Staffing.

(a) The provider shall have an adequate number of qualified staff to comply with commission rules, provide the services described in the program description, and protect the health, safety, and welfare of clients/participants.

(b) The program shall hire applicants who meet the minimum qualifications listed in the job description.

(c) The application or resume shall document required education, training, and related work experience.

(d) The facility shall develop and implement procedures for reviewing the background and suitability of any employee with access to clients/participants. The review shall be appropriate for each person's level of access and shall adequately protect clients/participants.

(e) The program shall obtain the results of a statewide criminal background check from the Department of Public Safety on all staff with access to adolescents or children.

(f) The facility shall ensure that staff are adequately trained and competent to perform job duties.

(g) Each employee shall complete initial training during the first seven calendar days of employment. The initial training shall include, as applicable:

(1) client/participant rights;

(2) client/participant complaint procedures;

(3) confidentiality of client/participant-identifying information;

(4) client/participant abuse, neglect, and exploitation;

(5) requirements for reporting abuse, neglect, and exploitation;

(6) standards of conduct; and

(7) the individual's specific job duties.

(h) The program shall establish an annual staff training plan for employees based on the program design and identified staff needs. The plan must include annual cultural competency training for all employees.

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

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Subchapter E. Prevention and Intervention

40 TAC §§144.411–144.416, 144.441–144.447, 144.451–144.455, 144.457–144.460, 144.462

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§144.411-144.416 and 144.441-144.447 and adopts new §§144.451-144.455, 144.457-144.460 and 144.462 concerning Prevention and Intervention. Sections 144.411, 144.412, 144.416, and 144.441 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4770). Sections 144.413-144.415, 144.447, 144.451-144.455, 144.457-144.460 and 144.462 are adopted without changes to the proposed text and will not be republished.

These sections contain information regarding program design and implementation, program self-evaluation, performance and activity measures, performance measure review, participant rights, smoking policies, information dissemination, prevention education and skills training, alternatives, problem identification and referral, community-based process, environmental and social policy, intervention services, youth prevention programs, youth intervention programs, community coalitions, prevention training services, prevention resource centers, pregnant postpartum prevention programs, pregnant postpartum intervention programs, other special prevention programs, HIV early intervention services, and HIV outreach services.

These amendments and new sections are adopted to reorganize the rules to present them in more logical order; to clarify the process and requirements for program design and implementation; to describe the requirements for self-evaluation of programs; to specify that performance and activity measures may be defined for both the primary and secondary target populations; to refine the performance measure review process; to clarify that participant rights apply to participants in both prevention and intervention programs; to outline the additional rights of participants in intervention programs; to require programs to have written smoking policies and to prohibit all adults from using tobacco products in the presence of adolescent program participants on site; to clarify the requirements related to information dissemination; to refine the requirements related to prevention education and skills training; to more fully describe the strategy of alternatives; to include identification of risk factors for HIV and sexually transmitted diseases during the screening process; to expand the requirements related to follow-up in the problem identification and referral strategy; to present the community-based process in a more organized and detailed manner; to more fully describe intervention services and present the requirements related to these services in a logical and organized format; to add requirements for each program type that may be funded as a prevention or intervention program; and to make grammatical changes to improve readability and understanding. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and individuals.

The following comments were received regarding §144.411.

Comment: This sections talks about long-range goals. What is the time frame?

Response: No specific time frame is implied. The goals should describe what the program is trying to accomplish.

Comment: The examples of universal, selective and indicated populations do not exactly reflect the Institute of Medicine (IOM) definitions where the indicated target population includes groups with identified risk factors, beyond experimentation and problem behaviors, such as prenatally substance-exposed young children, developmentally delayed youth, pregnant adolescents, victims of domestic violence, etc.

Response: The commission disagrees. Selective prevention programs target specific subgroups that are believed to be at greater risk than the general population. Risk groups may be identified on the basis of biological, psychological, social, or environmental risk factors. Pregnant adolescents would be part of an indicated population because of their high-risk behaviors, but the others listed are at risk because of their physical or environmental risk factors.

Comment received regarding §144.412: The rule says that prevention programs need to do self-evaluation unless exempted through an executive order. What is an executive order? How do you get one?

Response: To avoid confusion, the commission will specifically list programs required to perform self-evaluation and delete the reference to an executive order.

The following are comments received in regard to §144.416.

Comment: The rule states that staff and "other adults" can't use tobacco products in the presence of participants. This needs further definition. Does it include our clients, participants in a 12 step program that use our facility but aren't in our program, etc.?

Response: "Other adults" includes all other adults: volunteers, clients, and visitors. The rule has been revised to clarify this.

Comment: We oppose this standard as written. We do not want to support or promote the use of tobacco products, however, this rule is problematic and unrealistic. The way this rule is written when a program transports clients to a 12-step meetings and/or recovery support group recreational activities (both of which are structured program activities), then the staff would be inappropriately required to police this issue. An on premises prohibition is sufficient.

Response: The commission agrees. The text has been revised to clarify that the rule only applies on the program site.

Comment: We have an adult-only facility. Does this mean that none of our clients or 12-step groups can smoke outside the building in the view of other clients?

Response: This rule only applies to prevention programs. Smoking regulations for treatment facilities are located in the

licensure rules. The rule has been revised to clarify that it refers to adolescent participants.

Comment received regarding §144.442: The rule requires curricula to be based on proven, effective principles. Who decides what are proven effective principles? Who says the activities are OK? Would suggest the old language, ...*or an outline approved by the commission* remain. This allows for flexibility and provides non-NIDA identified research based programs (an assumption the language *proven, effective principles* implies) the opportunity to be approved.

Response: The provider is responsible for researching literature discussing current research and best practices and using that information to adopt, modify, or develop an appropriate curriculum. The language was carefully chosen to allow providers to choose or develop their own curricula (rather than adopting a NIDA-identified model), provided it incorporates principles and practices supported by research. The provider is also responsible for designing appropriate activities to implement the curricula. The overall program, including curricula and activities, is approved by the commission through the funding process.

Comment regarding §144.445: The proposed rule requires working agreements to be redone annually. This is a hardship for agencies with lots of working agreements. We have over 70 working agreements. Since we tailor the agreement to each agency, it would be a full-time job to negotiate these every year. This is cost prohibitive and does not measure whether people are really working together. We would like there to be something that an agency could do by itself that says this is still what we want to do and not have to get with all the other agencies to renew yearly. Another alternative would be to include language in the agreement that it is on-going unless there is a significant change in agency operations.

Response: Working agreements need to be reviewed regularly to see if revisions are needed and to reaffirm mutual commitment to the agreement. Annual review can be particularly helpful in renewing a relationship that has been disrupted by staff turnover. It gives both agencies the opportunity to remind staff of appropriate procedures and obligations under the agreement. While a written document does not guarantee effective implementation and coordination, it is an important foundation for long-term organizational collaboration. To streamline the paperwork, agreements can be printed with multiple signature/ date lines, so that the original copy can simply be resigned if it is still appropriate. We have also revised the rule to allow the agreements to be renewed through other documented contacts. For example, the providers could review the agreement by phone and document the results.

Comment regarding §144.447: We run an intervention program. Intervention services are beginning to look more like treatment services with the types of documentation that are being required. One way of possibly pulling intervention services out is to actually separate intervention services from prevention services because as it is, it is confusing.

Response: The distinction between prevention, intervention and treatment is the target population. Treatment programs serve individuals who meet the DSM-IV criteria for substance abuse or dependence. Intervention programs serve individuals (indicated) who do not meet DSM-IV criteria but are showing early warning sign such as failing grades, dropping out of school, and/or use of alcohol and other gateway drugs. The basic units of documentation are similar for intervention and treatment, but the documentation requirements are much more comprehensive and detailed for treatment programs. We are using the term "intervention" to help distinguish this kind of program from other prevention programs, who serve the general population (universal) or at-risk groups (selective).

Comment regarding §144.452: Is this different from a Youth Prevention Intervention program (YPI)?

Response: No.

Comment regarding §144.455: One of the required services is "prevention needs assessment and resource identification." Is this an annual needs assessment or something else?

Response: The assessment process should be ongoing. Formal components of the needs assessment might be conducted annually or more often as needed. The following comments were received in regard to §144.456.

Comment: The rule says that within one hour, the client is to be given the opportunity to talk with a trained counselor or trained volunteer. What does the volunteer need to be trained in?

Response: Volunteers should be trained in crisis intervention and have knowledge of available community resources. Training in chemical dependency would also be helpful. The rule has been revised to provide clarification.

Comment: For a small council, with a very small staff and virtually no volunteers, this is a very difficult requirement. Those councils that serve a number of counties with a small staff and very limited resources may not be able to meet this requirement.

Response: The commission acknowledges that this requirement will be more difficult for small councils. However, we believe the service is essential, and that it can be provided even when there are few staff to share on-call responsibilities. Councils can also meet this requirement by pooling resources with other health and human service providers, forwarding calls to an existing hotline, or similar arrangements.

Comment: The rule requires crisis intervention services. How do you define intervention in terms of crisis? How do you get clients to where they need to go when you can't by law disclose information to another agency without the client signing a release form, which means you have to see him or her in person?

Response: Crisis intervention is defined in §144.21. When referrals are given over the phone, it is not necessary to contact the program to which the client is referred. However, contact between the two programs can be beneficial, particularly if the council will be involved in providing aftercare. It also allows referring agencies to track the follow-through rate on referrals. One way to accomplish this is for the receiving agency to ask applicants where they were referred from, and then to obtain consent to release information back to the referring agency.

The following comments were received in regards to §144.457 and §144.458.

Comment: I am concerned about doing away with Infant Primary Prevention Intervention program category. Though in the old rules there never was a real good match between the brief descriptive statements and the title, at least the title better described our primary target population (infants).

Response: This is a change in terminology and does not exclude programs focused on infants.

Comment: What will the quarterly report contain that our measures don't cover already? Why must there be multiple reporting processes and forms?

Response: Narrative reports, which are generally required only in specialized programs, provide a vehicle to collect information needed to monitor program implementation. They complement performance and activities measures to provide a more comprehensive view of program performance.

These amendments and new sections are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.411. Program Design and Implementation.

(a) The provider shall determine what population(s) the program is designed to serve: universal, selective or indicated.

(1) Universal programs reach the general population (such as all students in a school).

(2) Selective programs target a subset of the general population which is at high risk for substance abuse (such as children of drug users).

(3) Indicated programs are designed for those who may already be experimenting with drugs or who exhibit other problem-related behaviors.

(b) The program shall identify and describe the primary and secondary target populations including specific information about:

(1) age, gender, and ethnicity;

(2) risk and protective factors;

(3) patterns of substance use;

(4) social and cultural characteristics;

(5) knowledge, beliefs, values, and attitudes; and

(6) needs.

(c) The program shall identify long-range goals which:

(1) address identified risks, needs and/or problems of the primary and secondary target populations;

(2) are designed to enhance protective factors;

(3) clearly describe behavioral and/or societal changes to be achieved; and

(4) are realistic in relation to available resources.

(d) The program shall establish objectives for each contract period that are linked to the goals. Objectives must:

(1) be realistic, outcome oriented, measurable, and time-specific;

(2) include performance and activity measures required in the contract; and

(3) address specific family strategies, as applicable

(e) The program design shall be based on a logical, conceptually sound framework to connect the prevention or intervention effort with the intended result of preventing alcohol, tobacco, and other drug problems. The program shall gather and use reliable evidence of effectiveness from comparable programs to select and guide the program design. The program shall use results that come from sound studies to assess potential effectiveness of the program design relative to the needs of the target population.

(f) In order to carry out the program design, the program shall incorporate a combination of some or all of CSAP's six prevention strategies (information dissemination, prevention education and skills training, alternative activities, problem identification and referral, community-based process, and environmental and social policy). All Youth Prevention Programs (YPP) and Youth Prevention Intervention (YPI) Programs must at a minimum conduct prevention education and skills training as a core strategy. Each strategy and activity must:

(1) relate directly to program goals and objectives; and

(2) address identified needs.

(g) The program shall be designed to build on and support related prevention and intervention efforts in the community. The program shall secure and maintain the support of key decision makers and leaders, and shall establish formal linkages and coordinate with other community resources.

(h) The program shall be appropriately structured to implement the program design. The prevention effort shall be consistent with the availability of personnel, resources, and realistic opportunities for implementation.

(i) The program design, content, communications, and materials shall:

(1) be available in the primary language of the target population;

(2) be appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age, and developmental level of the target population; and

(3) recognize the cultural identification (context) of the family unit.

(j) The program design shall be delivered at an appropriate time with sufficient intensity and applied over an appropriate duration so that results can be sustained.

§144.412. Program Self-Evaluation.

(a) The program shall perform self-evaluation to verify, document, and quantify program activities and effectiveness. Programs required to complete the self-evaluation include Youth Prevention Programs, Youth Intervention Programs, Community Coalitions, Core Council Services, Pregnant-Post Partum Prevention Programs, Pregnant-Post Partum Intervention Programs, Adult Primary Prevention, HIV Early Intervention Services, HIV Outreach Services, and Compulsive Gambling.

(b) Programs shall conduct evaluation activities using the Prevention Plus III format unless the commission has approved an alternative model.

(c) For programs in the first year of funding from the commission, the evaluation process must include:

(1) identification of goals and objectives (PP III Step 1);

(2) assessment of the service delivery process (PP III Step 2); and

(3) a plan for assessment of the program outcomes (plan for PP III Step 3).

(d) In subsequent funding years, the evaluation must include:

(1) identification of goals and objectives (PP III Step 1);

(2) assessment of the service delivery process (PP III Step 2); and

(3) implementation of the assessment of the program outcomes (PP III Step 3).

(e) The program shall submit a written evaluation report using the format specified by the commission. The provider must submit the report at the end of each contract period, no later than September 30th unless otherwise stipulated in the contract.

(f) The program shall use information gained from the annual self-evaluation to make appropriate changes to the program and the staff training plan. Any change requiring commission approval must be made through a contract amendment as described in §144.103 of this title(relating to Amendments).

§144.416. Smoking Policies.

(a) The program shall prohibit smoking inside program buildings.

(b) The program shall not allow vending machines that dispense tobacco products on site.

(c) Staff shall not provide, distribute, or facilitate participant access to tobacco products.

(d) Staff and other adults (volunteers, clients, and visitors) shall not use tobacco products in the presence of adolescent participants on the program site.

(e) The program shall prohibit adolescents from using tobacco products on the program site or during structured program activities.

(f) The program shall have a written smoking policy that complies with this section.

§144.441. Information Dissemination.

(a) Each program that provides activities within this strategy shall disseminate information about these topics as appropriate for the target population:

(1) the nature and extent of alcohol, tobacco, and other drug use, abuse, and addiction;

(2) HIV infection, tuberculosis, hepatitis, and sexually transmitted diseases; and/or

(3) information about available services and resources.

(b) The information shall be accurate and current.

(c) The information shall be accessible and understandable to the target population in terms of:

(1) content; and

(2) mode, time, and location of delivery.

(d) The program shall document the number of persons receiving written information/literature.

(e) For presentations, documentation shall include, as applicable:

(1) date, time, and duration of activity;

(2) location of activity;

(3) staff/volunteers conducting activity;

(4) purpose and goal of activity; and

(5) number of participants.

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 August 11, 1999.

TRD-9905036
Mark Smock
Deputy for Finance and Administration
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For further information, please call: (512) 349–6733

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40 TAC §144.417

The Texas Commission on Alcohol and Drug Abuse adopts new §144.417, concerning Prevention and Intervention. This new section is adopted without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4777) and will not be republished.

This section contains information regarding staff training.

This new section is adopted to establish requirements for training the staff of prevention and intervention programs, including training during the first six months after hire and annually thereafter.

A comment on this section was received from an individual.

Comment: The staff training requirement of eight hours in subsequent years seems excessive, particularly if restricted in content to the area of prevention training. In the cases of well-implemented and stable intervention programs with demonstrable positive outcomes, this rule will necessitate time be taken from direct services to fulfill an arbitrary hourly requirement. We would recommend that the staff training plan, both in content and time (number of hours) and for both initial and subsequent training efforts, be individually determined based on program design and be submitted to TCADA for approval annually. Response: Well trained staff are essential. We do not believe eight hours of training over the course of a year is excessive, particularly because many individuals have no background or training when they are hired. Initial training may be waived for individuals with documentation of equivalent training. We also believe the guidelines are broad enough to allow programs to design individualized training plans. After the initial training, the only requirement is that the content be related to the program design.

This new section is adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by this section is the Texas Health and Safety Code, Chapter 461.

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

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40 TAC §§144.431–144.435

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.431-144.435, concerning Prevention and Intervention without changes to the proposed text as published in the June 25, 1998, issue of the *Texas Register* (24 TexReg 4777).

These sections contain the requirements for HIV early intervention services, HIV outreach services, prevention resources centers, infant primary prevention and intervention programs, and core council services.

The sections are repealed because this entire subchapter has been reorganized to present the rules in a more logical order. The requirements of these sections are incorporated into new sections that are being adopted concurrently.

No comments were received regarding the adoption of the repeals.

The repeals are adopted the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeals is the Texas Health and Safety Code, Chapter 461.

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

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40 TAC §144.456

The Texas Commission on Alcohol and Drug Abuse adopts new §144.456, concerning Prevention and Intervention. The amendment is adopted with changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4778).

This section contains information regarding core council services.

This section is adopted because this section was reorganized to present the information in a more logical order and to require that Core Council service providers render crisis intervention services.

Comments on this section were received from individuals.

Comment: The rule says that within one hour, the client is to be given the opportunity to talk with a trained counselor or trained volunteer. What does the volunteer need to be trained in?

Response: Volunteers should be trained in crisis intervention and have knowledge of available community resources. Training in chemical dependency would also be helpful. The rule has been revised to provide clarification.

Comment: For a small council, with a very small staff and virtually no volunteers, this is a very difficult requirement. Those councils that serve a number of counties with a small staff and very limited resources may not be able to meet this requirement.

Response: The commission acknowledges that this requirement will be more difficult for small councils. However, we believe the service is essential, and that it can be provided even when there are few staff to share on-call responsibilities. Councils can also meet this requirement by pooling resources with other health and human service providers, forwarding calls to an existing hotline, or similar arrangements.

Comment: The rule requires crisis intervention services. How do you define intervention in terms of crisis? How do you get clients to where they need to go when you can't by law disclose information to another agency without the client signing a release form, which means you have to see him or her in person?

Response: Crisis intervention is defined in §144.21. When referrals are given over the phone, it is not necessary to contact the program to which the client is referred. However, contact between the two programs can be beneficial, particularly if the council will be involved in providing aftercare. It also allows referring agencies to track the follow-through rate on referrals. One way to accomplish this is for the receiving agency to ask applicants where they were referred from, and then to obtain consent to release information back to the referring agency.

This new section is adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by this new section is the Texas Health and Safety Code, Chapter 461.

§144.456. Core Council Services

(a) Core council service providers are community-based organizations that provide alcohol, tobacco and other drug prevention and intervention services to the community at large in their identified catchment area. Core council service providers conduct a variety of services aimed to reduce use and abuse of ATOD in the targeted community(ies) including information, referral and placement services.

(b) Core council services programs shall offer universal, selective and indicated strategies to individuals, families, and communities within the service area defined in the contract.

(c) Minimum core council services shall include the following:

(1) Information dissemination shall be provided for the purposes of awareness and case finding in the community.

(2) Problem identification and referral shall be provided for the purpose of the identification of appropriate treatment needs through screening, referral, placement and follow-up.

(3) Crisis intervention services shall be provided for the purpose of providing immediate response to individuals and/or families in crisis who may call or present themselves in need of core council services.

(A) Core council service programs shall establish an avenue for a person in crisis to speak with a trained counselor or trained volunteer within one hour of the initial call received during and after normal business hours. Training must include crisis intervention techniques and available community resources.

(B) Core council service programs shall develop written policies and procedures for crisis intervention services during and after normal business hours.

(C) Core council service programs shall provide training annually on crisis telephone call policies and procedures for all employees who answer (or may answer) the telephone during or after normal business hours.

(4) Minors and tobacco activities shall be provided for the purpose of reducing minors' access to tobacco products throughout the catchment area served.

(5) Community-based process shall be provided for the purpose of enhancing the ability of the community to more effectively provide substance abuse services.

(d) Core council services may include assessment for treatment as described in §144.448 of this title (relating to Assessment for Treatment). Core council service programs conducting assessments for treatment shall maintain written agreements with referral sources/ treatment providers to a. identify assessment roles in order to minimize duplicate efforts in conducting treatment assessments.

(e) Core council service providers shall not provide intervention counseling.

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

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Subchapter F. Treatment

40 TAC §§144.511, 144.512, 144.521-144.526, 144.531, 144.541, 144.543, 144.545, 144.551-144.554

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§144.511, 144.512, 144.521-144.525, 144.531, 144.541, 144.543, 144.545, and 144.551-144.554 and adopts new §144.526 concerning Treatment. Sections 144.522, 144.541, 144.543, and 144.545 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4779). Sections 144.511, 144.512, 144.521, 144.523-144.526, 144.531, and 144.551-144.554 are adopted without changes to the proposed text and will not be republished.

These sections contain information regarding program design and implementation, self evaluation, client eligibility, priority populations, capacity management, facility capacity system, interim services for priority populations, length of stay guidelines, admission, specialized treatment services for females, pharmacotherapy services, family services, performance measure review, select performance measure definitions, client billings and client data systems (CDS) forms.

These amendments and new section are adopted to provide more guidance about the use of data, research and studies in program design; to describe the self evaluation process and how to use the resulting information; to clarify how to determine an adolescent's ability to pay; to add veterans to the list of priority populations (required by new legislation); to require providers to implement an outreach plan that specifically targets members of the commission's designated priority populations who fall within the program's target population; to add requirements regarding capacity management, particularly for certain populations; to specify that programs must use the state's facility capacity management system to facilitate prompt, appropriate placements; to clarify the procedures to be used by treatment programs to report available capacity and waiting list information; to describe required interim services; to incorporate length of stay guidelines in the rules; to fully describe the admission process and to ensure that admission criteria will not automatically exclude certain individuals; to clarify what is required of programs that serve pregnant adult or adolescent females and adult or adolescent females with dependent children; to expand the requirements of pharmacotherapy programs; to fully describe family services, including purpose, potential recipients, reimbursable services, acceptable providers, and required documentation; to update the performance measure review process; to clarify performance measure definitions; to specify which clients are to be reflected on the monthly client billings; to revise the description of the billing system; to update references; and to make grammatical changes that enhance readability and understanding. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and individuals.

The following are comments received regarding §144.522.

Comment: We serve a culturally distinct target population. The rule talks about marketing to the priority populations. If we must market to the priority populations whether or not they fit within our target population, then we have lost our identity and cultural competency. The concept of target populations seems to have been restricted to prevention and intervention and removed from treatment. We continue to need that option under treatment.

Response: The commission's rules regarding target population are virtually identical for prevention, intervention, and treatment programs. Every program is required to identify a specific target population, and that population may be a culturally distinct subset of the general population. The intent is for programs to market to members of the target population who fall within

the priority population categories. The rule has been revised to clarify this issue. However, if a member of the priority population who does not fall within the program's target population requests treatment, the provider should accommodate the client (if appropriate) or provide referral to a more suitable program.

Comment: Only those programs that are not meeting their required priority population targets should be a mandated to establish outreach plans.

Response: The commission believes this is an important standard. The commission has not established priority population targets, so the rule will apply to all programs. Providers who maintain high capacity utilization and have large numbers of priority population members will simply need to document existing outreach strategies.

Comment regarding §144.525: We strongly oppose this rule as written. The requirement of counseling and education as a function of interim services is an unacceptable unfunded mandate.

Response: This definition of interim services is mandated in the substance abuse block grant. The program is not required to provide these services directly. Counseling and education about HIV and TB are usually available free of charge through the local health department.

The following are comments received regarding §144.526.

Comment: We would advocate that the commission not state that any revisions adopted by the Texas Department of Insurance supersede the recommended lengths of stay listed in this section. TCADA and its funded programs are not directly regulated by TDI. Therefore automatically adopting rules designed for insurance products might not be in the best interest of TCADA, its funded programs and indigent clientele.

Response: The commission acknowledges that the statute is not absolutely clear in terms of applicability. The intent, however, is clearly for the two agencies to collaborate in establishing a single set of standards for chemical dependency treatment services in Texas. Although TDI publishes the standards, the law requires collaboration with the commission, and both agencies work together to determine the content.

Comment: I am very concerned about the length of stay for adolescent treatment programs. 70% of my clients are intravenous heroin users, and 60 days of treatment will not be effective.

Response: The length of stay guidelines are just that-guidelines. If an individual needs additional time in a specific level of treatment, the provider can continue services provided justification is documented in the client record. However, providers are expected to transfer clients to less intensive levels of service as treatment progresses. When multiple levels of treatment are used, the recommended length of stay for a treatment episode increases significantly. In fact, an adolescent who goes through four levels of treatment (Level II and III Residential, Level III and IV Outpatient) could be in treatment up to 15 months without exceeding the length of stay guidelines. Providers with a limited range of services should consider restructuring and/or collaborating to provide a full continuum of care.

Comment: In 60 days, you are just beginning to reach an adolescent who needs service at this level. The minimum length of stay should be between 120 and 180 days. The proposed regulation would add more paperwork in utilization and extension justifications. It would be easier to justify discharging a client earlier than planned if they make acceptable progress.

Response: This does not require additional paperwork. Providers are already required to document regular treatment plan reviews, which must include an assessment of the continued appropriateness of the current treatment level.

The following comments were received regarding §144.531.

Comment: Commission rules say that every client admitted to a Level II, III, or IV treatment program must meet the DSM-IV criteria for abuse or dependence. Our Amarillo network is using the Texas Department of Insurance (TDI) criteria, which say that clients must be chemically dependent to be admitted to a residential program. Which should we follow?

Response: All providers must comply with commission rules. However, a provider may choose to adopt the more restrictive diagnostic criteria published by TDI.

Comment: The rule says that admission criteria cannot automatically exclude individuals based on past or present prescription medication. Does that include methadone? At the current time, some detoxification programs reject methadone clients because they have a total abstinence-based philosophy.

Response: Yes, methadone is included.

Comment: The rule states that all treatment programs must implement procedures to identify clients exhibiting conditions or behavior that may suggest unmet mental health needs. This calls for expertise beyond the licensed ability of an LCDC. It will require hiring of an LPC, LMSW, Ph.D., or other higher credentialed person. At the least it will call for a contractual arrangement with a mental heath facility. Otherwise you are leaving the LCDC professional and the contractor open to legal action when a client disagrees. This will add significantly to service costs and will require a higher unit cost.

Response: The rule calls for a simple screening process, not a professional mental health assessment. It is comparable to the process a school counselor might use in identifying students who need to be assessed for chemical dependency. To help LCDCs perform this function more effectively, licensure rules will require related information to be included in the eight hours of annual training that is mandated by statute.

Comment: This mentions that the program will assess each applicant face-to face. So often, clients are referred from another city and we have to conduct telephone screenings and assessments as to the appropriateness of a client. No more telephone screenings? This will greatly delay admission time, and create more time and expense, especially for clients and outside agencies who will need to transport the clients and work with them in the interim.

Response: Telephone screening is acceptable. The commission has never allowed a chemical dependency assessment to be conducted over the phone.

Comment: We strongly oppose this rule as written. In certain instances it is appropriate to deny admission based on prior treatment. Clients who leave treatment against staff advise or who are discharge at staff request, prior to successful completion, should not be rewarded with immediate readmission. We suggest the following alternative: *(g) The program shall not au-*

tomatically deny admission to a previous client based on prior treatment UNLESS the individual left against staff advice, was discharged at staff request prior to successful completion, or has been admitted to the facility three or more times in the past 12 months.

Response: The rule simply says the facility cannot automatically deny admission based on prior treatment. The factors mentioned can be considered when deciding whether to readmit the individual. However, the provider must also consider that chemical dependency is a chronic, relapsing disease and many clients are successful in subsequent episodes of treatment despite initial failures.

The following are comments received regarding §144.541.

Comment: The rule requires a coordinated marketing/outreach plan - Advertising? Or what? We cannot use TCADA funds for advertising/marketing. How do we show this on time sheets or in job descriptions so it will not be denied by TCADA and our outside auditors? It is direct opposition to the OMB Circulars. We already work with CPS and TANF and all local hospitals and social service agencies. To require a completely written and documented plan will require an additional staff time and increase costs. It also requires us to work with agencies who may not want to work with us in the way TCADA requires. Other agencies have restrictions on their staff time. Why does TCADA always assume they will work with us in the way, and in the time frame TCADA requires its providers? Unit cost amounts need to be increased as either direct program costs or indirect costs will have to be increased.

Response: OMB Circulars allow promotional activities and materials designed to educate the community and target population about available services. Networking and collaboration is another valuable outreach/marketing strategy, and your agency appears to be actively engaged with key organizations in your area. After evaluating your current efforts in relation to capacity utilization, it may be that you simply need to document what you are already doing. If your program is not consistently full, you should look for additional ways to bring clients into your program. This rule does not dictate how you work with local agencies, and it does not assume that they will respond to your overtures. The rule has been revised to delete the word "marketing" to avoid redundant language.

Comment: The rules require program to provide written referral and service coordination procedures with qualified providers to provide Early Childhood Intervention assessments and counseling. Will the referrals on the screening suffice or is this an ongoing process? We refer children for ECI and therapy as part of their treatment - is this what you are talking about?

Response: Yes.

The following are comments received regarding §144.543.

Comment: The new methadone rules state that if a client remains in a commission-funded slot for more than 18 months, the provider must review the treatment plan and justify the need for continued commission-funded treatment. This requirement seems to represent a change in philosophy that is contrary to best practices, which stress long-term retention. It seems that in order to contain costs, the commission is forcing providers to discharge clients before they are ready to move on. The commission states the intent of this rule is to encourage movement out of commission-funded slots and into private treatment programs so that more clients can be served. However, 80% of my population falls into the working poor, medically indigent population. These people cannot afford private pay treatment. Providers were not involved in determining the appropriate length of stay. We recommend the commission remove this provision and establish a workgroup to make recommendations on this issue.

Response: The proposed rule in no way implies that providers should discharge clients who are not ready; it simply requires periodic justification for continued treatment. However, the commission recognizes that in the current environment this might be interpreted as a move away from nationally recognized standards of pharmacotherapy for opiate addiction. We also realize that many working, low-income clients cannot afford private treatment. In light of the widespread concerns, the commission has taken this provision out of the rules, and will establish a workgroup of methadone providers to examine the underlying issues and make recommendations. Commission staff will continue to work with providers to identify clients who can be appropriately transferred to private programs so that new clients can be admitted.

Comment: The proposed rule states that providers may bill for methadone clients with an excused/planned absence for up to two consecutive days, provided approved absences do not exceed eight days in a single month. I am concerned because methadone programs are governed by two agencies and the amount of days allowed for absences before discharging a client are different. TDH recommends that clients be discharged after 14 consecutive days of absence, especially if unapproved. I would like to see the agencies reach consensus about the time allowed.

Response: The proposed rule does not relate to client discharges; programs should follow TDH guidance on that issue. The commission is simply allowing providers to receive reimbursement for a limited number of excused client absences per month. If the client was absent for six consecutive days, the provider could only bill TCADA for two of those days (and only if the absence was excused). The client could, however, remain in the program. The language of the rules has been revised to clarify the intent.

The following comments were received regarding §144.545.

Comment: We would recommend that Family Support Groups be added to the list of reimbursable family services. Many prevention-oriented agencies offer this type of program and it should be a reimbursable activity for treatment providers.

Response: Prevention programs are paid on a cost reimbursement basis to provide a range of services. In treatment programs, the provider is reimbursed for providing specific units of treatment. Peer support groups are an adjunct to treatment, not an element of treatment. They have never been a reimbursable, and do not count towards the required hours of service under licensure rules. The commission agrees that support groups can be a valuable experience for families and help them establish a continuing support system in the community. Treatment programs may choose to make such groups available to clients and their families.

Comment: The rule lists things that can be done for family services, but does not require that the services be age and developmentally appropriate.

Response: The rule has been revised to require services to be age and developmentally appropriate.

Comment: Will treatment programs now be providing prevention services? This seems inappropriate if there are existing prevention providers with the needed services and expertise.

Response: Language has been added encouraging collaboration with existing prevention programs.

Comment: Without additional funding the new family service requirements can only be implemented by serving fewer clients.

Response: Family services are reimbursable. Providers can bill for each unit of individual or group family services provided.

Comment: The listed services are poorly defined and open to interpretation. They need to be more specific.

Response: The services are described using standard terminology. Commission staff will be providing extensive guidance and technical assistance to help providers implement family services.

These amendments and new section are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the adopted amendments and new section is the Texas Health and Safety Code, Chapter 461.

§144.522. Priority Populations.

(a) The commission has established six priority populations. Preference shall be given in the following priority order:

(1) pregnant injecting drug users;

(2) pregnant substance abusers;

(3) injecting drug users;

(4) former Supplemental Security Income recipients previously disabled from substance abuse;

(5) parents with children in foster care; and

(6) veterans with honorable discharges.

(b) The program shall implement an outreach plan that specifically targets members of these priority populations who fall within the program's target population.

(c) The program shall establish screening procedures to identify members of priority populations and admit them before all others, in priority order.

§144.541. Specialized Treatment Services for Females.

(a) Specialized female programs shall serve pregnant adult or adolescent females and adult or adolescent females with dependent children. Females with dependent children include females in treatment who are attempting to regain custody of their children.

(b) These programs shall treat the female and her dependent children as a unit and therefore admit both females and their children into treatment, when appropriate and possible.

(c) All programs offering specialized female services shall provide a comprehensive treatment program. The following services shall be provided directly or through collaborative agreements and case management arrangements with other service providers:

(1) primary medical care for females receiving treatment, including age-appropriate and specific reproductive health care and prenatal care;

(2) gender-specific substance abuse treatment and other therapeutic interventions for females that address issues of relationships, sexual and physical abuse and parenting;

(3) childcare while the females are receiving services;

(4) primary pediatric care for the clients' children, including immunizations;

(5) therapeutic interventions for the children; and

(6) documented sufficient case management and transportation services to ensure that female clients and their children have access to the services provided by paragraphs (1) through (5) of this subsection.

(d) Programs shall implement a coordinated outreach plan that targets services and organizations that regularly serve adult or adolescent females with or without dependent children, including Child Protective Services and the Temporary Aid for Needy Families (TANF) program.

(e) Treatment programs serving women with dependent children shall report monthly measures for the women's children when the children receive prevention and/or intervention services.

(f) Programs serving adult or adolescent females shall, to the extent possible, provide an array of services including Levels II, III, and IV treatment and structured aftercare, either directly or through case management and service agreements. Level, intensity, and duration of services shall be clinically appropriate.

(g) Programs shall have written referral and service coordination procedures with qualified providers to provide:

(1) assessments for children for Early Childhood Intervention services; and

(2) counseling or therapy to address the children's identified developmental, emotional, or psychosocial needs.

§144.543. Pharmacotherapy Services.

(a) All programs providing pharmacotherapy services shall maintain compliance with applicable statutes and regulations adopted by the:

(1) Texas Department of Health;

(2) Food and Drug Administration; and

(3) Drug Enforcement Agency.

(b) Programs shall establish a phase/level system which is consistent with guidelines from the Substance Abuse and Mental Health Services Administration (SAMHSA) and includes the following phases:

(1) Phase I: During the first 45 days of treatment, the client shall receive four individual counseling sessions. If not, justification shall be documented in the client record.

(2) Phase II: After 45 days of continuous treatment, the client shall receive two individualized counseling sessions monthly. Justification shall be documented in the client record each month this standard is not met.

(c) All Pharmacotherapy programs must conduct the Methadone Annual Survey as directed by the Commission.

(d) All Pharmacotherapy programs shall adopt policies and procedures that conform with §144.523 of this title (relating to Capacity Management), §144.524 of this title (relating to Facility Capacity System), and §144.535 of this title (relating to Interim Services).

(e) A Pharmacotherapy program can bill for a client receiving methadone who has an excused or planned absence for up to two consecutive days. The frequency of approved absences shall be reasonable and appropriate. The provider shall not bill for more than eight days of excused/planned absences for a single client in a 30-day period.

(f) All Pharmacotherapy programs shall complete a client fee assessment on each commission-funded client every six months.

(g) All direct care employees shall demonstrate knowledge or receive training that includes:

(1) symptoms of opiate withdrawal;

(2) drug urine screens;

(3) current standards of pharmacotherapy; and

(4) poly-drug addiction.

§144.545. Family Services

(a) Providing services to the family of the primary client is required of all commission funded programs. Family centered services are a crucial ingredient in providing comprehensive, community-based services to children, adolescents and adults. The family service program should not duplicate existing community prevention or intervention program that offer appropriate services. Treatment, intervention, and prevention programs are expected to collaborate to establish a coordinated array of substance abuse services for families.

(b) Family services shall be designed to identify family risk factors associated with the client's chemical dependency, improve the health and functioning of the family unit and/or to assist individual family members to support the client in achieving and maintaining a healthy, drug-free life style. All services provided to family members shall be age and developmentally appropriate.

(c) Family services are provided to the entire family, including older adults, individual family members, and/or a subset of family members. Reimbursable family services include:

(1) family psychosocial assessment;

(2) individual counseling or therapy;

(3) group counseling or therapy;

(4) family counseling or therapy;

(5) family case management;

(6) family in-home support; and

(7) structured, curriculum-based education and/or skills training accompanied by group process.

(d) Family services must be provided by qualified staff including LCDCs who have the documented education, training and experience needed to perform the specific family services being provided. Qualifications shall be based on industry standards and applicable licensure requirements. LCDCs may provide family education, assessment, and counseling services for issues that are directly related to substance abuse treatment and prevention within the family (including the development of healthy family behavior patterns), commensurate with the individual's training and experience. However, clients and/or family members in need of therapy on issues outside the LCDC's scope of professional practice must be referred to a qualified mental health professional such as an LMSW (Licensed Master Social Worker), LMFT (Licensed Marriage and Family Therapist), LPC (Licensed Professional Counselor) or LPA (Licensed Psychological Associate).

(e) Family services must be documented in the client record. The record must include the elements listed.

(1) Family psychosocial assessment. The assessment must be conducted by a licensed and qualified professional based upon education and training.

(2) Family service plan. The counselor, client and family shall develop the plan and update it as goals are accomplished or needs change. This plan must include:

(A) abilities, strengths, preferences, problems and needs identified from the client and family assessment;

(B) goals that are realistic, outcome-oriented, measurable, time limited and stated in behavior terms that are understandable to the client and family;

(C) specific services to be provided that enable the family to achieve the agreed upon goals; and.

(D) aftercare services to be provided upon discharge, including necessary community supports.

(3) Progress notes. Progress notes must document the services provided and the family's response. The provider shall document each service contact in a signed progress note that includes:

(A) date, nature, and duration of the contact;

(B) individuals involved;

(C) content and goals addressed;

(D) progress or lack of progress toward the goals; and

(E) other relevant information.

(4) Discharge plan. Discharge planning shall begin at the time of the initial treatment plan and shall address ongoing family needs and support activities. The family shall receive a copy of the discharge plan, including:

(A) family goals or activities to sustain progress;

(B) referrals for other needed support services;

(C) aftercare services; and

(D) follow-up.

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

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40 TAC §144.532

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §144.532 concerning Treatment. This sections is adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4785).

This section contains information regarding core program requirements.

These amendments are adopted to update the name of the section; to delineate the exact responsibilities of all commission-funded programs; to make grammatical changes to enhance readability and understanding; to require all programs to provide family education and counseling and group aftercare; to mandate formal letters of agreement that must be renewed annually; to require that programs operating at low capacity implement structured outreach plans; to mandate that programs must document active participation in collaborations to support community resource development; to increase the number of hours of additional structured activities during evenings and weekends; and to specify that all counseling sessions and other activities counted toward the required hours of service must be of at least 30 minutes duration. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and individuals.

Comment: Although many programs offer an aftercare component, this is a new requirement and it has an associated cost. It affects counselor caseloads, scheduling and administration of records. Until such time as a program is able to re-negotiate a rate that takes into consideration this new requirement, a program should have the opportunity to present a case and apply for a waiver.

Response: The commission recognizes that this requirement will impact the workload of counselors or require additional cost to providers who are not currently offering aftercare. However, aftercare is a vital component of treatment and accepted industry standard, and we believe the benefits of aftercare merit the additional cost. Research shows that the most important factor in successful recovery is the length of time a client is engaged in the treatment delivery system. The length of stay guidelines proposed in these rules will shift service delivery toward multi-level treatment for individual clients, and aftercare is an important part of the individual's continuum. To minimize the burden placed on providers, the commission has provided two methods for a provider to receive reimbursement for aftercare. First, we have added language to this rule clarifying that Level IV treatment can meet the requirement for aftercare if it is provided as a transitional level of care for a client transferring from a Level II or Level III program. Second, under the new family services initiative, providers can bill for family services provided after the client's discharge, which is also aftercare. The commission's rules regarding waivers are found in §144.11 (Variances).

Comment: We consider our Level IV treatment program to be aftercare. So what is aftercare for aftercare? Aftercare is not defined.

Response: Aftercare is defined in §144.21 (Definitions). Although Level IV is part of the treatment continuum, the commission will consider transitional Level IV services as meeting the requirement in this rule. However, Level IV providers are strongly encouraged to provide less intensive aftercare services as described above retain clients in the treatment delivery system for as long as possible.

Comment: We oppose requiring providers to "provide" referrals for family members and family education and counseling. Using the word "offer" would continue to require programs to make the services available, but would not hold us accountable for making sure every family participated.

Response: The wording has been revised for clarification.

Comment: Please define what specific case management activities are required. The definition does not indicate how extensive a service we are required to provide. We have extensive, intensive case management for HIV clients and Dual Diagnosis client but are unable to provide the full complement of those services to all clients without specific funding. Will those services be billable if done as a session with the client?

Response: The proposed rule does not require the intense level of case management you provide for HIV and dual diagnosis clients. Case management is defined in §144.21. Programs are expected to link clients with needed services, help clients develop skills to use basic community resources more effectively, and monitor and coordinate those services. In most situations, these activities can be conducted through telephone contacts and regularly scheduled client sessions. The only case management activity that is billable is monitoring client follow-through during counseling. Telephone calls and other collateral contacts are not billable and cannot be made during a counseling session.

Comment: The rules require residential treatment programs to provide 10 hours of planned, structured activities during evenings and weekends in addition to the hours required by licensure rules. What kinds of groups and activities can be included? The clause either needs to be explicitly and extensively defined or simply have a phrase such as "as clinically defined by the program".

Response: Many treatment programs schedule virtually all of their services and activities during business hours. This rule is designed to help clients learn to structure their leisure time in constructive ways, including drug-free leisure activities. Examples of such activities include game nights, movie nights, AA meetings, shopping trips, meditation or relaxation sessions, supervised study sessions, dances, field trips, cooking lessons, etc. The commission has intentionally left the rule flexible so that providers can determine what is clinically appropriate for their programs.

Comment: The requirement for additional structured activities is very difficult, because you need to give the clients time to do their laundry, wash their baby's bottles, etc. You want them to learn time management and you need to allow them some time to live. How can you include these extra structured hours and still allow time for these types of activities?

Response: The commission believes the number of hours required is reasonable. Clients have 112 awake hours in a week. In Level II programs, 20 hours of treatment are required. The additional hours raise the scheduled activities to 30 hours. That is less than a regular work week and leaves 82 hours for clients to relax and attend to personal needs.

Comment: Making sure everyone goes to the additional structured activities is a problem. Some clients work, and others

(such as HIV positive clients) may be physically unable to participate in all the extra activities.

Response: The provider is not required to ensure that every client attends every activity. The activities must be scheduled and provided, and staff should establish an expectation that all clients attend when they are able to do so. However, there is flexibility for clients who work or have other scheduled activities (family visits, educational classes, etc.) or are physically unable to participate.

Comment: Many comments related to the proposed rule reducing the maximum number of clients allowed in group counseling sessions from 16 to 12. They cited a number of cost concerns and said the proposed change would be a significant challenge to cost effective staffing patterns. Many also mentioned that the commission has not changed its reimbursement rates for many years, but has gradually increased standards. In addition, providers noted that proposals and bid rates were submitted to the commission based on the current rule, and in some situations the rule could have an impact on the staffing pattern and cost.

Response: Group size is a key factor in the efficacy of group therapy, and the current maximum is considerably higher than accepted industry standards. However, the commission does recognize the cost and workload implications of the proposed rule. While some programs already meet this standard and others could make relatively minor changes to come into compliance, the impact would be significant in many programs. Rates have remained static despite increasing standards, and providers have relied on the current rule in developing their programs. Therefore, the commission will withdraw this proposed rule change. However, the commission will be examining its rate structure during FY2000, and will consider this factor during its analysis.

Comment: Can we see more than 12 clients in a group if we have two counselors?

Response: The current maximum of 16 clients will remain in place. Groups cannot have more than 16 clients even with additional counselors present. The maximum group size is established to address group dynamics.

Comment: The proposed rule requires providers to document active participation in collaborations to support community resource development. This goes beyond the scope of what TCADA should require of a provider who is funded to perform a particular service. Requiring a funded provider to develop community resources for gaps in publicly funded services is beyond their scope. For many programs, their non-profit missions often precipitate active participation in community and community efforts to develop services, but this should not be a governmental requirement unless the program they are funded to provide has elements of advocacy and community organization involved.

Response: Collaboration has always been a vital aspect of service delivery and is required under current rules for all providers. Furthermore, the commission's recent requests for proposals have emphasized collaboration and coordination with the goal of establishing a continuum of treatment, prevention, and intervention services supported by a range of ancillary services. Effective collaboration includes identifying and addressing gaps in available services. This activity is particularly important in the transition to networks, when groups of providers will be required to ensure the availability of a service continuum. The commission does not believe the proposed rule is unreasonable or excessive. This is an expectation for all providers, so the language of the rule has been revised to delete "where gaps in the service delivery system exist".

These amendments are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the adopted amendments is the Texas Health and Safety Code, Chapter 461.

§144.532. Core Program Requirements.

(a) All treatment programs shall comply with applicable chemical dependency treatment facility licensure requirements for the specified level of service established in Chapter 148 of this title (relating to Facility Licensure).

(b) All programs funded by the commission shall:

(1) implement a systematic process to identify and offer appropriate referrals for family members of clients;

(2) inform clients and involved family members of family services offered directly and through other community resources; and

(3) document family participation and attempts to engage family members in services.

(c) Levels II, III, and IV treatment programs funded by the commission shall provide:

(1) family education and counseling related to the client's substance abuse (to the extent possible and appropriate);

(2) life skills training;

(3) case management;

(4) relapse prevention services;

(5) support group opportunities for adolescents and adults, including older adults; and

(6) individual and/or family aftercare. Level IV treatment can be used to satisfy this requirement if it is provided as a transitional level of care for a client transferring from a Level II or Level III treatment program.

(d) The program shall have written description of all educational and didactic sessions, including curricula, outlines, and activities.

(e) Group size shall be limited to a number that allows effective interaction between the group and facilitator and between group members.

(1) Group counseling sessions are limited to a maximum of 16 clients.

(2) Group education sessions, didactic sessions, and other groups are limited to a maximum of 32 clients. This limitation does not apply to seminars, outside speakers, or other events designed for a large audience.

(f) The program shall establish formal letters of agreement with available substance abuse and other mental health, health care, and social services to meet the needs of clients and family members. Agreements to coordinate services must be established in writing and

renewed annually (through signature or other documented contact), and shall include:

(1) names of the organizations entering into the agreement;

(2) services or activities each organization will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

(g) The program shall develop and implement a written plan of operation explaining outreach efforts, including specific strategies to reach members of the priority populations listed in §144.522 of this title (relating to Priority Populations). The commission may waive this requirement if the program demonstrates high capacity utilization and adequate engagement of priority populations.

(h) The program shall document active participation in collaborations to support community resource development.

(i) Levels II, III, and IV residential programs shall schedule planned, structured activities during evenings and weekends. These hours are in addition to those required by licensure rules. The minimum number of additional hours for Levels II, III, and IV are 10 hours for adults and 15 hours for adolescents. The program shall maintain documentation that the activities were provided, including sign-in sheets. Client participation does not need to be individually recorded in client records.

(j) All counseling sessions and other activities counted toward the required hours of service must last at least 30 minutes.

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

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40 TAC §§144.533, 144.542, 144.544

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.533, 144.542 and 144.544 concerning Treatment without changes to the proposed text as published in the June 25, 1998, issue of the *Texas Register* (24 TexReg 4786).

These sections contain information on service enhancements, court commitment services and dual diagnosis programs.

The sections are repealed due to reorganization of the rules and deletion of outdated requirements. Requirements related to service enhancements have been incorporated into appropriate sections in this chapter which are being concurrently adopted. Requirements related to court commitment services have been consolidated into §148.238 of this title (related to Court Commitment Services) so that they will all be contained in one section, which is also concurrently adopted. Requirements related to dual diagnosis programs have been deleted.

No comments were received regarding the adoption of the repeals.

The repeals are adopted the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeals is the Texas Health and Safety Code, Chapter 461.

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Subchapter G. Network Management Organizations (NMOs)

40 TAC §§144.611-144.616

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.611-144.616 concerning Network Management Organizations (NMOs). Sections 144.611, 144.612, and 144.614-144.616 are adopted without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4786) and will not be republished. Section 144.613 is adopted with changes to the proposed text.

These sections contain information regarding service structure; outreach; screening, assessment and referral; care coordination; monitoring service utilization; and service delivery planing and implementation.

These new sections are adopted to establish standards for network management organizations. These rules will apply to networks established under the fiscal year 2000 request for proposals.

A comment on these sections was received from an individual.

Comment: Though the NMOs as described in the proposed revisions to Chapter 144 refer to management of treatment services, in looking ahead to the possible provision of prevention and intervention services through networks, some general concerns exist. The proposed rules require procedures that minimize duplication between the NMO and the service providers in the network. In what manner will the TCADA rules allow for prevention and intervention service networks composed of, administered by, owned by and/or established by the providers of the network services?

Response: In the FY2000 RFP for networks, the commission allowed an organization to serve as the NMO and provide prevention or intervention services.

These new sections are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these new sections is the Texas Health and Safety Code, Chapter 461.

§144.613. Screening, Assessment, and Referral.

(a) The NMO shall ensure that all persons in the network service area have 24-hour access seven days a week to a toll-free telephone information line for substance abuse prevention, intervention, and treatment services.

(b) The NMO shall provide screening and referral services to ensure access to the appropriate level and type of services needed by applicants and their families.

(1) Screening. The screening process shall be designed to identify warning signs for alcohol, tobacco, and/or other drug abuse. The screening shall also identify STD/HIV risk factors as appropriate. If a potential substance abuse problem is identified, the NMO shall arrange for a substance abuse assessment.

(2) Referral. The NMO shall also identify needs that cannot be met by the network and help the applicant and family members access appropriate support systems and community resources. The program shall maintain a list of referral resources.

(3) Follow-up. The NMO shall conduct and document follow-up on referrals whenever possible.

(4) Documentation. The NMO shall maintain documentation which includes:

(A) date of the screening;

(B) name of the individual screened;

(C) demographics of the individual screened;

(D) referrals made; and

(E) any follow-up contacts.

(c) Assessments for treatment may be provided directly or through referral to a network treatment provider.

(1) Assessment tools shall be appropriate for the target population.

(2) Assessment shall be provided through a confidential, face-to-face interview.

(3) The assessment shall include a criteria-based evaluation to determine the appropriate level of treatment.

(4) All assessments shall be conducted by qualified credentialed counselors or counselor interns working under appropriate supervision.

(5) Documentation shall include a written summary of the applicant's needs, treatment recommendations, and referrals.

(d) The NMO may also conduct financial assessments for treatment applicants as described in §144.521 of this title (relating to Client Eligibility).

(e) The NMO shall have written procedures that describe screening, assessment, and referral activities.

(f) The procedures shall minimize duplication between the NMO and treatment providers, especially in the area of assessments. Any activity completed by the NMO does not need to be repeated or duplicated by the treatment program.

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

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Chapter 148. Facility Licensure

Subchapter A. Licensure Information

40 TAC §§148.3, 148.4, 148.21, 148.23-148.27, 148.41, 148.61

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.3, 148.4, 148.21, 148.23-148.27, 148.41 and 148.61 concerning Licensure Information. Sections 148.41 and 148.61 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4788). Sections 148.3, 148.4, 148.21 and 148.23-148.27 are adopted without changes to the proposed text and will not be republished.

These sections describe sites and services, variances, new license application process, changes in status, change in ownership, licensure fees, inactive status and closure, licensure review, sanctions, and definitions of terms used in this chapter.

These amendments are adopted to clarify which chemical dependency treatment programs are required to have a license issued by the commission; to explain what sites may offer what services; to clarify that a provider must be approved as a clinical training institution before designating interns to perform duties; to clarify the variance process; to describe what happens if an applicant fails to provide evidence of compliance within six months; to specify which department within the commission must receive advance notice of proposed changes relevant to a facility's license, invalid licenses, and notices of closure; to clarify that advance written approval is required before a facility moves to a new location; to more fully describe the processes related to inactive status; to require that the licensure certificate must be displayed at each approved site; to clarify that practicing at an unapproved site is subject to the same penalty as practicing without a license; and to number, expand and refine the definitions of terms used and to remove definitions of terms no longer used in this chapter. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from a number of individuals.

Comment received on §148.41: It appears that there has been an attempt to remove the wording of "licensed" sites, yet this one rule refers to "unlicensed" sites and thus continues the confusion over whether sites are licensed.

Response: The word "unlicensed" has been replaced with "unapproved" to be consistent with changes in other sections.

A number of comments were received on §148.61. Definitions:

Comment: The definition of abuse states that abuse may be perpetrated by staff or other clients/participants. Client abuse of other clients is serious and needs attention. However, there is a concern about a client who curses another client and if this needs to be reported as an abuse incident. As the definition reads, every time a client is observed cursing another client an abuse report would be indicated. This could set up a huge reporting overload that may overstress the process.

Response: The commission concurs. This language has been removed from the definition.

Comment: We strongly oppose the expansion of the definition of aftercare. This change mandates TCADA facility licensure if two or more hours of service are provided. This has the potential to dramatically negatively impact successful outcomes by decreasing duration and scope of aftercare services. TCADA funded programs may in many cases be able to bill for outpatient services, however, unfunded programs may not. Our concern is that, rather than incurring the additional cost of TCADA licensure, some facilities may simply decrease or stop providing aftercare services.

Response: The commission disagrees. If the program is providing two or more hours of treatment services per week, it is providing treatment and should be licensed. The wording has been revised to indicate that this does not apply to non-treatment activities.

Comment: I am concerned that the proposed definition of direct supervision does not address the practicum student.

Response: The definition has been revised to include practicum students.

Comment: The definition of direct supervision is incomplete. There is no provision to document supervision of a CI with over 4,000 hours who has not tested.

Response: Individuals who have completed their 4,000 hours are not interns, they are graduates. Direct supervision is not required for graduates.

Comment: The tiered approach to clinical supervision outlined in this proposed definition/rule is a positive change and we are in favor of the change. However, it would seem more appropriate to address this is in the body of the rules rather than in the definitions.

Response: The term is used often enough that the requirements would have to be repeated in various sections of the rules. When the rules are published, defined terms will be bolded to alert readers that there is a specific definition.

Comment: There are separate and mutually exclusive criteria for substance abuse and substance dependence in the DSM-IV, yet the commission's definition of chemical dependency includes both. It would be advisable to separate your definitions to be in sync with the DSM-IV criteria.

Response: For clinical purposes, the commission distinguishes between substance abuse and substance dependence in accordance with the DSM-IV criteria. However, state statute dictates the definition of chemical dependency when used in the legal context (such as identifying a "chemical dependency treatment facility").

Comment: A common use of "dually diagnosed" in the behavioral sciences can refer to persons with diagnoses of mental illness, substance abuse/substance dependence, and/or mental retardation. Commonly used also is the term "multiply diagnosed".

Response: The commission has defined dually diagnosed based on its usage in the rules.

Comment: The definitions of aftercare and residential site are confusing. Aftercare is provided after discharge from a treatment facility, but the residential site definitions suggest that aftercare is an element of treatment.

Response: The definition of residential site has been revised to include aftercare.

Comment: The definition of family should be expanded to include family members of adolescents who do not live in the home but are in the treatment area.

Response: All family members are included in this definition, regardless of location. The phrase "who perform the roles and functions of family members in the lives of client's participants" relates only to "significant others". Language has been clarified.

Comment: The definition of neglect does not have a proposed change. However, clarification is needed on the issue of providing prescription medication for a client who becomes ill. We cannot use TCADA funds to pay for medication. If we don't provide it are we in a neglect situation and liable? If we cannot access an outside source are you requiring us to commit neglect? Remember most treatment centers are non-profit agencies with limited other resources. Give us some leeway for exceptional or emergency situations. Some social service agencies are actually not open at night or on weekends to get assistance from when needed.

Response: If a client becomes ill, the provider should take (and document) all reasonable and necessary steps to obtain appropriate care. Commission funds can be used to purchase medication if other resources are not available. The provider is not guilty of neglect if all reasonable and necessary steps were taken to obtain appropriate care for the client, even if the efforts are unsuccessful.

These amendments are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.41. Sanctions.

(a) The commission shall deny, suspend, revoke, or refuse to renew a license, or place on probation a facility whose license has been suspended, or reprimand a facility if an applicant, licensee, owner, member of the governing body, administrator, or clinical staff member of the facility:

(1) has a documented history of client abuse or neglect; or

(2) violates any provision of the Act or other applicable statute, or a commission rule.

(b) The commission will determine the length of the probation or suspension. The commission may hold a hearing at any time and revoke the probation or suspension.

(c) The commission may impose an administrative penalty against a facility regulated under the Act who violates authorizing statutes, or a rule or order adopted under the statutes.

(d) A facility practicing without a license or practicing at an unapproved site is subject to a civil penalty of not more than $25,000 for each violation of the Act or these rules. Each day a violation continues or occurs is a separate violation.

(e) Surrender or expiration of a license does not interrupt an investigation or sanctions process. The facility is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved.

(f) A facility whose license has been revoked is not eligible to apply for licensure until two years have passed since that date of revocation.

§148.61. Definitions.

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

(1) Abuse - Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client abuse includes:

(A) any sexual activity between facility personnel and a client;

(B) corporal punishment;

(C) nutritional or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client;

(F) restraint that does not conform with these rules;

(G) coercive or restrictive actions taken in response to the patient's request for discharge or refusal of medication or treatment that are illegal or not justified by the patient's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) Act - Texas Health and Safety Code, Chapter 464.

(3) Admission - Formal documented acceptance of a prospective client to a treatment facility, based on specifically defined criteria.

(4) Adolescent - An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(5) Adult - An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(6) Advanced practice nurse - A registered nurse currently licensed in Texas who is prepared for advanced practice and approved by the Texas State Board of Nurse Examiners.

(7) Aftercare - Structured services provided after discharge from a treatment facility which are designed to strengthen and support the client's recovery and prevent relapse. Aftercare may be provided by the facility directly or through a letter of agreement with another provider. If the program provides two or more hours of chemical dependency counseling, chemical dependency education, and/or life skills training per week, it must be licensed as an outpatient program.

(8) Applicant (licensure) - A person who has submitted a complete application to the commission for licensure, relicensure, or change in status, and paid the application fee.

(9) Approval - Written authorization.

(10) Assessment (treatment) - The process used to interpret information from the psychosocial history to identify the participant's strengths, problems, and needs in order to develop an appropriate plan for treatment.

(11) Case management - A systematic process to ensure clients receive all substance abuse, physical health, mental health, social, and other services needed to resolve identified problems and needs. Case management activities are provided by an accountable staff person and include:

(A) linking a client with needed services;

(B) helping a client develop skills to use basic community resources and services; and

(C) monitoring and coordinating the services received by a client.

(12) Chemical dependency - Substance abuse and substance dependence as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(13) Chemical dependency counseling - Face-to-face interactions in which a counselor helps an individual, family or group identify, understand, and resolve issues and problems related to chemical dependency.

(14) Chemical dependency counselor - A qualified credentialed counselor or counselor intern.

(15) Chemical dependency education - A planned, structured presentation of information training, provided by qualified staff (not clients), which is related to chemical dependency. It includes but is not limited to: physiological and psychological effects, emotional and social deterioration, rehabilitation and relapse, and risk of acquiring Human Immunodeficiency Virus.

(16) Chemical dependency treatment - A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(17) Chief executive officer - The individual authorized by the governing body to act on its behalf in the overall administration of the facility.

(18) Child - An individual under the age of 13.

(19) Child abuse and neglect - Any act or omission that constitutes abuse or neglect of a child by a person responsible for a child's care, custody, or welfare as defined in the Texas Family Code §261.001.

(20) Client - An individual who has been admitted to a chemical dependency treatment facility licensed by the commission and is currently receiving services.

(21) Clinical training institution - An individual or legal entity approved by the commission to provide a counselor training program in which counselor interns obtain supervised work experience.

(22) Commission - The Texas Commission on Alcohol and Drug Abuse.

(23) Confidentiality laws - Federal law (42 United States Code, §290 dd-2) and state law (Texas Health and Safety Code, Chapter 611) and regulations adopted pursuant to these statutes.

(24) Consenter - The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients under 16 years of age admitting themselves for chemical dependency counseling under the provisions of the Texas Family Code, §32.004.

(25) Consultant - An individual who is not an employee who provides professional advice or services to the facility for compensation.

(26) Counselor - See chemical dependency counselor.

(27) Counselor intern (CI) - A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor.

(28) Direct care staff - Staff responsible for providing treatment, care, supervision, or other client services that involve a significant amount of face-to-face contact.

(29) Direct supervision - Oversight and direction of a counselor intern provided by a qualified credentialed counselor (QCC). If the intern has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern is providing services. If the intern has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone. The qualified credentialed counselor shall:

(A) assume responsibility for the actions of the intern within the scope of the intern's clinical training;

(B) be available for assistance;

(C) conduct and document a complete review of the intern's current written work at least weekly during the practicum and the first 1000 hours of supervised work experience, monthly during the second 1000 hours, and quarterly during the final 2000 hours;

(D) complete and document a session to observe the intern providing services to chemical dependency clients at least weekly during the practicum, every two weeks during the first 1000 hours of supervised work experience, monthly during the second 1000 hours, and as deemed necessary during the final 2000 hours; and

(E) meet with the intern (in a group or individual session) at least one hour each week to provide written and verbal feedback and direction; and

(F) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(30) Discharge - Formal, documented termination from a treatment facility. Discharge occurs when a client successfully completes treatment goals, leaves against professional advice, or is terminated for other reasons.

(31) DSM-IV - The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Revised, published by the American Psychiatric Association. Any reference to DSM-IV is understood to mean the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(32) Dually diagnosed - Diagnosed with co-occurring psychiatric and substance abuse disorders.

(33) Education - See chemical dependency education.

(34) Employee - An individual hired directly by the facility to provide services in exchange for money or other compensation, as determined under the usual common law rules. An employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done.

(35) Ensure - Take all reasonable and necessary steps to achieve results.

(36) Experience - Direct participation in a similar job activity supervised by a qualified individual.

(37) Exploitation - An act or process to use, either directly or indirectly, the labor or resources of a client for monetary or personal benefit, profit or gain of another individual or organization.

(38) Extension services - Services provided by a licensed facility at a registered site that is not owned, leased, or operated by the licensed facility.

(39) Family - The children, parents, brothers, sisters, other relatives, foster parents, or guardians of clients, or significant others who perform the roles and functions of family members in the lives of clients/participants.

(40) FTE - Full Time Equivalent staff position requiring 40 hours per week.

(41) Facility - A legal entity with a single governing body, a single administration, and a single staff that provides chemical dependency treatment.

(42) Governing body - The individual or individuals legally established to operate a facility. The governing body has ultimate legal authority and responsibility for the facility's finances, services and operations.

(43) HIV - Human Immunodeficiency Virus infection.

(44) Immediate supervision - Being physically present while a task is being performed.

(45) Individual service day - A day on which a specific client receives services.

(46) Intake - The administrative process for gathering information about a prospective client and giving a prospective client

information about the treatment facility and the facility's treatment and services.

(47) Intervention and assessment service - A service that offers assessment, counseling, evaluation, treatment intervention, or referral services or makes treatment recommendations to an individual with respect to chemical dependency.

(48) License - A grant of authority to a facility to provide chemical dependency treatment in the State of Texas, which is issued by the commission under the Act.

(49) Licensed chemical dependency counselor (LCDC) - A counselor licensed by the Texas Commission on Alcohol and Drug Abuse.

(50) Licensed dietitian - An individual who is currently licensed or provisionally licensed by the Texas State Board of Examiners of Dietitians.

(51) Licensed health professional - A physician, physician assistant, advance practice nurse, registered nurse, or licensed vocational nurse as defined in these rules.

(52) Licensed marriage and family therapist (LMFT) - An individual who is currently licensed as a marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists.

(53) Licensed master social worker (LMSW) - An individual who is licensed as a master social worker by the Texas State Board of Social Work Examiners.

(54) Licensed professional counselor (LPC) - An individual licensed as a professional counselor by the Texas State Board of Examiners of Professional Counselors.

(55) Licensed psychological associate - A person licensed as a psychological associate by the Texas State Board of Examiners of Psychologists.

(56) Licensed vocational nurse (LVN) - A nurse licensed by the Texas State Board of Vocational Nurse Examiners.

(57) Life skills training- A formalized program of training provided by qualified staff (not clients), based upon a written curriculum, to help clients manage daily responsibilities effectively and become gainfully employed. It may include instruction in communication and social interaction, stress management, problem solving, daily living, and decision making.

(58) Mechanical restraint - Use of a physical device to control or restrict a person's physical movement or actions.

(59) Medical emergency - A medical condition with acute symptoms of sufficient severity that a prudent layperson could reasonably expect the absence of immediate medical attention to result in death or serious harm.

(60) Medication error - Medication not given according to the written order by the prescribing professional or as recommended on the medication label. Includes duplicate doses, missed doses, and doses of the wrong amount or drug.

(61) Mental health referral service - See Qualified Mental Health Referral Service.

(62) Neglect - Actions resulting from inattention, disregard, carelessness, ignoring or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client. Examples of neglect include, but are not limited to:

(A) failure to provide adequate nutrition, clothing, or health care;

(B) failure to provide a safe environment free from abuse;

(C) failure to maintain adequate numbers of appropriately trained staff;

(D) failure to establish or carry out an appropriate individualized treatment plan; and

(E) any other act or omission classified as neglect by the Texas Family Code, §261.001.

(63) Offer - To make available.

(64) On call - Immediately available for telephone consultation.

(65) On duty - Scheduled and present at the site to perform job duties.

(66) Orders (written, verbal, or telephone) - Direct communication between a physician and licensed program staff in which the physician directs specific treatments.

(67) Person - An individual, firm, partnership, corporation, association, or other business or professional entity.

(68) Personal restraint - Physical contact to control or restrict a person's physical movement or actions.

(69) Personnel - Members of the governing body, employees, contract providers, consultants, agents, representatives, volunteers, and other individuals working on behalf of the facility through a formal or informal agreement.

(70) Physician - A physician licensed by the Texas State Board of Medical Examiners, or a physician employed by any agency of the United States who has a license in any other state of the United States.

(71) Physician assistant - An individual registered as a physician assistant by the Texas State Board of Medical Examiners.

(72) Policy - A statement of direction or guiding principle issued by the governing body.

(73) Practicum - A 300 hour course of structured clinical training in the 12 core functions required for chemical dependency counselor licensure.

(74) Private practice - Unless otherwise defined by a licensing board, an individual's professional counseling practice in which the individual:

(A) provides all treatment services personally;

(B) does not report to a supervisor or utilize subordinate counseling staff;

(C) is a licensed chemical dependency counselor or exempt from licensure.

(75) Procedure - A step-by-step set of instructions.

(76) Program - A specific level of chemical dependency treatment delivered to a defined client population.

(77) Program director - The individual who manages a chemical dependency treatment program.

(78) Provide - To perform or deliver.

(79) Psychiatric emergency - Symptoms requiring immediate psychiatric attention.

(80) Psychologist - An individual licensed as a psychologist by the Texas State Board of Examiners of Psychologists.

(81) Qualified credentialed counselor (QCC) - A licensed chemical dependency counselor or one of the professionals listed below:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(82) Qualified mental health referral service - A service that does not provide treatment directly but instead refers clients in need of chemical dependency treatment to qualified providers. A mental health referral service shall meet the statutory requirements of Texas Health and Safety Code, §164.007.

(83) Refer - Identify appropriate services and provide information and assistance needed to access them.

(84) Registered nurse (RN) - A professional nurse licensed by the Texas State Board of Nurse Examiners.

(85) Religious organization - A church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax by being listed as an exempt organization under the Internal Revenue Code (26 United States Code), Section 501(a).

(86) Residential site - A site owned, leased, or operated by the facility where clients who are receiving chemical dependency treatment stay in a structured, supervised, 24-hour living environment, including aftercare.

(87) Retaliate - Adverse actions taken to punish or discourage a person who reports a violation or cooperates with an investigation, inspection, or proceeding. Such actions include but are not limited to suspension or termination of employment, demotion, discharge, transfer, discipline, restriction of privileges, harassment, and discrimination.

(88) Seclusion - The placement of a client alone in a room from which exit is prevented.

(89) Service day - A day during which the program provides scheduled services to any client.

(90) Sexual exploitation - A pattern, practice, or scheme of conduct that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

(91) Site - A single identifiable location owned, leased, or controlled by a facility where any element of chemical dependency treatment is offered or provided, including aftercare.

(92) Small family living environment - A single apartment unit, house, or similar residence designed for an average size family, with no more than four bedrooms.

(93) Solicit - To contact a person for the purpose of inducing the person, directly or indirectly, to enter treatment or make a referral.

(94) Special treatment procedures - Personal restraint, mechanical restraint, and seclusion.

(95) Staff - Individuals employed by the facility to provide services for the facility in exchange for money or other compensation.

(96) Support services - Services designed to provide individuals with a stable living environment, such as meals, shelter, and access to peer support groups.

(97) Treatment - See chemical dependency treatment.

(98) Treatment intervention - A meeting designed to persuade a chemically dependent individual to enter treatment.

(99) Treatment level - The intensity of treatment provided by a program.

(100) Treatment protocol - Instructions for the delivery of treatment services to groups of clients by non-licensed and licensed staff.

(101) Unethical conduct - Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

(102) Unprofessional conduct - An act or omission that violates commonly accepted standards of behavior for individuals or organizations.

(103) Volunteer - An individual who provides services for the facility without compensation. Unpaid students are volunteers.

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

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Mark Smock
Deputy for Finance and Administration
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Subchapter B. Facility Management

40 TAC §§148.71-148.74, 148.113, 148.116, 148.117, 148.119

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.71-148.74, 148.113, 148.116, 148.117 and 148.119 concerning Facility Management. Sections 148.74, 148.116 and 148.119 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the

Texas Register (24 TexReg 4794). Sections 148.71-148.73, 148.113, and 148.117 are adopted without changes to the proposed text and will not be republished.

These sections contain information on: the governing body; chief executive officer; policies, procedures and licensure rules; standards of conduct; initial training; personnel files and training records; basic staffing requirements; and clinical training institutions.

These amendments are adopted to change the term executive director to chief executive officer; to require timely correction of identified deficiencies; to specify the requirements for and duties of a chief executive officer; to clarify the requirements related to policies, procedures and licensure rules; to make it clear that client abuse, neglect and exploitation are considered an unprofessional and unethical act; to add to the standards of conduct the requirement that facility personnel shall not have an intentional personal or business relationship with a client until at least two years after the client's discharge; to require facilities to have written policies that comply with the commission's rules on standards of conduct; to require that initial training must be completed within seven days of hire; to specify under what circumstances video, manual or computer-based training are acceptable; to specify requirements for documentation of initial staff training; to clarify the requirements for personnel files and training records; to clarify basic staffing requirements for various duties; to add to the section on basic staffing requirements the rule that former clients shall not be hired until at least two years after discharge from active treatment; to clarify that counselor interns may only be used in facilities registered as clinical training institutions; and to update references. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and individuals.

Comment received on §148.73: The inconsistent and frequent nature of the TCADA rule changes makes it very difficult to ensure compliance with Commission rules. This is primarily due to the difficulty in determining which set of TCADA rules is the most current. We suggest that TCADA needs to establish a standard time frame for review and/or revision of their rules. Perhaps no more often than every two to three years, unless there is a new statutory mandate which needs to be addressed.

Response: The commission reviews rules on an annual basis. On occasion it has been necessary to make minor revisions during the year to accommodate a pressing need.

Two comments were received regarding §148.74:

Comment: A provision has been added to the standards of conduct prohibiting facility personnel from entering into a personal or business relationship with a client until at least two years after the client's discharge. What guided the decision for a timeframe of two years? What is the impetus behind applying the prohibition to all facility personnel? Counselors are guided by their own licensure rules and ethics on these matters. This rule is very broad and thus problematic in its potential interpretation and application. In many situations staff will not know that someone they enter into a relationship with was once a client. Another area of concern is what constitutes a business relationship. If a person is employed by a treatment center and also has an interest in a local retail shop, can the person sell merchandise to a former client? We would encourage the timeframe be reduced and more clarity be added to the range of activities that would be considered a violation.

Response: Ethical codes for counseling professionals prohibit inappropriate relationships, but do not define them. The commission's experience with complaints and investigations indicates that inappropriate relationships with clients are widespread in the chemical dependency field, indicating a need for clearer guidance. The two-year time frame was based on the industry standard that extends the counselor-client relationship for two years after discharge. The standard is being applied to all facility personnel because experience shows potentially harmful relationships often involve non-credentialed staff, including interns and administrators. The commission acknowledges that the proposed rule is broadly worded and subject to interpretation, but such language is often necessary to accomplish the purpose of a rule. We have revised the text to add "intentional" to address the fact that staff may not know they are in a relationship with a former client. This rule does not preclude general business transactions that do not involve establishing a relationship with client, such as the one described.

Comment: Can providers hire clients to help around the facility (i.e. cleaning administrative offices)? If it is a total prohibition just say so.

Response: No. The rule has been revised to make this clear.

Comment regarding §148.116: Elimination of supervisory documentation of competency lessens an important standard of quality control in a facility setting.

Response: The commission will retain this requirement.

The following two comments were received regarding §148.117.

Comment: This section should state that former clients cannot be hired until two years after leaving any of the facility's programs, including aftercare.

Response: Language has been added to parallel §148.163, which states that former clients are not eligible for employment until at least two years after documented discharge from active treatment. The commission believes two years is an adequate time of separation, even if it includes a period of aftercare. Furthermore, the rules do not require documentation for aftercare, so the expanded prohibition suggested could not be implemented feasibly.

Comment: Paragraph (c) states that chemical dependency education shall be taught by chemical dependency counselors or people who have the specialized education, expertise, and/or experience needed to teach the material. Paragraph (f) says that counselors shall not provide counseling on trauma, abuse, or sexual issues unless they are licensed and have specialized education/training and supervised experience in the subject. These statements are way too vague. Provide us with a consultant-approved outline of what you want in the way of course content. Better yet develop a course and provide it to us for use. This would seem like a given function of a state agency to provide contractors. If you want a high degree of specialized training as a part of the contract you should at least assist us in obtaining the materials.

Response: These sections are worded to allow providers to determine what is appropriate in their own programs. The commission does not dictate the content of client education and

therefore cannot dictate specific qualifications for the instructors. Paragraph (f) specifically states that the provider can define (in writing) what training is appropriate. This provision should not be interpreted to say that the commission requires programs to provide counseling focused on trauma, abuse, or sexual issues. These topics are extremely sensitive and require considerable expertise that most LCDCs do not have. If the program decides to provide such counseling, it must take responsibility for determining whether the person doing the counseling has sufficient knowledge and skills.

These amendments are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Chapter 464.

§148.74. Standards of Conduct.

(a) The facility and all of its personnel shall:

(1) protect the health, safety, rights, and welfare of clients;

(2) provide adequate services as described in the program description;

(3) comply with all applicable laws, regulations, policies, and procedures;

(4) maintain required licenses, permits, and credentials; and

(5) comply with professional and ethical codes of conduct.

(b) Neither the facility nor any of its personnel shall:

(1) commit an illegal, unprofessional or unethical act (including client abuse, neglect, or exploitation);

(2) assist or knowingly allow another person to commit an illegal, unprofessional, or unethical act;

(3) knowingly provide false or misleading information;

(4) omit significant information from required reports and records or interfere with their preservation;

(5) retaliate against anyone who reports a violation or cooperates during a review, inspection, investigation, hearing, or other related activity; or

(6) interfere with commission reviews, inspections, investigations, hearings, or related activities. This includes taking action to discourage or prevent someone else from cooperating with the activity.

(c) Facility personnel shall report violations of laws, rules, and professional and ethical codes of conduct to the commission.

(d) The facility and its personnel shall not enter into an intentional personal or business relationship with a person who receives services from the facility until at least two years after the service recipient's discharge.

(e) The facility shall have written policies on staff conduct and reporting procedures that comply with this section.

§148.116. Personnel Files and Training Records.

(a) The facility shall ensure that staff are qualified, trained, and supervised to perform assigned duties.

(b) The facility shall maintain current personnel documentation on each employee. Training records and supervision records may be stored separately from the main personnel file, but shall be easily accessible upon request. Required documentation includes, if applicable:

(1) job description;

(2) application or resume;

(3) documentation that the facility has direct verification from the credentialing authority (by telephone or letter) that required credentials are current at the time of employment and maintained throughout employment;

(4) documentation of appropriate screening and required background checks;

(5) signed documentation of required training (initial and annual);

(6) documentation of other training the employee has completed;

(7) written supervisory approval to provide treatment services independently;

(8) records of direct supervision for all counselor interns;

(9) annual performance evaluations; and

(10) records of any disciplinary actions.

(c) Documentation of external training for individual staff members shall include:

(1) date;

(2) number of hours;

(3) topic;

(4) instructor's name; and

(5) signature of the instructor (or equivalent verification).

(d) The facility shall maintain documentation of all internal training.

(1) For each topic, the file shall include an outline of the contents and the name, credentials, and relevant qualifications of the person providing the training.

(2) For each group training session, the facility shall maintain on file a dated participant sign-in sheet.

(3) When internal training is delivered to only one or two individuals at a time, the individual's dated certificate of completion may substitute for the participant sign-in sheet.

(e) Personnel files shall be kept for at least two years after the individual stops working at the facility. Documentation of training required in §148.118 of this title (relating to Training Requirements Relating to Abuse, Neglect, Professional or Unethical Conduct) must be kept for at least five years.

§148.119. Clinical Training Institutions.

A facility shall not use a counselor intern for performing counseling, assessments, or treatment interventions unless the facility is registered with the commission as a clinical training institution as required in Chapter 150 of this title (relating to Counselor Licensure).

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

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Mark Smock
Deputy for Finance and Administration
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40 TAC §148.112

The Texas Commission on Alcohol and Drug Abuse adopts an amendment to §148.112 concerning Facility Management. The amendment is adopted without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4796) and will not be republished.

This section contains information on hiring practices.

The amendment is adopted to direct that the facility must obtain the results of a statewide criminal background check done on all staff who have access to adolescents or children.

No comments were received regarding adoption of this amendment.

This amendment is adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by this amendment is the Texas Health and Safety Code, Chapter 464.

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

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40 TAC §148.114

The Texas Commission on Alcohol and Drug Abuse adopts an amendment to §148.114 concerning Facility Management. The amendment is adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4796).

This section contains information on special training requirements.

This amendment is adopted to allow a facility to accept documented training from another organization during the year prior to employment if it meets commission requirements; to require a minimum number of hours of face-to-face training in issues related to abuse, neglect, exploitation, illegal, unprofessional and unethical conduct for all staff who have any client contact; to set standards for required, face-to-face training related to tuberculosis, HIV, Hepatitis C and other sexually transmitted diseases for all direct care staff; to require that direct care employees have their current certification in CPR within 90 days of hire and to specify that staff in programs that serve women with their dependent children must have certification in both adult and child/infant CPR; to specify the requirements for nonviolent crisis intervention training, training in special treatment procedures, training for staff who conduct intakes or assess applicants for admission, detoxification training, training of staff who supervise self-administration of medication, and staff training requirements in adolescent programs; and to state the conditions under which video, manual or computer-based training are acceptable. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from a number of individuals.

Comment: We strongly support allowing the use of video/computer based training. This provides flexibility and should make it easier to stay in compliance.

Comment: The rule states that training for intake staff must include information to help staff recognize possible unmet mental health needs. This puts providers in position for liability if they are not able to recognize such an unmet need and a client then kills himself.

Response: The commission disagrees with this comment. A provider is always at some risk for liability in the case of a client death. The risk increases if the provider cannot show that reasonable and necessary steps were taken to recognize and respond to warning signs. Providers are required to assess clients prior to admission to determine whether or not they meet admission criteria and are appropriate for admission. Training admission staff how to recognize unmet mental health needs shows the provider made some effort to avoid such an incident. The intent of this rule, however, is broader than screening for risk to self and/or others. It is also designed to facilitate appropriate referrals for clients with other mental health needs: depression, anxiety, thought disorders, etc.

Comment: What is the distinction between "training" and "in-service training".

Response: These terms have been replaced with the terms "external training" and "internal training" to clarify the difference.

Comment: For non-violent crisis intervention training, the rule states that the instructor must be certified or have equivalent experience. What is considered equivalent experience? Can one of our employees with extensive inpatient psychiatric experience be qualified to provide the training? We have been unable to find a certified instructor who will do just two hours of training for us. There is a shortage of qualified instructors to do just the basic training. Since the four hour training costs $50 per employee, a two-hour refresher course could cost $25 per employee.

Response: The provider is responsible for determining equivalent experience. Factors to consider might include years of experience in high-risk settings, past training, and special research on the topic. An individual with extensive inpatient psychiatric experience who had received regular crisis intervention training would probably be qualified to conduct the training, particularly with additional research. We have also modified the new requirement to state that refresher courses may be taught by individuals with recognized knowledge and experience in cri-

sis intervention. This should allow many providers to meet this requirement through in-internal training.

Comment: In the past, the rule required annual training for staff in adolescent programs. That has been changed to eight hours. The intent must be balanced with the cost. Eight hours often requires more than one session, which is more difficult to monitor to ensure that everybody gets the required hours.

Response: This is a critical population that is very challenging to serve. We believe the importance of this issue merits the proposed hours. To help relieve the burden on facilities, we have also proposed revisions to allow use of alternate training modalities such as videos and manual-based instruction.

Comment: This whole section needs to be reviewed. Except for large multi-provider agencies that can draw on a large cross section of trainers these requirements are becoming increasingly expensive. At some point TCADA needs to use its in house or contractual consultants to recommend programs we can purchase, or actually provide to us training programs we can present that meet these requirements. Otherwise TCADA needs to expand the training provided through the HIV Connection or the Leadership program to provide the training in all areas in a manner to meet the TCADA time requirements.

Response: The commission acknowledges that training requires a significant investment of time and money. However, we believe all of the required training is necessary. To ease the burden, new provisions have been added which allow providers to use video, manual, or computer based training for many courses. Also, the eight hours of required adolescent training will be provided through the regional leadership trainings. We will also try to identify other resources to help providers meet these requirements.

Comment: The requirement for eight hours of training annually for staff who conduct intakes or assess applicants for admission is arbitrary, excessive and professionally indefensible. We hire an LCDC or other QCC for their credentials and professional experience. The facility should determine the length of time and the Clinical or Executive Director certifies the staff person is properly licensed and knows agency procedures.

Response: Eight hours of training annually is required by law.

Comment: Clarification is needed on how often during the eight-hour training should the instructor be present for discussion; i.e., every hour, or after each module of training. Must they stay for videotapes?

Response: This is a general provision that applies to all trainings. The language allows the instructor to determine when the face-to-face session(s) is appropriate. The instructor does not need to be present for videotapes.

Comment: Adolescent training should include normal adolescent development, dual diagnoses specific to adolescent population, how to engage the adolescent client in treatment, and how to avoid power struggles with the adolescent client.

Response: The commission agrees. We believe these issues are encompassed in the more general topics listed.

Comment: Please clarify the number of hours for abuse training in outpatient programs. The information is contradictory.

Response: Additional language has been added to clarify this issue.

This amendment is adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by this amendment is the Texas Health and Safety Code, Chapter 464.

§148.114. Special Training Requirements.

(a) The facility shall ensure that staff are adequately trained and competent to perform job duties.

(b) The facility may accept documented training from another organization completed during the year prior to employment if it meets commission requirements.

(c) The facility shall provide face-to-face training in issues relating to abuse, neglect, exploitation, illegal, unprofessional, and unethical conduct to all staff who have any client contact.

(1) This training shall comply with the interagency memorandum of understanding on abuse training (see §148.118 of this title relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct).

(2) Crisis intervention training and other training related to improving client care may be included in the required hours.

(3) Full time staff in residential programs must receive at least eight hours every year, and full time staff in outpatient programs must receive at least two hours every year. (The hours for staff of outpatient programs is less because the interagency memorandum of understanding on abuse training does not apply to outpatient programs.) Hours of training for part time staff may be determined by the facility based on the number of hours worked and the amount of direct client contact.

(d) All direct care staff shall complete two hours of face-to-face training related to tuberculosis, HIV, Hepatitis C, and other sexually transmitted diseases during the first 90 days of employment.

(1) The training must be based on the Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(2) Staff shall receive an update with current information every two years.

(e) All direct care employees in residential programs shall have current certification in CPR within 90 days of hire.

(1) Personnel in licensed medical facilities are exempt if emergency resuscitation equipment and trained response teams are available 24 hours a day.

(2) Licensed medical physicians, registered nurses, licensed vocational nurses, physician assistants, and advanced practice nurses are also exempt.

(3) Staff working in programs that serve women with their dependent children must have certification in adult and child/infant CPR.

(f) All direct care employees shall have at least four hours of face-to-face training in nonviolent crisis intervention during the first 90 days of employment.

(1) The instructor shall have successfully completed a course for crisis intervention instructors or have equivalent training and experience.

(2) The training shall teach employees how to use verbal and other non-physical methods for prevention, early intervention, and crisis management.

(3) Staff must receive an additional two hours of nonviolent crisis intervention in every subsequent year. These hours may be taught by an individual with knowledge and experience in crisis intervention.

(g) All direct care employees working in programs that use special treatment procedures shall have face-to-face training and competency in the safe methods of the specific procedures used within 90 days of hire. This includes all direct care staff working in adolescent programs, detoxification programs, or programs that accept emergency detentions. The training must last approximately four hours and must include hands-on practice under the supervision of a qualified instructor. It is required one time only.

(h) Each employee who conducts intakes or assesses applicants for admission shall complete eight hours of training in the program's intake and admission determination procedures annually.

(1) The first eight hours must be completed during the first 90 days of employment, and an employee shall not conduct intakes or assess applicants for admission unless training is complete and current.

(2) The training shall cover the DSM-IV diagnostic criteria for substance-related disorders, and shall also include information to help staff recognize possible unmet mental health needs and provide appropriate referrals for further mental health assessment and follow-up.

(i) All direct care employees working in detoxification programs shall complete detoxification training during the first 90 days of employment. The training is required one time only and shall:

(1) be provided by a physician, physician assistant, advanced practice nurse, or registered nurse with at least one year of documented experience in detoxification;

(2) include:

(A) signs of withdrawal;

(B) pregnancy-related complications (if the program admits females of child-bearing age);

(C) observation and monitoring procedures;

(D) appropriate intervention;

(E) complications requiring transfer; and

(F) frequently-used medications, including purpose and precautions.

(j) All programs that admit females of child-bearing age shall have at least one staff person with documented knowledge of pregnant substance-abusing females and their care. When a pregnant female is admitted, all members of the treatment team shall receive information needed to provide appropriate care.

(k) All employees responsible for supervising clients in self-administration of medication who are not credentialed to administer medication shall complete at least two hours of documented training from a physician, pharmacist, physician assistant, or registered nurse before performing this task. The training is required one time and must be completed during the first 90 days of employment. It shall include:

(1) prescription labels;

(2) medical abbreviations;

(3) routes of administration;

(4) use of drug reference materials;

(5) storage, maintenance, handling, and destruction of medication;

(6) documentation requirements; and

(7) procedures for medication errors, adverse reactions, and side effects.

(l) All supervisory and direct care staff working in adolescent programs shall receive at least eight hours of specialized education or training in adolescent health and development each year. The training shall include:

(1) psychosocial stages of adolescent development;

(2) physical growth and development;

(3) adolescent culture;

(4) communicable diseases;

(5) mental health;

(6) substance abuse and dependency in adolescents; and

(7) family systems.

(m) Unless otherwise specified, video, manual, or computer-based training is acceptable if the supervisor discusses the material with the employee in a face-to-face session to highlight key issues and answer questions.

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 August 11, 1999.

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Subchapter C. Client Management

40 TAC §§148.141, 148.143, 148.161-148.164, 148.171-148.173, 148.181, 148.183, 148.185

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.141, 148.143, 148.161-148.163, 148.171-148.173, 148.181, 148.183, 148.185 and adopts new §148.164 concerning Client Management. Sections 148.163 and 148.164 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4798). Sections 148.141, 148.143, 148.161, 148.162, 148.171-148.173, 148.181, 148.183 and 148.185 are adopted without changes to the proposed text and will not be republished.

These sections contain information on: required postings; voluntary clients - additional rights; client abuse, neglect, and exploitation; behavior management; client labor; searches;

client record security; general documentation requirements; release of confidential information; significant incident reports; special treatment procedures; and adolescents absent without permission.

These amendments and new section are adopted to clarify that it is the commission's current poster on reporting complaints and violations that must be posted; to specify that required postings must be at each approved site; to clarify the process regarding requests for discharge from voluntary clients under 16 years of age; to replace the term executive director with chief executive officer; to fully describe the process for reporting allegations of client abuse, neglect or exploitation; to specify that the client government process cannot substitute for the client grievance procedure; to mandate that written information about required housekeeping activities and responsibilities be given to the client at the time of admission; to specify that two years must elapse between discharge of a former client and (1) the employment of the former client by the facility, (2) any intentional business relationship between the former client and a facility staff member, and/or (3) the giving of personal gifts to the former client by a staff member; to require a policy on searches and to set parameters for the search process in facilities that choose to allow searches; to add requirements regarding client and applicant record security including location of records, protection of applicant information, and a record of destroyed client records; to clarify the requirement for signatures on documentation; to include applicant information and specific legal citations in the section on release of confidential information; to clarify the requirements regarding significant incident reports; to require all adolescent programs, detoxification programs and programs that accept emergency detentions to authorize the use of personal restraint; to reduce the maximum amount of time personal restraint may be used on a client; and to clarify what programs must have written procedures for use when an adolescent leaves the program without permission. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and individuals.

The following comments are regarding §148.163.

Comment: The proposed rule prohibits a facility from hiring a former client for two years after discharge. What is the rationale behind this requirement and what guided the decision to designate a two-year timeframe? Historically, former clients have often been afforded opportunities to work at the treatment facility, which has allowed them to establish employment histories. Many times these are in maintenance, housekeeping/ kitchen, and other supportive type of positions. Given the drug and alcohol histories many clients have, this opportunity has been important to their community transition. Additionally, it seems there could be some discrimination liability on the part of providers if the person is qualified for the job and is turned down because of being a former client.

Response: The rationale for this rule has several components. First, failure to maintain adequate boundaries between staff and clients is harmful to clients and can jeopardize recovery. When a client becomes a coworker, we believe such boundary violations are almost inevitable. The commission's experience with complaints and investigations indicate that inappropriate relationships with clients are widespread in the chemical dependency field, indicating a need for clearer guidance. Second, the former clients frequently become intimately involved in the recovery issues of new clients, often preventing full resolution of their own issues. This is true even when the former client is employed in a support position, although to a far lesser extent. Conversely, the former client's unresolved personal issues can have a negative impact on active clients. Third, an important step in recovery is establishing an independent support system in the community. Clients who work in the treatment program frequently become dependent on the treatment environment to provide support for their recovery. The commission acknowledges that discharged clients face barriers to employment, and establishing a work history can be very helpful in obtaining future jobs. However, we feel that this benefit is outweighed by the problems described above. The two-year time frame was based on the industry standard that extends the counselor-client relationship for two years after discharge. The liability issue could be addressed by having clients sign a form at the time of admission documenting that they understand that recovery is a long-term process that requires development of an independent support system outside of the treatment environment, and therefore they will not be eligible for employment at the facility for two years after discharge.

The following are comments received regarding §148.164.

Comment: This new section tells providers what kind of search they can make in their privately owned facilities for protection of their own clients. That is micro-management. If you must go into those areas, don't mandate. Look at it from a liability point of view.

Response: The commission has specifically avoided mandating provider policy relating to client searches. The proposed rules consist solely of standards necessary to protect the rights of clients who are subjected to searches. State statute specifically requires the commission to adopt rules protecting the rights of individuals receiving services from a treatment facility. From a liability perspective, these rules could help a provider avoid suits charging violation of client rights. If a person filed charges alleging that the provider should have conducted a more intrusive search to avoid contraband, the rules would provide a defense.

Comment: In an adolescent program, contraband is a big issue, especially in an outpatient program. Local law enforcement officers will not transport a juvenile on a request or on a suspicion. You are requiring us to fail if a local authority over which we have no jurisdiction will not cooperate. Each facility should have a policy on strip searches and the right to enforce it. At the least under this policy TCADA is requiring the provider to deny services to the client (with all the possible legal ramifications) or you are requiring the provider to subject the other clients to a possible abuse and neglect situation.

Response: The commission believes that providers can conduct thorough searches that will detect most contraband without stripping the client. Close supervision will also help maintain a safe environment, particularly in an outpatient program. The language related to strip searches and law enforcement personnel has been removed. However, language requiring the client to be fully clothed during a search has been retained.

Comment: This is a brand new section dealing with client searches. We are generally in support of these rules. However, the documentation requirements are excessive. We rec-

ommend that TCADA keep the base of these rules, but ease off on the documentation requirements.

Response: The commission does not believe that documenting the reason for the search and its results is excessive. We have substituted "reason" for the originally proposed wording, "circumstances prompting".

The following are comments received regarding §148.183.

Comment: The rule states that all adolescent programs, detoxification programs, and programs accepting emergency detentions shall authorize use of personal restraint. Does that mean all adolescent programs? The wording is too vague.

Response: It does mean all adolescent programs.

Comment: The rule essentially mandates the use of specialized treatment procedures in certain settings. This should not be mandated; it should be up to the provider to make this decision. Some providers are philosophically opposed to using physical restraint with clients.

Response: This rule is designed to protect the safety of staff and clients. The commission prohibits the use of physical restraint except when a client is endangering self or others. Clients in adolescent programs, detoxification programs, and programs accepting emergency detention are much more likely to exhibit violent behavior that presents danger to self or others than clients in other settings. In such situations, it is inevitable that staff will physically intervene. If they are not properly trained, the intervention is likely to be ineffective, use unnecessary force, and/or cause injury or pain.

Comment: Is the personal restraint training for adolescent programs to be done once or annually?

Response: The rule refers back to §148.114, which states that the training is required one time only.

These amendments and new section are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by these amendments and new section is the Texas Health and Safety Code, Chapter 464.

§148.163. Client Labor.

(a) Clients can be required to maintain their own living quarters and client activity areas if they are physically able to do so. These housekeeping activities and individual/group responsibilities shall be clearly defined in writing and presented to the client at the time of admission.

(b) The facility shall not hire clients to fill staff positions. Former clients are not eligible for employment at the facility until at least two years after documented discharge from active treatment.

(c) Except for activities permitted in subsection (a) of this section, clients shall be required or allowed to work only when the following conditions are met.

(1) Work responsibilities (and compensation, if applicable) are defined in writing.

(2) Staff explain the work requirements before admission.

(3) The client gives voluntary written consent.

(4) Work does not interfere or conflict with treatment.

(5) Work does not endanger client safety or well-being.

(6) Work does not involve access to client records.

(7) Work arrangements do not violate client confidentiality.

(8) The facility provides appropriate equipment, supplies, instruction, and assistance.

(d) The facility shall not allow clients to solicit donations or raise funds for the facility. This does not prevent clients from participating in small fund-raising activities when the following conditions are met:

(1) the activity is completely voluntary;

(2) the activity is conducted in compliance with confidentiality regulations;

(3) clients have direct control of the funds; and

(4) all proceeds are used for the direct benefit of the clients.

(e) The facility and its staff members shall not enter into an intentional business relationship with any client or give personal gifts to clients until at least two years after documented discharge.

§148.164. Searches.

(a) The facility shall adopt a policy on searches. If searches are allowed, the facility shall adopt a search procedure that ensures the protection of client rights.

(b) Searches may only be conducted to protect the health, safety, and welfare of clients, including detection of drugs and weapons.

(c) Searches must be conducted in a professional manner that maintains respect and dignity for the client. All searches must comply with the following standards.

(1) Staff members performing a personal search must be the same gender as the client.

(2) The client must be allowed to remain fully clothed during a personal search. The client may be required to remove jackets, coats, and extra garments. Staff may use their hands to pat down the client's body to feel for illicit items.

(3) The client must be present when a search is conducted of belongings such as back packs, purses, and luggage.

(4) When searching bedrooms, all clothes, furniture, and personal items must be returned to their original state.

(5) All searches must be witnessed by a second staff person or another individual who is not directly involved in the search.

(6) All searches must be documented in the client record, including the reason for the search, the result of the search, and the signature of the individuals conducting and witnessing the search.

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

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Subchapter D. Program Services

40 TAC §§148.201-148.203, 148.211, 148.231-148.233, 148.236-148.238, 148.252, 148.261-148.268

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.201, 148.202, 148.211, 148.231-148.233, 148.236, 148.252, 148.261-148.268 and adopts new §§148.203, 148.237, and 148.238 concerning Program Services. Sections 148.202, 148.203, 148.211 and 148.231 are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4801). Sections 148.201, 148.232, 148.233, 148.236-148.238, 148.252, and 148.261-268 are adopted without changes to the proposed text and will not be republished.

These sections contain information on: general information; services required in all programs; client transportation; Level I treatment (outpatient or residential detoxification); adolescents; parents and their dependent children; structured therapeutic children's services; extension services; small family living environments; court commitment services; meals in residential programs; general provisions for medication; medication storage; medication inventory; disposing of medication; staff qualifications and training; authorizations for medication; administration of medication; and self-administration of medication.

These amendments and new sections are adopted to add and/or update appropriate references; to ensure that residential programs have procedures that provide for clients to continue prescribed medication after admission; to require that chemical dependency education is based on a course curriculum and that all sessions include opportunities for client participation and discussion; to require programs to provide education about specific communicable diseases; to require clients be referred for other services they need; to mandate that facilities have a written policy regarding the use of facility vehicles and/or staff to transport clients and to set parameters for facilities that choose to use their resources to provide transportation for clients; to clarify and/or add requirements for Level I treatment programs including periodic checks while clients are sleeping, some additional experience and/or training requirements for certain staff, and at least one counseling session to encourage clients to seek appropriate treatment after detoxification; to strengthen the requirements for adolescent treatment programs including family involvement, prohibition of tobacco use by adolescents, and prohibition of tobacco use in the presence of adolescents by staff and other adults; to clarify the requirements for programs for parents and their dependent children and for structured therapeutic children's services provided in connection with their parents' treatment; to specify that extension sites must be registered and approved prior to service provision at the site; to add requirements for small family living environments to this subchapter and to clarify that small family living environments are only for outpatient clients who need temporary living arrangements in order to access services; to consolidate the rules on court commitment services in one place; to specify that residential programs are responsible for the meals of clients who are scheduled to be away from the facility at meal time; and to clarify the requirements regarding medication policies and procedures including inventory, disposal, storage, administration and self-administration as well as training for staff who administer medication. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and a number of individuals.

The following are comments received in response to §148.202.

Comment: We are opposed to requiring licensed (but non-funded) facilities to provide case management services. To require referrals to ancillary services is reasonable, so we recommend that TCADA go back to the original wording of this standard. Response: The commission accepts this comment. The original wording will remain unchanged.

Comment: We are opposed to the new requirement that all programs provide gender-specific services. This requirement in TCADA funded gender specific programs makes sense. We are opposed to this level of micro-management in non-funded programs.

Response: Traditionally, substance abuse treatment programs have been designed to meet the needs of a predominately male population. Studies have shown that these programs do not meet the needs of many women. Gender-specific programs were created in response, but the long-range goal is for all programs to meet the needs of both genders. This standard can be met by simply offering a separate women's group.

The following are the comments received regarding §148.203.

Comments: This is a brand new section dealing with client transportation. We are generally in support of these rules. The commission should not, however, establish the number of moving violations that would preclude someone from providing client transportation. It should be sufficient for a person to have a license if the facility is willing to accept the risk and pay the liability insurance.

Response: The commission concurs and has removed this provision from the rules.

Comment: Drivers under 21 years of age should be allowed if the facility carries the proper insurance.

Response: The commission accepts this comment. The rule has been revised accordingly.

Comment regarding §148.211: Requiring night staff to conduct hourly checks is excessive. This goes beyond what even the federal government requires for prisoners in a community based setting. Requiring three documented checks per night seems reasonable enough and, depending on the configuration of the facility, even this could be redundant. This is micromanagment. It should be up to the facility to determine the time period we need. Also, what does TCADA consider an appropriate "check" on a sleeping client?

Response: The commission believes periodic checks are necessary for security and clinical purposes. Staff should walk through the entire building and look into each bedroom to see that clients are sleeping and/or resting comfortably. Night can be a difficult time for many clients, especially new ones, and it is often necessary for the staff person to spend some time with an upset or anxious client. The rule has been revised to require checks three times per night.

Comment regarding §148.232: Who is to assess the parent-child interaction? Childcare, counselor, or family therapist?

Response: The facility should determine who is most appropriate. When multiple staff are involved with the client, a team staffing might provide the best alternative.

Comment regarding §148.238: The rules for court commitment programs say the program needs to be able to provide an appropriate level of services, but it doesn't mention Level IV services. We are not funded by TCADA to provide Level III, but we are funded to provide Level IV. We are located in a rural area, and judges are often willing to commit clients to our program.

Response: An individual cannot be court committed to treatment unless he or she is a danger to self or others, or is suffering abnormal distress and deteriorating in ability to function independently and is unable to make a rational and informed choice regarding treatment. The commission does not believe such an individual can be safely or effectively treated in an outpatient program that provides only two hours of services per week.

Two comments were received regarding §148.233.

Comment: We need an exact definition of the 90 contact hours of education and training required for the supervisor/consultant. If this is the college courses, such as offered by Lamar University, it is a one or two year program that will cost us $2,000 per staff.

Response: The rule has been written to allow a variety of educational and training experiences to be considered. The only requirement is that the content must address child development and/or early childhood education. College courses are acceptable but not required. A three-hour college course is generally equivalent to 45 contact (or clock) hours of education.

Comment: Is there a specific program we need to access for our childcare workers?

Response: No. The rule simply requires 8 hours of training that addresses the six topics listed.

Comment regarding §148.262: Reference to non-prescription medications has been deleted. If a client has Tylenol, cough syrup, aspirin, creams, etc. that could be a danger to small children. Non-prescription drugs need to be kept where children cannot get to them. This section goes on to say that non-prescription drugs may be kept by the client with written permission from a licensed professional or the Program Director. I personally do not want that responsibility.

Response: The content of the rule has not changed. The term "non-prescription" has been replaced with "over-the-counter", a term more familiar to the general population. The provision about client's maintaining personal possession of over-the-counter medication was added to give providers greater discretion. The language permits authorization for clients to keep their own over-the-counter medication, but does not require it.

Comment regarding §148.267: It would be useful to include a definition of medication error.

Response: Medication errors are defined in §148.61. When the commission publishes the rules for distribution to providers, defined terms are printed in bold to alert readers that the word has a specific definition.

These amendments and new sections are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by these amendments and new sections is the Texas Health and Safety Code, Chapter 464.

§148.202. Services Required In All Programs.

(a) All services shall be delivered according to the written program description referenced in §148.73 of this title (relating to Policies, Procedures, and Licensure Rules). The program shall maintain a service schedule listing services provided and timeframes in which they are provided.

(b) The program shall be culturally appropriate for the population served.

(c) Members of the client's treatment team shall demonstrate effective communication and coordination of efforts and activities.

(d) Every residential program shall adopt medication procedures so that clients can continue taking prescribed medication after admission.

(e) Chemical dependency education shall follow a course curriculum that identifies lecture topics and major points to be discussed. All educational sessions shall include opportunities for client participation and discussion.

(f) The program shall provide education about the health risks of tobacco products and nicotine addiction.

(g) The program shall provide education about tuberculosis, HIV, Hepatitis C, and other sexually transmitted diseases based on the *Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases*.

(h) The provider shall:

(1) provide access to pre-test and post-test counseling and anonymous or confidential HIV testing; and

(2) ensure that testing for the etiologic agent for AIDS is not carried out unless it is accompanied by written consent and counseling that conforms to the model protocol developed by the Texas Department of Health; and

(3) refer HIV positive clients to a provider of HIV early intervention services (when available).

(i) The program shall make testing for tuberculosis and sexually transmitted diseases available to all clients unless the program has access to test results obtained during the past year.

(1) Services may be made available directly or through referral.

(2) If a client tests positive, the program shall refer the client to an appropriate health care provider and take appropriate steps to protect clients and staff.

(j) The program shall refer clients to physical health, mental health, and ancillary services necessary to meet treatment goals and conduct follow-up. Residential programs shall ensure clients have access to appropriate physical and mental health services.

(k) Programs that admit females of child-bearing age shall ensure that at least one staff person has training and/or experience in providing specialized care for substance-abusing pregnant females. In addition, the program shall:

(1) adopt procedures for the care of pregnant clients that is approved by a licensed health care professional;

(2) implement the procedures whenever a pregnant female is admitted;

(3) refer pregnant clients who are not receiving prenatal care to an appropriate health care provider and monitor follow-through; and

(4) provide gender specific services.

(l) Clients in residential programs shall have an opportunity for eight continuous hours of sleep each night.

§148.203. Client Transportation.

(a) The facility shall have a written policy on the use of facility vehicles and/or staff to transport clients.

(b) If the facility allows the use of facility vehicles and/or staff to transport clients, it must adopt transportation procedures which include the following elements:

(1) Any vehicle used to transport a client must have appropriate insurance coverage for business use with a current safety inspection sticker and license.

(2) All vehicles used to transport clients must be maintained in safe driving condition.

(3) Drivers must have a valid driver's license.

(4) Drivers and passengers must wear seatbelts at all times the vehicle is in operation.

(5) A vehicle shall not be used to transport more passengers than designated by the manufacturer.

(6) Drivers shall not use cellular phones while driving.

(7) Use of tobacco products shall not be allowed in the vehicle.

(8) Every vehicle used for client transportation shall have a fully stocked first aid kit and A:B:C fire extinguisher that are easily accessible.

§148.211. Level I Treatment (Outpatient or Residential Detoxification).

(a) Every client shall have a medical history and physical as required in §148.291 of this title (relating to Detoxification History and Assessment).

(b) The program shall provide continuous supervision for clients.

(1) In residential programs, direct care staff shall be awake and on duty where the clients are located 24 hours a day.

(A) During day and evening hours, at least two awake staff shall be on duty for the first 12 clients, with one more person on duty for each additional one to 16 clients.

(B) At night, at least one awake staff member shall be on duty for the first 12 clients, with one more person on duty for each additional one to 16 clients. Night staff shall conduct and document at least three checks while clients are sleeping.

(2) In outpatient programs, direct care staff shall be awake and on site whenever a client is on site. Clients shall have access to an on-call health care professional with detoxification experience 24 hours a day.

(c) If the program accepts clients with acute withdrawal symptoms or a history of acute withdrawal symptoms, the program shall have:

(1) a licensed vocational nurse or registered nurse with detoxification experience on duty during all hours of operation; and

(2) a physician on call 24 hours a day.

(d) Level of observation shall be based on medical recommendations and program design.

(e) A physician shall approve all medical policies, procedures, guidelines, tools, and forms, which shall include:

(1) screening instruments (including a medical risk assessment) and procedures;

(2) the form used for the admission and medical history and physical;

(3) treatment protocol or standing orders for each major drug category; and

(4) emergency procedures.

(f) The clinical supervisor shall be a physician, physician assistant, advanced practice nurse, or registered nurse.

(g) The program shall:

(1) ensure continuous access to emergency medical care;

(2) provide clients access to mental health evaluation and linkage with mental health services when indicated; and

(3) conduct at least one counseling session to encourage clients to seek appropriate treatment after detoxification.

(h) Direct care staff shall complete training in detoxification and special treatment procedures as described in §148.114 of this title (relating to Special Training Requirements).

(i) Staff shall help each client develop an individualized post-detoxification plan that includes appropriate referrals.

§148.231. Adolescents.

(a) The facility shall address the special needs of adolescents and protect their rights.

(b) Residential facilities shall have separate sleeping areas, bedrooms, and bathrooms for adults and adolescents and for males and females. The facility shall have adequate barriers to divide the populations.

(c) Adults and adolescents may be mixed for specific groups or activities when there are therapeutic benefits for both populations. The program shall also provide separate groups and activities for adults and adolescents.

(d) The facility shall obtain consent for admission and authorization to obtain medical treatment at the time of admission for all clients under 16 years of age.

(e) The program shall involve the adolescent's family or an alternate support system in the treatment process or document why this is not happening.

(f) Residential and day-treatment programs shall provide access to education approved by the Texas Education Agency within three school days of admission when treatment is expected to last more than 14 days.

(g) The program's treatment services, lectures, and written materials shall be age-appropriate and easily understood by clients.

(h) The facility shall allow regular communication between an adolescent client and the client's family and shall not arbitrarily restrict any communications without clear, written. individualized clinical justification documented in the client record.

(i) The facility shall ensure that staff who plan, supervise, or provide chemical dependency education or counseling to adolescents have specialized education or training as required in §148.114 of this title (relating to Special Training Requirements).

(j) All direct-care employees shall be trained and competent to use personal restraint.

(k) In residential programs, the direct care staff-to-client ratio shall be at least 1:8 during waking hours (including program-sponsored activities away from the facility) and 1:16 during sleeping hours.

(l) Clients shall be under direct supervision at all times.

(1) At the program site, staff shall be within eyesight or hearing distance and readily available at all times. If clients are not within eyesight, staff shall conduct visual checks at least once every hour, including bed checks.

(2) In public places, clients shall be within eyesight at all times.

(m) Admission criteria shall limit admission to adolescents 13 through 17 years of age.

(1) Children who are 10 through 12 years of age and young adults 18 through 20 years of age may be admitted only when the assessment indicates that the individual's needs, experiences, and behavior are similar to those of adolescent clients.

(2) Each exception shall be approved in writing by the program director.

(n) The treatment plan shall address adolescent needs and issues and family relationships.

(o) The program shall prohibit adolescent clients from using tobacco products on the program site or during structured program activities.

(p) Staff shall not provide, distribute, or facilitate access to tobacco products.

(q) Staff and other adults (volunteers, clients, and visitors) shall not use tobacco products in the presence of adolescent clients on site.

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

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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40 TAC §§148.212-148.214

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.212-148.214 concerning Program Services. These sections are adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4808).

These sections contain information on Level II treatment (day treatment or intensive residential); Level III treatment (residential or intensive out patient); and Level IV treatment (transitional outpatient or transitional residential).

These amendments are adopted to clarify and/or add requirements for Level II, III and IV treatment programs including setting minimum requirements for those admitted to each program, implementing new staff to client ratios during sleeping hours, ensuring that every residential client has a medical history and physical examination, conducting periodic checks while clients are sleeping, and requiring individual counseling at least once a month in Level IV treatment programs. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs and individuals.

The following are comments received regarding §§148.212, 148.213, and 148.214.

Comment: Requiring night staff to conduct hourly checks is excessive. This goes beyond what even the federal government requires for prisoners in a community based setting. Requiring three documented checks per night seems reasonable enough and, depending on the configuration of the facility, even this could be redundant. This is micromanagment. It should be up to the facility to determine the time period we need. Also, what does TCADA consider an appropriate "check" on a sleeping client?

Response: The commission believes periodic checks are necessary for security and clinical purposes. Staff should walk through the entire building and look into each bedroom to see that clients are sleeping and/or resting comfortably. Night can be a difficult time for many clients, especially new ones, and it is often necessary for the staff person to spend some time with an upset or anxious client. The rule has been revised to require checks three times per night.

Comment: The rules attempt to define medically stable and able to participate. The same definition is used for all three levels of care. The definitions are not flexible enough to accommodate various programs. Some programs have greater medical supports or can handle different types of patients than others.

Response: The commission disagrees that the definitions do not accommodate different types of programs. The level of staffing and support provided by the program will in part determine what kind of physical or mental impairments prevent the client from participating in treatment at that program.

Comment: We oppose changing the time frames for completion of assessments and treatment plans.

Response: The change is reasonable and establishes a uniform standard across all levels of care.

Comment: We strongly oppose mandating a 1:32 ratio when clients are sleeping. This will have a significant financial impact,

especially in programs with ratios just slightly above the 1:32 ratio. TCADA has not proposed increasing its reimbursement rates so TCADA funded programs are being ask to absorb yet another unfunded mandate.

Response: The commission believes the current rule (which simply requires one staff person regardless of the number of clients) is not sufficient to protect the health and safety of clients. We proposed the 1:32 ratio with full awareness that it could have significant cost impact on some providers, depending on current staffing levels and physical plant configuration. This is the only comment we received on this rule, which leads us to believe the impact will not be onerous for large numbers of providers. Facilities that have a bed capacity slightly over 32 have the option of requesting a variance.

The following comments regarding §148.214 were received.

Comment: The rules for Level IV mandates an average of two hours of treatment per week. I would like to recommend that this be changed to be a little more flexible. More often than not, this is a transitional setting. Giving clients the opportunity to come back less frequently for shorter periods of time may assist with outcome. Requiring two hours per week can also become a barrier to them remaining in treatment. The client may only need to be there 30 minutes every other week for a one-on-one or an hour every week for a group. I know the argument is that this is an average, but then you have to front load the program. That is not in agreement with the concept of individual, client-driven, need-based treatment. This requirement seems out of context with the direction TCADA is going everywhere else.

Response: The commission agrees with many of the points raised above. It is essential to keep the client engaged in the treatment system for an extended period of time, and treatment should be designed to provide a gradual transition to self-supported recovery. This means treatment contacts will become shorter and/or less frequent over time. The point of difference is whether the final contacts are treatment or aftercare. Level IV was designed as a transitional level of care. The two hour minimum was recommended by a group of providers from across the state who spent two days examining the clinical aspects of the commission's licensure standards. The commission agrees with their conclusion that anything less than two hours per week is not treatment, but intervention (if delivered before treatment) or aftercare (if delivered after treatment). The commission strongly encourages providers to provide extended aftercare and, under other proposed rules, requires some level of aftercare in all funded programs. We recognize that aftercare is not presently a reimbursable service, but this is at least partially balanced by the fact that aftercare services do not fall under the rules governing treatment (such as maximum group size). Lowering the threshold for "treatment" would increase the cost of providing those less intensive transitional services. Finally, we believe a multi-level system of care based on averages gives providers considerable flexibility in creating an individualized episode of care for each client. We have found that difficulties occur when treatment is rigidly structured into programs where all clients receive the same array of services (often for the same period of time), regardless of need. These programs are generally designed to meet the minimum hours of service for a given level of care, leaving no flexibility for decreasing attendance requirements in response to individual need. An alternate strategy would be to offer an array of services, and select from that array to create an individualized treatment program for each client, which could be revised as often as needed. Under this system, the level of care would be determined by the content of the individualized treatment plan.

Comment: Level IV programs are now required to provide individual counseling at least once per month. In the Northstar pilot project, the contract with Value Options reimburses program providers $35 per day for Supportive Outpatient which would be for two hours of service. This economically prohibits individual counseling unless it can be billed in addition to the per day rate once a month.

Response: One of the basic precepts of effective treatment is that it must be delivered in accordance with an individualized treatment plan. A provider cannot develop, review, and revise a client's treatment plan without some individual sessions.

These amendments are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by these amendments is the Texas Health and Safety Code, Chapter 464.

§148.212. Level II Treatment (Day Treatment or Intensive Residential).

(a) All clients admitted to Level II shall not have:

(1) a documented, reported, or observed medical condition that requires immediate medical treatment or continuous medical supervision (as determined by a prudent lay person); or

(2) an observable physical or mental impairment that prevents the client from participating in treatment.

(b) The program shall have enough staff to provide close supervision and individualized treatment, even if this requires more staff than indicated by the minimum staff-to-client ratios listed in this section.

(c) Counselor caseloads shall not exceed ten clients for each counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation.

(1) In outpatient programs, the direct care staff-to-client ratio shall be at least 1:16 during all hours of operation.

(2) In residential programs, the direct care staff-to-client ratio shall be at least 1:16 during the hours clients are awake and 1:32 when clients are asleep.

(3) Night staff shall conduct and document at least three checks while clients are sleeping.

(e) Counselors shall complete a comprehensive client assessment and initial treatment recommendations within three individual service days of admission for all clients transferred from Level I or admitted directly to a Level II program.

(f) An individualized treatment plan shall be completed for all clients within five individual service days of admission.

(g) The facility shall deliver an average of 20 hours of structured activities per week for each client, including:

(1) three hours of chemical dependency counseling (including at least one hour of individual counseling);

(2) 14 hours of additional counseling, chemical dependency education, or life skills training; and

(3) three hours of structured social and/or recreational activities.

(h) Every residential client shall have a medical history and physical examination as required by §148.301 of this title (relating to Client History and Assessment).

(i) Program staff shall offer related services to identified significant others.

§148.213. Level III Treatment (Residential or Intensive Outpatient).

(a) All clients admitted to Level III shall be able to function with limited supervision and support and shall not have:

(1) a documented, reported, or observed medical condition that requires immediate medical treatment or continuous medical supervision (as determined by a prudent lay person); or

(2) an observable physical or mental impairment that prevents the client from participating in treatment.

(b) The program shall have enough staff to meet treatment needs within the context of the program description, even if this requires more staff than indicated by the minimum staff-to-client ratios listed in this section.

(c) Counselor caseloads shall not exceed 16 clients per counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation.

(1) In outpatient programs, the direct care staff-to-client ratio shall be at least 1:16 during all hours of operation.

(2) In residential programs, the direct care staff-to-client ratio shall be at least 1:16 during the hours clients are awake and 1:32 when clients are asleep.

(3) Night staff shall conduct and document at least three checks while clients are sleeping.

(e) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment and initial treatment recommendations within three individual service days of admission.

(f) All clients shall have an individualized treatment plan within five individual service days of admission.

(g) The facility shall deliver an average of ten hours of structured activities per week for each client, including at least two hours of chemical dependency counseling (with at least one hour of individual counseling every two weeks) and eight hours of additional counseling, chemical dependency education, or life skills training.

(h) Every residential client shall have a medical history and physical examination completed and filed in the client record within 96 hours of admission, as required by §148.301 of this title (relating to Client History and Assessment).

§148.214. Level IV Treatment (Transitional Outpatient or Transitional Residential).

(a) All clients admitted to Level IV programs shall be able to function with minimal supervision and support and shall not have:

(1) a documented, reported, or observed medical condition that requires immediate medical treatment or continuous medical supervision (as determined by a prudent lay person); or

(2) an observable physical or mental impairment that prevents the client from participating in treatment.

(b) A Level IV program shall not admit a client transferred directly from Level I without written justification in the client record.

(c) The program shall have enough staff to provide clients with adequate support and guidance, even if this requires more staff than indicated by the minimum staff-to-client ratios listed in this section.

(d) Counselor caseloads shall not exceed 20 clients per counselor in residential programs. Outpatient programs shall set limits on counselor caseload size that ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented.

(e) The program shall be adequately staffed during hours of operation to ensure effective service delivery.

(f) In residential programs, the awake direct care staff-to-client ratio shall be at least 1:20 during the hours clients are awake and at least 1:32 when clients are sleeping. Night staff shall conduct at least three checks while clients are sleeping.

(g) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment and initial treatment recommendations within three individual service days of admission. In outpatient programs, this period shall not exceed 45 calendar days.

(h) All clients shall have an individualized treatment plan within five individual service days of admission. In outpatient programs, this period shall not exceed 45 calendar days.

(i) The facility shall deliver an average of two hours of structured activities per week for each client, including at least one hour of chemical dependency counseling and one hour of additional counseling, life skills training, or chemical dependency education. Individual counseling shall be provided at least once a month.

(j) Every residential client shall have a medical history and physical examination as required by §148.301 of this title (relating to Client History and Assessment).

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

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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40 TAC §148.235

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.235 concerning Program Services without changes to the proposed text as published in the June 25, 1998, issue of the *Texas Register* (24 TexReg 4810).

This section contains the requirements for pharmocotherapy programs.

The section is repealed because the commission is no longer required to license methadone programs. These programs

are now under the sole regulatory jurisdiction of the Texas Department of Health.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the repeal is the Texas Health and Safety Code, Chapter 464.

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

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Deputy for Finance and Administration

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Subchapter E. Treatment Process

40 TAC §§148.281, 148.282, 148.284, 148.291–148.293, 148.301–148.304, 148.322–148.324

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.281, 148.282, 148.284, 148.291-148.293, 148.301-148.304, and 148.322-148.324 concerning Treatment Process. These amendments are adopted without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4810) and will not be republished.

These sections contain information on: admission criteria; admission determination; client orientation; detoxification history and assessment; detoxification plan; detoxification notes; client history and assessment; treatment plan; progress notes; treatment plan reviews; discharge plan; discharge summary; and discharge follow-up.

These amendments are adopted to clarify the typical age range served by adolescent and adult programs, when exceptions may be warranted and how they must be approved; to describe the admission determination process; to require that information about searches the program may use be included in client orientation; to expand the requirements related to detoxification history and assessment including reducing the time allowed to complete the detoxification history to 24 hours; to require that goals be established as part of the detoxification plan and that progress or lack of progress toward those goals be addressed in detoxification notes; to specify the process for and requirements of the client history and assessment; to describe the treatment plan process and document; to clarify what is to be included in progress notes; to specify that programs must define in writing the intervals at which treatment plans will be reviewed; to mandate that the treatment plan must be revised when the client enters a new level of service; to require that family members who were initially involved in the initial treatment planning participate in reviews or that the counselor must document why this does not occur; to specify that discharge planning begins at the time of admission and must be completed before the client's scheduled discharge; to state what must be addressed in the discharge plan; and to institute a time limit of 90 days after discharge for follow-up to occur.

Comments on the proposed amendments were received from individuals.

Comment regarding §§148.291, 148.292, and 148.293: These sections seem to apply only to detoxification programs but there is no heading that denotes this. Are physical examinations, detox plans, and detox notes required for every level of care?

Response: No. When the rules are printed for distribution to providers, headings are included.

Comment regarding §148.303: We need to allow a copy of the program schedule and group sheets to help document the client's level of participation. The requirement as written will create additional paperwork for the counselors, increase costs and decrease client contact.

Response: The proposed change may increase documentation time for some providers who are not funded by the commission. It is, however, consistent with industry standards. The change will have no impact on funded providers, who are already held to these requirements. Comment regarding §148.304: This section basically demands family involvement. Our clients come from homeless and totally dysfunctional family environments. Many times the family's initial cooperation is self-serving to get the client away from them or out of their house. Many times for therapeutic reasons the client does not need family involvement in the short time we have to treat him/her in residential services. The number of chemical dependency and personal issues the client has may be extensive. The staff time to maintain contact with or even try to track down members for reviews based on changes in the treatment plan (remember it is individualized and a very fluid document) would be extensive, expensive and destroy time lines. Response: The commission recognizes that family involvement is not always appropriate and/or feasible. The rules simply asks for the provider to document why the family is not participating. Even this is not necessary if family members did not participate in developing the original treatment plan.

These amendments are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by these amendments is the Texas Health and Safety Code, Chapter 464.

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

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Mark Smock

Deputy for Finance and Administration

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Subchapter F. Physical Plant

40 TAC §§148.331, 148.341, 148.353, 148.355, 148.372, 148.373

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.331, 148.341, 148.353, 148.355 and adopts new §148.372 and §148.373 concerning Physical Plant. Section 148.331 is adopted with changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4813). Sections 148.341, 148.353, 148.355, 148.372 and 148.373 are adopted without changes to the proposed text and will not be republished.

These sections contain information on: general environment; general physical plant provisions; exits; furniture and supplies; physical plant requirements for children; and physical plant requirements for small family living environments.

These amendments and new sections are adopted to require that any needed corrective action plan to ensure compliance with the Americans with Disabilities Act is implemented within a reasonable time frame; to clarify the requirements for private space for confidential interactions; to expand the prohibitions on smoking, firearms and other weapons; to require prohibitions on alcohol, illegal drugs, illegal activities and violence on site; to prohibit the use of recreational vehicles and campers as client sleeping areas; to clarify under what circumstances windows may be smaller than the size stated in the rules; to specify the required ratio of washers and dryers to clients; to specify the physical plant requirements that are specific to programs that provide children's services or childcare on site; and to specify the physical requirements for small family living environments. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

The following comments on §148.331 were received from individuals.

Comment: The rule requires the program to prohibit firearms. What specific actions are expected of the provider? Is it necessary to post a sign to this effect?

Response: At a minimum, the prohibition must be stated in the program's policies and the statement of client rules and responsibilities. Providers are not required to post a sign.

Comment: The rule says that staff shall not provide, distribute, or facilitate access to tobacco products. Does this mean that if a client is allowed to go to a store on free time and buys cigarettes we are in the wrong? Must we require clients who work to work for a smoke free company?

Response: No. In these examples, the staff person is not taking action to make it easier for clients to get cigarettes. An example of facilitating access would be buying cigarettes for clients or driving them to the store for the specific purpose of buying cigarettes. On the other hand, the facility could take clients to a store to buy various personal items. If clients choose to purchase cigarettes on such a trip, the facility would not be "facilitating" access. The term "distribute" has been removed from the rule to clarify that a facility may collect and store cigarettes for clients (e.g., in a detoxification program), and distribute or provide access to the client's own cigarettes. The distinction here is that the client came to the facility with the cigarettes already in his or her possession. Only adult clients may possess or use tobacco products.

Comment: The proposed rule says that staff shall not use tobacco products in the presence of adult clients. You are really putting a harsh requirement in place. "In the presence" is not clear. To outlaw smoking during counseling is okay. But does it mean where clients can see? This is micromanaging.

Response: The commission has withdrawn this proposed requirement for adults. It will remain in place for adolescents, which is not a change from the rule currently in effect.

These amendments and new sections are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by these amendments and new sections is the Texas Health and Safety Code, Chapter 464.

§148.331. General Environment.

(a) The facility shall provide a safe, secure, and well-maintained environment.

(b) The facility shall comply with the Americans with Disabilities Act (ADA). The facility shall maintain documentation that it has conducted a self-inspection to evaluate compliance and implemented a corrective action plan within reasonable time frames to address identified deficiencies.

(c) The environment shall enhance client dignity and confidentiality.

(d) The facility shall have adequate space, furniture, and supplies for the services described in the program description.

(e) The facility shall have private space for counseling, assessments, and other confidential interactions. Staff shall not office in space needed for other activities, and partitions are not acceptable for creating private space.

(f) The facility shall prohibit smoking inside facility buildings and during structured program activities.

(g) The facility shall not permit vending machines that dispense tobacco products on the program site.

(h) Staff shall not provide or facilitate client access to tobacco products.

(i) The facility shall prohibit firearms and other weapons on the site.

(j) The facility shall prohibit alcohol, illegal drugs, illegal activities, and violence on the site.

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

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Mark Smock
Deputy for Finance and Administration
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40 TAC §§148.371

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.371 concerning Physical Plant without changes as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4815).

This section contains the requirements for small family living environments.

This section is repealed because these requirements are revised and have been moved to other portions of the rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the repeal is the Texas Health and Safety Code, Chapter 464.

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

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Chapter 149. Court Commitments

Subchapter A. Civil Court Commitments

40 TAC §§149.1, 149.11–149.16

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§149.1 and 149.11-149.16 concerning Court Commitments without changes as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4816).

These sections describe the definitions of terms used, authority of the commission regarding court commitments, approval needed by facilities, licensure requirements, staff training requirements, general procedures, and the documentation required for court commitments.

These sections are repealed because these rules have been incorporated into the rules for all licensed facilities.

No comments were received regarding the adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, §461.012(a)(15) and §462 which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for approval of chemical dependency treatment facilities to accept court commitments.

The code affected by the repeals is the Texas Health Safety Code, §461.012(a)(15) and §462.

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

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Part IV. Texas Commission for the Blind

Chapter 159. Administrative Rules and Procedures

The Texas Commission for the Blind adopts the repeal of §§159.1-159.16, 159.22, 159.24, and 159.31-159.35 and simultaneously adopts new §§159.1-159.3; 159.20-159.23; and 159.40-159.45 without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4213). The adopted text will not be republished.

The repeals are adopted in order to adopt rewritten and reorganized rules.

New Subchapter A contains various general rules required by state law. Human Resources Code §91.018 requires the Commission to promulgate rules establishing methods by which consumers or service recipients can be notified of the name, mailing address, and telephone number of the Commission for the purpose of directing complaints. Section 159.1 contains these methods. The Business Corporation Act requires state agencies to require Texas corporations contracting with agencies to certify in writing that its corporate franchise taxes are current; §159.2 contains this requirement and other related rules. Government Code §2001.103 requires state agencies to have rules for the reimbursement of witnesses. These rules are contained in §159.3.

New Subchapter B contains procedural rules of the Commission's board. Section 159.20 speaks to the frequency of board meetings. Section 159.21 contains the rules required by Government Code §2001.021 regarding how a person may petition for adoption of rules. § 159.22 contains the board's procedures for hearing public comments and requesting to appear before the board. § 159.23 contains the procedures for public hearings that are required by Government Code §2001.029.

New Subchapter C contains rules required by Government Code §552.262 regarding access to public information maintained by the Commission. Section 159.40 contains the method for requesting public information. Section 159.41 contains information about available copy formats. Section 159.42 contains the agency's charges for providing copies. Section 159.43 contains procedures pertaining to estimates, deposits, and waivers of charges. Section 159.44 contains procedures for processing public complaints of overcharges. Section 159.45 contains

rules on gaining access to public information when copies are not requested.

The Commission received no comments regarding the proposal.

Subchapter A. Procedures of the Commission

40 TAC §§159.1–159.16

The repeals are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its 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.

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Terrell I. Murphy
Executive Director
Texas Commission for the Blind
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Subchapter A. General Rules

40 TAC §§159.1–159.3

The new rules are adopted under the Human Resources Code, Title 5, Chapter 91, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs and §91.018, which requires the Commission to promulgate rules establishing methods by which consumers or service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints 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.

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Terrell I. Murphy
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Subchapter B. Commission Board Procedures

40 TAC §§159.20–159.23

The new rules are adopted under the Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs and requires the Commission to develop and implement policies that provide the public with a reasonable opportunity to appear 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.

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Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 459–2611

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Subchapter B. Fair Hearing Procedures for Resolution of Client Dissatisfaction

40 TAC §159.22, §159.24

The repeals are adopted under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its 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 August 13, 1999.

TRD-9905107
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 459–2611

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Subchapter C. Full and Evidentiary Hearings for Business Enterprises Operators

40 TAC §§159.31–159.35

The repeals are adopted under Human Resources Code, Title 5, §94.012, which authorizes the Commission to promulgate rules in the administration of the Business Enterprises Program.

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

Filed with the Office of the Secretary of State on August 13, 1999.

TRD-9905108
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 4, 1999

For further information, please call: (512) 459–2611

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Subchapter C. Access to Public Information

40 TAC §§159.40–159.45

The new rules are adopted under the Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its 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 August 13, 1999.

TRD-9905106
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 459–2611

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Chapter 161. Appeals and Hearing Procedures

Subchapter A. Vocational Rehabilitation Program

The Texas Commission for the Blind adopts the amendment of §161.13, the repeal of §§161.43-161.44, and new §§161.43-161.45 without changes to the proposed text as published in the June 11, 1999, issue of the *Texas Register* (24 TexReg 4353). The adopted text will not be republished.

To receive the full benefits of federal funds, the agency is required to administer the Vocational Rehabilitation Program according to the provisions in the federal Rehabilitation Act of 1973. The Act has been amended, and the agency has updated its rules accordingly.

The repeal of §161.43 and §161.44, pertaining to action by the executive director after hearings, is adopted because the authority of the executive director to review decisions of hearing officers was removed in the federal amendments.

The Act requires the addition of mediation to the choices for resolving disputes. Notice that the appellant has the right to request mediation is included in §161.13, pertaining to filing a request for review. New §161.45 contains conforming mediation procedures.

New §161.43 and §161.44 contain the Act's requirements pertaining to implementation of decisions and the rights of parties aggrieved by final decisions to bring a civil action for review of the decision.

The Commission received no comments regarding the proposal.

40 TAC §161.13

The amendment is adopted under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its 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 August 13, 1999.

TRD-9905111
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 11, 1999
For further information, please call: (512) 459–2611

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40 TAC §161.43, §161.44

The repeals are adopted under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its 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 August 13, 1999.

TRD-9905109
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 11, 1999
For further information, please call: (512) 459–2611

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40 TAC §§161.43–161.45

The new rules are adopted under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its 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 August 13, 1999.

TRD-9905110
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 11, 1999
For further information, please call: (512) 459–2611

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Chapter 171. Cooperative Activities

40 TAC §§171.1–171.4

The Texas Commission for the Blind adopts the repeal of Chapter 171, §§171.1-171.4, pertaining to Cooperative Activities,

without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4219). The adopted text will not be republished.

The repeal is adopted in order to simultaneously adopt a new chapter. During the review of this chapter pursuant to the agency's rule review plan, the agency decided to rename the chapter and make improvements. §§171.1, 171.2, and 171.4 were deleted because they duplicate rules in other chapters. The agency's memoranda of understanding are contained in the new chapter. The agency deleted obsolete memoranda and revised the rule citations in those memoranda of understandings where necessary to reflect the current TAC location of the lead agency's rules where the full text of the memorandum is published.

The Commission received no comments in response to the proposal.

The repeals are adopted under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its 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 August 13, 1999.

TRD-9905112
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 459–2611

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The Texas Commission for the Blind adopts new Chapter 171, §§171.1-171.4, pertaining to Memoranda of Understanding, without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4220). The adopted text will not be republished.

The purpose of each rule is to define the individual responsibilities of signatory agencies to various memoranda of agreement when certain populations can benefit from services from multiple state agencies. Section 171.1 contains the memorandum of agreement required by Human Resources Code 22.011. Section 171.2 is required by Family Code §264.003. Section 171.3 is required by Texas Education Code §29.011. Section 171.4 is required by Health and Safety Code §614.015.

The Commission received no comments regarding the proposal.

The new rules are adopted under the Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs and §91.021, which requires the Commission to negotiate interagency agreements with other state agencies to extend and improve the regular services provided by the 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 August 13, 1999.

TRD-9905119
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: September 2, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 459–2611

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Part XIX. Texas Department of Protective and Regulatory Services

Chapter 701. Communities in School

40 TAC Chapter 701

(Editor's note: In order to comply with Senate Bill 330 (Attachment 1), 76th Legislature, Regular Session, which transfers all functions, obligations, rights, contracts, records, and rules of the Texas Workforce Commission relating to the Communities in Schools program to the Texas Department of Protective and Regulatory Services, the Texas Workforce Commission is requesting the Administrative transfer of the rules, listed in Attachment 2, from the Texas Workforce Commission to the Texas Department of Protective and Regulatory Services, effective September 1, 1999.

The Texas Register is administratively transferring the following rules listed in the conversion chart published in this issue under the Tables and graphics section. The table lists the old rule numbers and the new rule numbers that corresponds to them.)

Figure: 40 TAC Chapter 701

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Part XX. Texas Workforce Commission

Chapter 827. Communities in School

40 TAC Chapter 827

(Editor's note: In order to comply with Senate Bill 330 (Attachment 1), 76th Legislature, Regular Session, which transfers all functions, obligations, rights, contracts, records, and rules of the Texas Workforce Commission relating to the Communities in Schools program to the Texas Department of Protective and Regulatory Services, the Texas Workforce Commission is requesting the Administrative transfer of the rules, listed in Attachment 2, from the Texas Workforce Commission to the Texas Department of Protective and Regulatory Services, effective September 1, 1999.

The Texas Register is administratively transferring the following rules listed in the conversion chart published in this issue under the Tables and graphics section. The table lists the old rule numbers and the new rule numbers that corresponds to them.)

Figure: 40 TAC Chapter 701

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Chapter 841. Workforce Investment Act

Subchapter C. Training Provider Certification

40 TAC §§841.43, 841.44, 841.46

The Texas Workforce Commission (Commission) adopts new §§841.43, 841.44, and 841.46, relating to the implementation of the Workforce Investment Act as published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4542). Sections 841.43, 841.44 and 841.46 are adopted with changes to the proposed text.

The purpose of §841.43 is to set forth the requirements for submitting an Application for Subsequent Eligibility Determination. Section 841.44 sets forth the items considered in a Determination of Subsequent Eligibility. Section 841.46 sets forth the provisions applicable to Verifiable Program-Specific Performance Information.

These sections were originally published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3054). Based on a desire for further public comment and revisions to the initial proposal, the Commission re-proposed these sections for an additional 30-day comment period in the Texas Register on June 18, 1999.

The Commission received comments from two commenters, the West Central Local Workforce Development Board and the Texas Skill Standards Board, regarding the proposed rules. The commenters did not state whether they were for or against the rule but requested changes to the rules. The comments and responses are set forth as follows:

Comment. Regarding §841.44(b)(1), the commenter suggested deleting the phrase "when available" to ensure that only those skill standards recognized or conditionally recognized by the Texas Skill Standards Board are used to develop training criteria and outcomes criteria.

Response. The Commission agrees with the comment and revises the rule accordingly. The intent of the rule is to ensure that only those skill standards recognized or conditionally recognized by the Texas Skill Standards Board be taken into consideration by Local Workforce Development Boards to develop training and outcomes criteria. The commenter's suggested change further clarifies the Commission's intent.

Comment. Regarding §841.44(b)(2), the commenter recommended replacing the words "industry-defined" and "recognized" in this subsection with the phrase "industry endorsed skill standards" to avoid confusion between the Texas Skill Standards Board and the Commission. The law governing the Texas Skill Standards Board, as well as public information disseminated by the Board, uses the words "industry-defined" and "recognized."

Response. The Commission agrees with the comment and revises the rule accordingly. The Commission will amend the rule to use the term "industry-endorsed skill standards."

Comment: Regarding §841.46(e), the commenter stated that the section requires quarterly reporting by training providers. The commenter recommended flexibility in this requirement to accommodate schools in rural settings with limited WIA enrollment. The commenter believed it could be an undue burden on the school to provide a quarterly report when their enrollment of WIA participants is frequently less than 5 individuals. The commenter encouraged TWC to consider language that would allow for different requirements, such as every 6 months or annually for schools with low enrollment numbers.

The Commission agrees with the commenter and revises the rule accordingly to allow for more flexibility in the reporting process. Specifically, the following language is added to 841.46(e), "If the Commission determines that the size of the program or other circumstances exist that would justify a different reporting schedule, the Commission may approve a different reporting schedule for an LWDB that makes such a request."

Technical corrections are added for clarity. In §§841.43(a) and 841.46(d), "30 day" is changed to "30-day." In paragraph 841.44(a)(5), the word "and" is deleted. In subsections 841.46(d) and (e), "in" is changed to "within" and "quarterly" is changed to "quarter" respectively.

The new sections are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

§841.43. Application for Subsequent Eligibility Determination.

(a) All training services providers, including training providers who were determined to be eligible under §§841.38 and 841.39, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services. The LWDB may request that the state make a certification effective on or after a requested date subject to the state's 30 day review period.

(b) Each training services provider shall provide verifiable program-specific performance information as required, and in a format and on a schedule determined by the Commission.

(c) The Commission and the LWDB may accept program-specific performance information consistent with the requirements for eligibility under Title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the applicable requirements of this section if the information is substantially similar to the information otherwise required.

§841.44. Determination of Subsequent Eligibility.

(a) Each LWDB shall annually establish minimum requirements for subsequent eligibility. In determining subsequent eligibility, LWDBs shall consider the following:

(1) the specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located;

(2) the characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving such populations, where applicable;

(3) current and projected occupational demand within the local area;

(4) the performance of a provider of a program(s) of training services, including the extent to which the annual standards of performance established by the LWDB have been achieved;

(5) the program cost of training services;

(6) the involvement of employers in the establishment of skill requirements for the training program; and

(7) the feedback of employers who employ individuals who have recently completed WIA-funded training to verify that the training provided produced the expected skills.

(b) No later than July 1, 2000, each LWDB shall ensure that training providers, in developing programs of training services and establishing performance criteria for successful course completion, use in descending order:

(1) skill standards recognized or conditionally recognized by the Texas Skill Standards Board;

(2) industry-endorsed skill standards; or

(3) skill requirements determined by employers.

(c) LWDBs may require enhancements to programs or courses to meet local industry needs.

§841.46. Verifiable Program-Specific Performance Information.

(a) Performance information submitted for a training services program, as a part of the subsequent eligibility determination process, shall be verifiable.

(b) Participating training providers shall provide to the Commission the participant and employer information determined by the Commission to be necessary to utilize unemployment insurance wage records and employer-based, follow-up surveys to obtain performance information. The training providers shall submit the information in a form and format determined by the Commission.

(c) Subject to approval by the Commission, alternate procedures may be used to collect and verify supplemental performance information in addition to those described in §841.46(b). Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by §841.46(b). Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.

(d) An independent audit of any alternate methodology used shall be conducted on an annual basis by a certified public accountant for programs of training services in which 100 or more WIA-supported students are served within a twelve-month period. Programs that serve less than 100 WIA-supported students within a twelve-month period shall provide for an independent audit of the performance data collection methodology every two years. A copy of the report shall be made available to the LWDB and to the Commission within 30-days of the completion of the report.

(e) Verifiable program performance information shall be submitted on a calendar quarter basis in a format and on a schedule established by the Commission. If the Commission determines that the size of the program or other circumstances exist that would justify a different reporting schedule, the Commission may approve a different reporting schedule for an LWDB that makes such a request.

(f) The Commission may conduct performance verification throughout the year and may require training providers to submit additional information to resolve performance reporting anomalies or irregularities.

(g) Providers of training services shall retain participant program records for a period of three years from the date the participant completes the program.

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

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905013
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: August 11, 1999
Proposal publication date: June 18, 1999
For further information, please call: (512) 463–8812

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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 Reviews

Texas Commission on Alcohol and Drug Abuse

Title 40, Part III

The Texas Commission on Alcohol and Drug Abuse proposes to review Chapter 150 concerning Counselor Licensure, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process, the commission is proposing amendments to §§150.1, 150.3, 150.6, 150.8, 150.9, 150.31-150.33, 150.36, 150.38, 150.39, 150.52-150.54, 150.61, 150.71 and new §§ 150.35, 150.40, 150.51, 150.60, 150.72, 150.75-150.78. The commission is also proposing the repeal of §§150.51, 150.72 and 150.73. The proposed amendments, new sections and repeals may be found in the Proposed Rules section of this issue of the *Texas Register*.

During this review the Commission will determine if the reasons for adopting this chapter continue to exist. The chapter will be reviewed to determine whether the rules reflect current legal and policy considerations or if they are obsolete.

Please submit written comments regarding whether the reasons for adopting this chapter continue to exist to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date this notice is published in the *Texas Register*.

Issued in Austin, Texas on August 11, 1999. Mark S. Smock Deputy for Finance and Administration

TRD-9905062
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 11, 1999

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Interagency Council on Early Childhood Intervention

Title 25, Part VIII

The Interagency Council on Early Childhood Intervention (ECI) proposes to review the following sections from Chapter 621 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter F. Case Management Services for Infants and Toddlers with Developmental Disabilities.

§621.121

§621.122

§621.123

§621.124

§621.125

§621.126

§621.127

§621.128

§621.129

§621.130

§621.131

§621.132

§621.133

§621.134

§621.135

§621.136

§621.137

§621.138

§621.139

§621.140

Sections 621.129, 621.130, 621.131, 621.132, 621.133, 621.134, 621.135, 621.136, 621.137, 621.138, 621.139 and 621.140 were administratively transferred to the Health and Human Services Commission in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12686) however, these sections were still promulgated under the ECI's jurisdiction as of September 1, 1998 and are therefore required to be reviewed in accordance with the Appropriations Act.

The ECI is contemporaneously proposing the repeal and replacement of §§621.121-621.128 elsewhere in this issue of the *Texas Register*.

In addition to the repeal and replacement of Subchapter F, the Health and Human Services Commission is simultaneously proposing the repeal and replacement of §§355.9001-355.9010 and §§355.9012-355.9014, concerning Early Childhood Intervention: Case Management Services for Infants and Toddlers with Developmental Disabilities, elsewhere in this issue of the *Texas Register*.

Comments on the review of these proposed rules may be submitted to Alex Porter, General Counsel, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

Upon adoption of this review, the ECI will conclude its review process of Chapter 621 in its entirety.

TRD-9905165
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: August 16, 1999

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Texas State Library and Archives Commission

Title 13, Part I

The Texas State Library and Archives Commission proposes to review Chapter 2, concerning procedures of the commission, customer service polices, complaint procedures, affiliated friends organizations and general grant polices, in accordance with the requirements of the Appropriations Act, Section 167, 75th Legislature, 1997, and Government Code Section 2001.39.

The reasons for adopting the rules in Chapter 2 continue to exist. The rules were adopted pursuant to the Government Code, §441.002(j) that requires the commission to develop policies that separate policy making responsibilities of the commission from the management responsibilities of the director and staff, and Government Code, §441.006 that requires the commission to adopt policies covering a broad range of topics, and Government Code §441.0091 that requires the commission to adopt by rule guidelines for awarding grants. The rules are necessary to establish these policies in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

Comments on the commission's review of its rules in Chapter 2 may be submitted to Nancy Webb, Public Information Officer, P.O. Box 12927, Austin, TX. 78711-2927. Comments are due 30 days after publication in the Texas Register. For further information or questions, concerning this proposal, please contact Nancy Webb at (512) 463-5514.

TRD-9905136
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: August 16, 1999

♦ ♦ ♦

The Texas State Library and Archives Commission proposes to review Chapter 7, concerning the operation of regional historical resource depositories and the retention, microfilming, electronic storage of local government records, in accordance with the requirements of the Appropriations Act, Section 167, 75th Legislature, 1997 and Government Code Section 2001.39

The reasons for adopting the rules in Chapter 7 continue to exist. The rules were adopted pursuant to the Government Code, §441.006(a)(9) that requires the Texas State Library and Archives Commission to adopt policies to aid and encourage effective records management and preservation programs in local governments of the state; Government Code §441.153(b) that requires the commission to adopt rules for Regional Historical Resource Depositories; Government Code §441.158(a) that requires the commission to adopt local government records retention schedules by rule, Local Government Code §204.004 that requires the commission to adopt rules establishing standards and procedures for microfilming local government records, and Local Government Code §205.003 that requires the commission to adopt rules establishing standards and procedures for electronic storage of local government record data. The rules are necessary to carryout the statutory obligations of the Texas State Library and Archives Commission in the management of local government records.

Comments on the commission's review of its rules in Chapter 7 may be submitted to Michael Heskett, Director, State and Local Records Management Program, P.O. Box 12927, Austin, TX. 78711-2927. Comments are due 30 days after publication in the Texas Register. For further information or questions, concerning this proposal, please contact Michael Heskett at (512) 454-2705.

TRD-9905135
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: August 16, 1999

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Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.95 relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 17709 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.95 and is proposing new §26.172 of this title (relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers to replace this section. The proposed new section and the proposed repeal may be found in the Proposed Rules section of the *Texas Register.* The commission will accept comments on the Section 167 requirement in the comments filed on proposed new §26.172.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §23.95. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.

TRD-9905102
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 13, 1999

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Texas Workers' Compensation Commission

Title 28, Part II

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 134 concerning Benefits - Guidelines for Medical Services, Charges, and Payments.

This review is pursuant to the General Appropriations Act, Article IX, Section 167, 75th Legislature, the General Appropriations Act, Section 9-10.13, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§134.1 Use of the Fee Guidelines.

§134.4 Definition of Consulting Doctor.

§134.5 Treating Doctor Attendance at Medical Examination Under a Medical Examination Order.

§134.6 Travel Expenses.

§134.100 Provider Disclosure of Financial Interest, Submission to the Commission.

§134.101 Provider Disclosure of Financial Interest, Submission to the Carrier.

§134.201 Medical Fee Guideline For Medical Treatments and Services Provided Under the Texas Workers' Compensation Act.

§134.401 Acute care Inpatient Hospital Fee Guideline.

§134.800 Required Billing Forms and Information.

§134.801 Submitting Bills for Payment: Information Copies.

§134.802 Insurance Carrier's Submission of Medical Bills to the Commission.

§134.803 Calculating Interest for Late Payment on Medical Bills.

§134.900 Medical Benefit Review and Audit.

§134.1000 Mental Health Treatment Guideline.

§134.1001 Spine Treatment Guideline.

§134.1002 Upper Extremities Treatment Guideline.

§134.1003 Lower Extremities Treatment Guideline.

The agency's reason for adopting §134.2 continues to exist, however recently adopted §102.9 (Submission of Information requested by the Commission) contains the substance of §134.2 and therefore the repeal of the following rule is recommended:

§134.2 Insurance Carrier Responsibility.

The agency's reasons for adopting §§134.302 and 134.600 continue to exist, however it is recommended that §134.302 (Dental Fee Guideline) be incorporated into the Medical Fee Guideline when it is revised and that §134.302 be proposed for repeal at that time. Section 134.600 (Procedure for Requesting Preauthorization of Specific Treatments and Services) is proposed for repeal elsewhere in this issue of the Texas Register and is proposed to be replaced by seven new rules (§§134.601-134.607) which address the same subject. Therefore the following rules in Chapter 134 are proposed to be readopted, recognizing that future repeal may be proposed through the regular APA process:

§134.302 Dental Fee Guideline.

§134.600 Procedure for Requesting Pre-Authorization of Specific Treatments and Services.

Comments regarding the Appropriations Act Section 167, Section 9-10.13, and Texas Government Code §2001.039 requirement as to whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 27, 1999, and submitted to Donna Davila, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-9905256
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 18, 1999

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The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 160 concerning Workers' Health and Safety, General Provisions.

This review is pursuant to the General Appropriations Act, Article IX, Section 167, 75th Legislature, the General Appropriations Act, Section 9-10.13, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules.

Comments regarding the Appropriations Act Section 167, Section 9-10.13, and Texas Government Code §2001.039 requirement as to whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 27, 1999, and submitted to Donna Davila, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

§160.2 Non-Subscribing Employer's Report of Injury.

§160.3 Subscribing Employer's Report of Injury.

TRD-9905255
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 18, 1999

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Adopted Rule Reviews

Advisory Commission on State Emergency Communications

Title 1, Part XII

The Advisory Commission on State Emergency Communications (ACSEC) adopts without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4255) the following Sections from Chapter 251, concerning Regional Plans - Standards, in accordance with the Appropriations Act, Article IX, Section 167.

251.1 - Regional Plans for 9-1-1 Service

251.2 - Guidelines for Changing or Extending 9-1-1 Service Arrangements

251.3 - Guidelines for Addressing Funds

251.4 - Guidelines for the Provisioning of Accessibility Equipment

251.5 - Guidelines for the Maintenance and Replacement of 9-1-1 Equipment

251.6 - Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation

251.7 - Guidelines for Implementing Integrated Services

251.9 - Guidelines for Addressing Maintenance Rule

The report of the rule review of this Chapter was presented at the May 14, 1999 Commission meeting.

This concludes the review to this chapter.

TRD-9905163
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Filed: August 16, 1999

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Texas Commission on Alcohol and Drug Abuse

Title 40, Part III

Pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, the Texas Commission on Alcohol and Drug Abuse has conducted a review of Chapter 142 concerning Investigations and Hearings. Notice of the proposed rule review was published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4847).

No comments were received related to the rule review requirement as to whether the reason for adopting these rules continues to exist. The Board has determined that the reason for these rules continues to exist.

TRD-9905058
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 11, 1999

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Pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, the Texas Commission on Alcohol and Drug Abuse has conducted a review of Chapter 143 concerning Funding. Notice of the proposed rule review was published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4847).

No comments were received related to the rule review requirement as to whether the reason for adopting these rules continues to exist. The Board has determined that the reason for these rules continues to exist.

TRD-9905059
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 11, 1999

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Pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, the Texas Commission on Alcohol and Drug Abuse has conducted a review of Chapter 144 concerning Contract Requirements. Notice of the proposed rule review was published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4847).

No comments were received related to the rule review requirement as to whether the reason for adopting these rules continues to exist. The Board has determined that the reason for these rules continues to exist.

TRD-9905060
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 11, 1999

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Pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, the Texas Commission on Alcohol and Drug Abuse has conducted a review of Chapter 148 concerning Facility Licensure. Notice of the proposed rule review was published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4848).

No comments were received related to the rule review requirement as to whether the reason for adopting these rules continues to exist. The Board has determined that the reason for these rules continues to exist.

TRD-9905061
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: August 11, 1999

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Texas State Library and Archives Commission

Title 13, Part I

The Texas State Library and Archives Commission has completed the review of rules in Title 13, Chapter 9, concerning library services for blind or physically handicapped individuals, as noticed in the April 30, 1999 issue of the Texas Register (24 TexReg 3364). The commission readopts §§9.1-9.21 of this chapter in accordance with the requirements of the Appropriations Act of 1977, House Bill 1, Article IX, §167. The commission finds that it is in the public interest to continue providing library services to the blind or physically handicapped and therefore necessary to establish by rule the policies under which eligible persons or libraries receive services from the Talking Book Program of the Texas State Library and Archives Commission.

The commission received no comments on the review of Chapter 9.

The sections in Chapter 9 were adopted pursuant to the Human Resources Code, §91.082 that requires the Texas State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials; Government Code 441.006(a) that provides the Commission with the authority to govern the Texas State Library; and Government Code 441.112 that authorizes the commission to lend print access aids.

The adopted sections affect Government Code §§441.006, 441.112 and Human Resources Code §91.082.

TRD-9905097
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: August 13, 1999

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Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) adopts the review of the rules in 30 TAC Chapter 330, Municipal Solid Waste, Subchapters M - V, and Y - Z. The commission does not currently have a Subchapter W or X in Chapter 330. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The notice of proposed review was published in the March 19, 1999 issue of the *Texas Register* (24 TexReg 2031). The public comment period for the review closed April 19, 1999. No comments were received concerning the proposed notice of review.

The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission reviewed the rules in Chapter 330 Subchapters M - V, and Y - Z, and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 330 Subchapters M - V, and Y - Z are still necessary in that they implement critical provisions of the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act. These subchapters in Chapter 330 provide necessary rules to carry out the statutory mandates to regulate solid waste.

The commission readopts with amendments rules contained in 30 TAC Chapter 330, Subchapters M, N, P, and S, and readopts without amendments rules contained in 30 TAC Chapter 330, Subchapters O, T, and Y concerning Municipal Solid Waste. The commission is adopting these changes to the rules in Chapter 330, based on this review of the rules. The adoptions of changes are found in the adoption section of this *Texas Register*.

TRD-9905149
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 16, 1999

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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.

Figure: 30 TAC §106.494(b)(1)(E)(ii)

Table 494

Stack Height (feet)	Property Line Distance (feet) For 24-hour Operation	Property Line Distance (feet) For *Daytime-only Operation
8 or less	210	150
> 8 and ≤ 12	200	140
> 12 and ≤ 16	180	130
> 16 and ≤ 20	160	110
> than 20	140	90

*One hour after sunrise to one hour before sunset

Figure: 40 TAC Chapter 701

40 TAC Chapter 701, Subchapter B

Transferred from the Texas Workforce Commission to the Texas Department of Protective and Regulatory Services

Chapter 701, Subchapter B, Communities in Schools

Previously 40 TAC Chapter 827

Old	New	Title
§827.1	§701.201	Purpose and Applicability.
§827.2	§701.202	Definitions.
§827.11	§701.211	Proposal Solicitation.
§827.12	§701.212	Proposal Requirements.
§827.13	§701.213	Procedure for Proposal Evaluation.
§827.14	§701.214	Proposal Amendments.
§827.21	§701.221	Continuation Re-Application Procedures.
§827.31.	§701.231	Compensatory Education Funds.
§827.32	§701.232	JTPA Funds.
§827.33.	§701.233	Temporary Assistance for Needy Families (TANF) Funding.
§827.41	§701.241	Program Policy Requirements.
§827.42	§701.242	Operational Plan.
§827.43	§701.243	Monitoring.
§827.51	§701.251	Preventive Maintenance.
§827.52	§701.252	Sanctions for Non-Compliance.
§827.53	§701.253	Violations Resulting in Sanctions.
§827.54	§701.254	Notice of Sanctions.
§827.55	§701.255	Appeals.

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 Appraiser Licensing and Certification Board

Correction of Error

The Texas Appraiser Licensing and Certification Board submitted an adopted amendment to §153.18 to be published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6293). The effective date was cited as January 1, 2000. This was an error on behalf of the Texas Appraiser Licensing and Certification Board. The correct date should have been August 15, 1999, which is the standard 20 days after submission to the *Texas Register*.

Due to (agency or Texas Register) error,

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of August 6, 1999, through August 12, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Exxon Land Development, Inc.; Location: The project site is located on an approximate 182-acre tract of land fronting and on the south side of Genoa-Red Bluff Road, between Beltway 8 and Red Bluff Road, south of the intersection of Jana Lane and Red Bluff Road, in Harris County, Texas; CCC Project Number: 99-0283-F1; Description of Proposed Action: The applicant proposes to fill 29.986 acres of isolated wetlands to construct and operate schools on the site; Type of Application: U.S.A.C.E. permit application #21754 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Tepee Petroleum Company, Inc.; Location: The project site is located in Galveston Bay, State Tract 255, approximately 1.6 miles northeast of Seabrook, in Chambers County, Texas; CCC Project Number: 99-0284-F1; Description of Proposed Action: The applicant requests authorization to erect and maintain structures and appurtenances to be used in the drilling of Well No. 1 for the production of oil and/or gas. If necessary, approximately 4,500 cubic yards of crushed rock or washed gravel will be used to provide stabilization for the drilling barge. If constructed, the rock or gravel pad will measure 290 feet by 120 feet; Type of Application: U.S.A.C.E. permit application #21745 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: Texas Department of Transportation; Location: The project is located along the State Highway (SH) 73 right-of-way, in Jefferson County, Texas and at the intersection of Interstate Highway 10 and the Sabine River, in Orange County, Texas; CCC Project Number: 99-0285-F1; Description of Proposed Action: The applicant is requesting to modify the mitigation proposal required under the existing permit. Under this amendment, the applicant is requesting to modify the mitigation proposal to allow for the creation of detention berms in the center median of the completed highway for the purpose of slowing and temporarily detaining highway runoff. In addition, the applicant proposes to construct a 4.0-acre detention pond, approximately 2 miles west of the intersection of SH 73 and Private LaBelle Road, also for the collection of highway runoff. Finally, the applicant is proposing to mitigate the loss of habitat by the purchase of 97.5 credits (5:1 ratio) from the Blue Elbow Swamp Mitigation Bank in Orange County, Texas; Type of Application: U.S.A.C.E. permit application #20057(03) under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

FEDERAL AGENCY ACTIVITIES:

Applicant: Department of the Navy-Surveillance Towed Array Sensor System Low Frequency Active Sonar, Draft Overseas Environmental Impact Statement and Environmental Impact Statement; CCC Project Number: 99-0290-F2; Description of Proposed Activity: This Draft Overseas Environmental Impact Statement and Environmental Impact Statement (DOEIS/EIS) identifies and evaluates the potential environmental impacts of employing the Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar. The proposed action has been prepared by the Department of the Navy in accordance with the requirements of Presidential Executive Order (EO) 12114 (Environmental Effects Abroad of Major Federal Actions) and the National Environmental Policy Act of 1969 (NEPA).

The Navy currently plans to operate four SURTASS LFA sonar systems worldwide. The additional SURTASS LFA sonar systems would be installed on board ocean surveillance vessels. Alternatives considered include the No Action Alternative, Alternative 1 (which provides for geographic restrictions and monitoring to prevent injury to potentially affected species), and Alternative 2 (unrestricted operation of the system). Alternative 1 is the Navy's preferred alternative.

The DOEIS/EIS will be available at 16 U.S. public libraries (the complete list can be accessed on the Internet at *http://eis-team.home.mindspring.com.*

Applicant: South Padre Island National Seashore-Draft Oil and Gas Management Plan, Environmental Impact Statement; CCC Project Number: 99-0291-F2; Description of Proposed Activity: This Draft Oil and Gas Management Plan, Environmental Impact Statement identifies significant issues and concerns facing park managers. The proposed plan presents a reasonable range of alternatives for managing surface uses associated with the exploration, development, and transportation of the nonfederal oil and gas underlying Padre Island National Seashore, while protecting natural and cultural resources and allowing for public use and enjoyment of those resources, and it analyzes the effects of implementing each alternative.

The combined plan and environmental impact statement meets the requirements of the National Environmental Policy Act of 1969 and the Council on Environmental Quality regulations. It is also consistent with the direction established in the lead planning document for the park, the General Management Plan/Development Concept Plan (1983).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas, 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9905248
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 18, 1999

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 08/23/99 - 08/29/99 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 08/23/99 - 08/29/99 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 09/01/99 - 09/30/99 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 09/01/99 - 09/30/99 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9905210
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 17, 1999

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Office of Court Administration

Notice of Invitation for Offers for Consulting Services

Purpose. The state Office of Court Administration (OCA) has been awarded a grant through the State Justice Institute to hire a consultant to conduct, with the assistance of OCA staff, an in-depth analysis of the civil case processing systems in Travis, Dallas, and Gregg counties and recommend systemic changes, which will lead to the creation of a more efficient system in the respective counties that is based on differentiated case management (DCM) principles. The grant number is SJI-99-T-222, and the grant period is August 2, 1999, through July 31, 2000. Pursuant to Texas Government Code, sections 2254.021 *et seq.*, the OCA is requesting offers of consulting services to assist with this grant project.

Description of Services. In each of the three counties, the chosen consultant will be responsible for fully evaluating the civil case management procedures and processes, making recommendations for improvements to the civil case management system, and developing a plan of action for implementation of a differentiated civil case management system in each participating county. *(NOTE: the civil case management system does not include family law cases.)* A total of 15 district courts and one county court at law are to be examined (i.e., Travis County: nine district courts; Dallas County: three district courts; and Gregg County: three district courts and one county court at law). The chosen consultant will work closely with the OCA Research and Court Services staff throughout the project to train them on the methodology and procedures for conducting a case management study.

It is anticipated that the contract period will be from October 12, 1999 through May 5, 2000. The contract amount to be awarded will be commensurate with services provided, but shall not exceed a total of $25,000.

Closing Date. The closing date for the receipt of written offers is 3:00 p.m., September 30, 1999. An original and five copies of the offer must be submitted. All offers submitted must be sealed. Delivery must be by mail or hand-delivery (no faxes will be accepted) to the following address: Jerry Bonheyo (DCM Offer), Accountant Purchaser, Office of Court Administration, 205 West 14th Street, Suite 600, Austin, Texas 78701.

Offers received after the deadline will not be eligible for consideration. Offerors may be requested to make oral presentations of their offers at their own expense.

Evaluation and Selection. The requested services will require that the consultant have a thorough understanding of caseflow management principles and techniques, including differentiated case management. The consultant selected must have experience with and knowledge of grants; knowledge of state laws and rules and the American Bar Association's standards relating to caseflow management, disposition of cases, and delay reduction; knowledge of and/or experience with the Texas judicial system; considerable knowledge of and experience with other states' judicial systems in a case management context; and experience in analyzing and making recommendations for improvement in case management systems.

The OCA will assemble an Evaluation Committee to review, evaluate, and rank offers. No information will be provided as to the status of offers while the offers are being considered. All offers will be evaluated on the following criteria:

1) prior experience completing similar types of projects;

2) ability of the offeror to provide the specified services;

3) total costs of providing the specified services; and

4) overall responsiveness to the Request for Offers.

The offer demonstrating the highest quality of offered services deliverable within the established time frame, offering the greatest expertise and qualifications at the most cost-effective price, will be awarded the contract.

To Obtain a Copy of the RFO. Requests for a copy of the Request for Offers should be directed to Jerry Bonheyo, Accountant Purchaser, Office of Court Administration, 205 W. 14th Street, Suite 600, Austin, Texas 78701; by phone 512/463-1625; by e-mail at jerry.bonheyo@courts.state.tx.us; or by fax (512)463-1648.

Agency Contact. Requests for additional information regarding this request for offers should be addressed to Mary Cowherd, Deputy Director for Research and Court Services, Office of Court Administration, 205 W. 14th Street, Suite 600, Austin, Texas 78701, (512) 463-1625.

TRD-9905206
Margaret McGloin Bennett
General Counsel
Office of Court Administration
Filed: August 17, 1999

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Texas Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on July 16, 1999, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND:Kimberly Anne Armour- Dallas; Brooke Nicole Barr-Austin; Maria Magdalena Barroso-Garland; Tandrea Deshawn Baxter-Tyler; Tammy Dickson Cross-Carrollton; Maria Elizabeth De La Rosa-Dallas; Susan Thelma Hahaj-Garland; Belinda C. Hoover-Dallas; Stormy Dockrey Jackson-Plano; Brian Keith Knobloch-Channelview; Suzanne Lane-Austin; Kristie Renee Mantsch-Sachse; Sheretta L. Martin-Lancaster; Kimberly Kay Massey-Cedar Hill; Trisha D. Matthews-Houston; Angela N. McBride-Houston; Carrie Lynn Milam-Sugar Land; Edward Kalipono Naihe-Atascocita; Irene N. Nasworthy-Flower Mound; Jessica Renee Pena-Dickinson; Trina Danette Pollock-McKinney; Holly Schulz-McDade; Lillian Janis Simon-Pflugerville; Karen Borghesi Smith-Alvarado; Rhonda Elizabeth Spagnoletti-Conroe; Ramona Carol St. Julian-Crosby; Antoinette Margaret Varela- Allen; Regina Vasquez-Amarillo; Shelly Dann Wulf-Houston; and Joy Frances Younts-Hempstead.

ORAL STENOGRAPHY: Holly Mire Hanney-Houston; Angela Bernice Howe-Joshua; Elizabeth Ann Hutchings-Arlington; Julianne McCrery-Grand Prairie; Denise Renee Moore-Cleburne; Tracey Lynn Puff-Fort Worth; Joan S. Pujals-Euless; Lori Ann Thorn- Fort Worth; and Dionne Zschiesche-Mansfield.

TRD-9905120
Peg Liedtke
Executive Secretary
Texas Court Reporters Certification Board
Filed: August 16, 1999

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License Revocation

The Texas Court Reporters Certification Board determined at a disciplinary hearing held on June 5, 1999, that Ms. Sandra Halsey, Certified Shorthand Reporter Number 308, of Dallas, Texas, violated Section 52.029(a) of the Texas Government Code and the Standards and Rules for Certification of Certified Shorthand Reporters as promulgated by the Supreme Court of Texas. The Board found that the actions and performance of Ms. Sandra Halsey, the official court reporter who reported the capital murder trial in Cause Number F-9639973-J, styled the State of Texas versus Darlie Lynn Routier in the Criminal District Court #3 of Dallas County, Texas, and, on a change of venue, A-96-253 (Kerr County), were negligent, incompetent and unprofessional for a certified shorthand reporter in the State of Texas.

The certification of Ms. Sandra Halsey is hereby revoked as a Certified Shorthand Reporter (CSR) in the State of Texas provided, however, that such revocation does not apply to any outstanding shorthand notes taken by Ms. Halsey prior to receipt of the Board's Final Order. Upon request, said outstanding work must be completed by Ms. Halsey in a timely manner.

TRD-9905070
Peg Liedtke
Executive Director
Texas Court Reporters Certification Board
Filed: August 12, 1999

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Texas Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from First Energy Credit Union, Houston, Texas to expand its field of membership. The proposal would permit those who live or work in, and business entities located in, the Central Houston Business District-the area of Houston, Texas, which is bounded by I-10 to the north, I-59 to the east and by I-45 to the south and west, excluding persons eligible for primary membership in credit unions with assets of less than $50 million which were serving the downtown area as of June 30, 1999, and with a headquarters office located in the community described, to be eligible for membership in the credit union.

An application was received from U.S. Employees Credit Union, The Woodlands, Texas to expand its field of membership. The proposal would permit the employees of the Alliance for Multicultural Community Services (a non-profit organization) operating in Harris County, Texas and the clients of that organization who qualify for Individual Development Accounts (IDAs), to be eligible for membership in the credit union.

An application was received from B.U.E. Credit Union, Waco, Texas to expand its field of membership. The proposal would remove the exclusionary language for persons eligible for primary membership in any occupation or association based credit union that has an office in Waco, Texas and permit them to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9905253
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: August 18, 1999

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Texas Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership

Dallas Teachers Credit Union, Dallas, Texas–See the May 28, 1999, issue of the *Texas Register* (24 TexReg 4046).

Application for a Merger or Consolidation

Syntex Credit Union and Associated Credit Union–See the June 25, 1999, issue of the *Texas Register* (24 TexReg 4895).

TRD-9905254
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: August 18, 1999

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Deep East Texas Council of Governments

Request for Proposals for Professional Grant Consultant Services

The Deep East Texas Council of Governments is seeking proposals from qualified vendors for professional grant consultant services pertaining to government affairs in the state of Texas, including local, state and federal levels of government and economic development. The service of duties include:

a. Serve as coordinator of special projects as determined by the Executive Director.

b. Provide DETCOG with reports and updates on any and all activities that may affect DETCOG.

c. Assist DETCOG in preparing for press conferences and/or testimony before local, state, and federal government bodies.

d. Maintain relations with the state's congressional delegations and local and state elected officials.

e. Assist DETCOG in economic development activities, including but not limited to grant procurement, local, state, and federal zone designations for the region, and information on recruitment and expansion of business.

Contractor Requirements

The proposal should include a proposed staffing of the project, a summary of experience of staff members that will perform most of the work, overall qualifications of the consultant in projects of this nature. A summary of direct and related project experience, and an estimated schedule and fee for accomplishing the overall scope of services.

Funding of this project will be dependent upon the successful recruitment of federal, state grant funds, by DETCOG and/or other funds the consultants.

Proposals should be submitted to:

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

274 E. Lamar

Jasper, Texas 75951

(409) 384-5704

Proposals should be received by 5:00 p.m. on Friday, September 3, 1999.

TRD-9905098
Rusty Phillips
Regional Services Director
Deep East Texas Council of Governments
Filed: August 13, 1999

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Texas Education Agency

Request for Applications Concerning Prekindergarten and Kindergarten Grant Program, 1999-2000 School Year

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Application (RFA) #701-99-025 from school districts, shared services arrangements (formerly cooperatives) of school districts, and/or open-enrollment charter schools to expand their existing half-day prekindergarten programs to a full day.

Description. The first funding cycle of this grant program will be used to award funds for the expansion of existing half-day prekindergarten programs to full-day programs. Future funding cycles will be used to award planning grants, grants for new prekindergarten programs, and grants to expand existing half-day prekindergarten and kindergarten programs to full-day programs. Information regarding future funding cycles of this grant program will be distributed via letter to all school

districts and open-enrollment charter schools in addition to notice in the Texas Register.

Dates of Project. The Prekindergarten and Kindergarten Grant Program (Cycle 1, Prekindergarten Expansion Grants) will be implemented during the 1999-2000 school year. Cycle 1 expansion grants may be renewed for the 2000-2001 school year, provided all terms and conditions of 1999-2000 funding awards have been met and subject to continued availability of funds.

Project Amount. The Texas Legislature appropriated $100 million per year to the Prekindergarten and Kindergarten Grant Program for the 1999-2000 and 2000-2001 school years, representing a total of $200 million in state funds. Cycle 1 grants to expand existing half-day prekindergarten programs to a full day will be funded based on the additional attendance in the same manner as current Foundation School Program (FSP) funding. Funds may be used to employ teachers and other personnel and to acquire curriculum materials and equipment, including computers, for use in prekindergarten programs.

Selection Criteria. Applications must address each requirement as specified in the RFA to be considered for funding. Priority will be given to school districts and open-enrollment charter schools where student performance on the Grade 3 Texas Assessment of Academic Skills (TAAS) tests falls below the state average. Additional priority will be given to school districts and open-enrollment charter schools that serve the highest percentages of eligible (limited English proficient, educationally disadvantaged, and homeless) children. "Educationally disadvantaged" is defined as those children eligible to participate in the national free or reduced-price lunch program.

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 #701-99-025, Prekindergarten and Kindergarten Grant Program, will automatically be mailed by the Texas Education Agency to every school district and open-enrollment charter school in the state. Additional copies of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number (701-99-025) and title (Prekindergarten and Kindergarten Grant Program) in your request. Provide your name, complete mailing address, and telephone number including area code.

Further Information. For clarifying information about the RFA or the Prekindergarten and Kindergarten Grant Program, contact Cathy Cox, School Finance and Fiscal Analysis, Texas Education Agency, telephone (512) 463- 5085. Questions regarding prekindergarten and kindergarten curriculum and programs should be addressed to Cami Jones, Curriculum and Professional Development, Texas Education Agency, telephone (512) 463-9501.

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, October 15, 1999, to be considered for funding.

TRD-9905252
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 18, 1999

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Finance Commission of Texas

Notice of Award of Contract

Pursuant to Texas Government Code, §2254.030, the Finance Commission of Texas (commission) files this notice of a contract award to Dorothy Drummer & Associates (consultant), 400 West 15th Street, Suite 600, Austin, TX 78701. A Request for Proposals to hire an executive search consultant to assist the finance commission in recruiting a person with the experience, personality, character, and leadership ability to be appointed banking commissioner was published in the July 9, 1999, edition of the *Texas Register* (24 TexReg 5234).

This award has been denominated as FC-99-002 and the fee for services is $27,000 plus expenses. Fee and expenses shall not exceed the amount of $40,000. The contract period begins on August 11, 1999, and terminates upon appointment of a person to be the banking commissioner. Consultant estimates completion of the search and appointment of the banking commissioner within 90-120 days. The commission estimates the appointment will occur before December 31, 1999.

The contract does not require consultant to present any documents, films, recordings, or reports by a date certain. Consultant will prepare a detailed position description and ideal candidate specifications and will submit a detailed written report on each candidate selected as a finalist for interviews, at times determined by mutual agreement based on the estimated time line.

TRD-9905247
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Filed: August 17, 1999

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General Services Commission

Notice of Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the General Services Commission, State Energy Conservation Office (SECO) publishes this notice of consultant contract award. The request for proposals appeared in the December 4, 1998, issue of the *Texas Register*(23 Tex Reg 12535). The consultants will provide energy conservation education outreach services to Texas schools.

The consultants selected for this project are the Texas Energy Education Development Project at P. O. Box 775, Liberty Hills, Texas 78642, for $99,915.00, The New Braunfels Children's Museum at 651 Business Loop 35-N, Suite 530, New Braunfels, Texas, 78130, for $99,922.00, and the University of Texas at El Paso, 500 W. University Avenue, El Paso, Texas, 79968, for $95,647.00. These projects are funded with federal funds from the Department of Energy. The contract term is May 1, 1998 through May 31, 2000.

Due dates for deliverables are as follows: Program activity newsletter to schools and the Program activity report to SECO are due May 5th, August 5th, 1999, February 5th and May 5th, 2000. Final program report to SECO due June 30, 2000.

TRD-9905063
Judy Ponder
General Counsel
General Services Commission
Filed: August 11, 1999

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Office of the Governor

Request for Applications Under the Office of Juvenile Justice Delinquency Prevention (OJJDP) Enforcing Underage Drinking Program

The Governor's Criminal Justice Division announces the availability of funds to enforce underage drinking laws. Eligible applicants are cities and counties, which may also contract with other units of government or private non-profit organizations. Projects must use a comprehensive interdisciplinary approach to review research on the problem of underage drinking and develop appropriate initiatives for their community, including prevention, public education, and strict enforcement of liquor laws. For example, within a given community grant funds could be used to create or expand a task force of state and local enforcement and prosecution agencies to target establishments suspected of a pattern of violations of state laws. Other grant activities could include sharing of records among agencies; informing both establishments and minors of the consequences of illegal sales and purchases; and prosecuting those who illegally sell and purchase alcoholic beverages. The ultimate goal is to create a community climate of zero tolerance toward underage drinking.

Application kits may be obtained from the Governor's Criminal Justice Division, Justice Programs Section, at 1100 San Jacinto, Austin, Texas, 78711, telephone 512/475-2252 or 512/463-1919. Applications must be received by 5:00 p.m. on October 15, 1999. Applications may be mailed to the Governor's Criminal Justice Division, P.O. Box 12428, Austin, Texas, 78711, or delivered to 1100 San Jacinto, Austin, Texas, 78701.

Questions should be addressed to Leticia Martinez at 512/463-1921 or Jim Kester at 512/463-1916.

TRD-9905194
James Hines
Assistant General Counsel
Office of the Governor
Filed: August 16, 1999

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Texas Health and Human Services Commission

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 99-02, Amendment Number 557.

The amendment specifies that FQHC crossover claims will be paid at the Medicaid State Plan rate. The amendment is effective January 1, 1999.

If additional information is needed, please contact Nancy Nichols, Texas Department of Health, at 512-338-6511.

TRD-9905260
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 18, 1999

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Heart of Texas Council of Governments

Public Meeting Notice

The Heart of Texas Council of Governments anticipates having approximately $151,000 available to local governments in FY 2000 for solid waste management projects which implement the *Regional Solid Waste Management Plan for the Heart of Texas Region*. The State has identified several program priorities for these funds. The Legislature has directed that projects must promote cooperation between public and private entities.

The following public entities are eligible for grant funding under this program (non-profit organizations and private companies are not directly eligible, but may be subcontracted by eligible public entities):

* Cities

* Counties

* Public schools and school districts (excluding universities and other post-secondary educations institutions)

* General and special law districts created in accordance with State law and with the authority and responsibility for water quality protection or municipal solid waste management (e.g. river authorities and municipal utility districts)

* Councils of governments

If you feel you may be interested in seeking funds, or would like to have the opportunity to provide input concerning the funding plan and/or selection process, you are encouraged to attend a Public meeting to be held on August 25, 1999 at 10:00 a.m. at the Heart of Texas Council of Governments' office located at 300 Franklin Avenue, Waco.

For more information, contact Tammy Conrad at (254) 756-7822.

TRD-9905207
Brenda Campbell
Executive Assistant
Heart of Texas Council of Governments
Filed: August 17, 1999

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Texas Department of Housing and Community Affairs

Notice of the State of Texas Action Plan for Disaster Recovery Initiative Funds.

The Texas Department of Housing and Community Affairs announces the proposed State of Texas Action Plan for Disaster Recovery Initiative Funds.

The State of Texas has received notice of approval from the U.S. Department of Housing and Urban Development (HUD) for a $5,561,602 grant from the Disaster Recovery Initiative allocation. Prior to the receipt of the grant funds, the State of Texas is required to publish for public comment the proposed State of Texas Action Plan for Disaster Recovery Initiative Funds. The proposed Action Plan describes the amount of funds available, eligible applicants, eligible activities, ineligible activities, the disaster recovery plan, and other considerations for the allocation and distribution of the Disaster Recovery Initiative funds.

Since the U.S. Department of Housing and Urban Development allocates Disaster Recovery Initiative funds under the Community Development Block Grant Program, the State of Texas Action Plan for Disaster Recovery Initiative Funds will become part of the 1998 and 1999 State of Texas Consolidated Action Plans;

specifically, part of the 1998 and 1999 Consolidated Action Plans which describe the 1998 and 1999 program year allocations and distribution of Community Development Block Grant funds by the Texas Community Development Program. After the public comment period for the Disaster Recovery Initiative Action Plan has ended, the final version of the State of Texas Action Plan for Disaster Recovery Initiative Funds will be submitted to the U.S. Department of Housing and Urban Development as an amendment to the 1998 and 1999 Consolidated Action Plans.

The proposed State of Texas Action Plan for Disaster Recovery Initiative Funds:

A. DISASTER RECOVERY INITIATIVE AWARD

On June 18, 1999, the U.S. Department of Housing and Urban Development (HUD) announced the award of $5,039,000 in 1998 HUD Disaster Recovery Initiative funds and an additional $522,602 in 1999 funds to the State of Texas.

B. ELIGIBLE APPLICANTS FOR DISASTER RECOVERY INITIATIVE FUNDS

Eligible applicants for the $5,561,602 of Disaster Recovery Initiative funds must meet the following criteria:

1. Must be a county, incorporated city, or eligible Indian tribe located in a county included in the list of counties eligible for Individual Assistance or Public Assistance through the August 22, 1998 and September 23, 1998, Presidential Disaster Declarations for the Texas' counties that sustained damage resulting from Tropical Storms Charlie and Frances in August and September 1998 (FEMA-DR-1239 and 1245, respectively). The following eight (8) counties are included in the August 1998 Disaster Declaration: Edwards, Kimble, Kinney, Maverick, Real, Uvalde, Val Verde and Webb. Five counties are included in the September 1998 Disaster Declaration: Brazoria, Galveston, Harris, Jefferson and Matagorda.

2. Priority for these funds will be given to eligible applicants that have not already received a Texas Community Development Program (TCDP) Disaster Relief grant for activities associated with the occurrence of these disasters.

NON-FEDERAL PUBLIC MATCHING FUNDS REQUIREMENT

The 1998 Supplemental Appropriations Act (Pub.L.105-174) requires that "each State shall provide not less than 25 percent in non-Federal public matching funds or its equivalent value (other than administrative costs)" for any 1998 HUD Disaster Recovery Initiative grant funds which it receives. Match contributions must be made to DRI-funded recovery projects related to covered disasters. Match may be provided by any public entity from non-Federal cash, real estate, or revenue resources owned or controlled by the public entity, or the value of public improvements and public facilities, or force account work undertaken. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award, including any other DRI grant or Community Development Block Grant, may not count as satisfying the matching contribution requirement for the HUD Disaster Recovery Initiative.

C. ELIGIBLE ACTIVITIES FOR DISASTER RECOVERY INITIATIVE FUNDS

Disaster Recovery Initiative funds may supplement, but not replace, resources received from other Federal or State agencies to address unmet disaster recovery needs resulting from Tropical Storms Charlie and Frances in August and September 1998. These funds cannot be used for activities that were reimbursable by or for which funds were made available from the Federal Emergency Management Agency, the Small Business Administration, the National Resource Conservation Service, or the U.S. Army Corps of Engineers.

The funds can only be used to address damages caused by Tropical Storms Charlie and Frances on August 22 and September 23, 1998. Any damages sustained in the counties named in these Disaster Declarations that were sustained from storm or flood conditions that occurred before or after August and September of 1998 are not eligible for assistance.

The funds may be used for a wide range of activities including:

1. Acquisition, construction, reconstruction, or installation of public facilities and improvements;

2. Acquisition of real property (including the buying out of properties in a flood plain and the acquisition of relocation property;

3. Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations;

4. Debris removal, clearance, and demolition;

5. Rehabilitation or reconstruction of residential structures (for low and moderate income persons) and non-residential structures;

6. Code enforcement in deteriorated or deteriorating areas, e.g., disaster areas;

7. Assistance to facilitate homeownership among low and moderate income persons;

8. Provision of public services (the TCDP cannot spend more than 25% of the Disaster Recovery Initiative funds on public service activities);

9. Activities relating to energy conservation and renewable energy resources, incorporated into recovery;

10. Provision of assistance to profit-motivated businesses to carry out economic development or recovery activities that benefit the public through job creation/retention;

11. Planning and administration costs (limited to 16% of the total grant amount);

The TCDP must use at least fifty percent (50%) of the Disaster Recovery Initiative funds for activities which principally benefit low and moderate income persons. Priority for the use of these funds will be given to applications that include activities principally benefitting low and moderate income persons.

D. INELIGIBLE ACTIVITIES FOR DISASTER RECOVERY INITIATIVE FUNDS

In addition to other activities that are ineligible for CDBG assistance, Disaster Recovery Initiative funds cannot be used for any of the following activities:

1. The construction of public facilities that did not exist prior to the August and September 1998 floods.

2. Activities that duplicate the activities already included in the Disaster Status Reports funded by the Federal Emergency Management Agency. An application for Disaster Recovery Initiative funds can only include activities that were not contained in the Disaster Status Reports.

3. Expenses required to carry out the regular responsibilities of the unit of general local government.

4. The purchase of construction equipment is generally ineligible except for the purchase of construction equipment integral to the

operation of a solid waste facility or the purchase of fire protection equipment.

5. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. However, funds may be used to purchase such items when necessary for the administration of disaster recovery activities, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

6. Operation and maintenance expenses are ineligible except for expenses associated with public service activities, interim assistance, and office space for staff employed in carrying out the disaster recovery activities.

7. Income payments (a series of subsistence-type grant payments made to an individual or family or items such as food, clothing, housing, or utilities) are ineligible except that grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family, are eligible costs.

E. TCDP DISASTER RECOVERY PLAN

Upon the occurrence of the tropical storms and flooding in August and September of 1998, the Texas Department of Housing and Community Affairs' response to the disaster situation followed the policies and procedures contained in the Department's Emergency Management Standard Operating Procedure and the State of Texas Emergency Management Plan.

The TCDP does not have an accurate assessment of the needs in the 13 counties resulting from this covered disaster.

As such, the TCDP overall plan for disaster recovery is to provide funding to eligible entities in accordance with the federal requirements for these funds and to ensure that these funds will not be used for activities that were reimbursable by or for which funds were made available from the Federal Emergency Management Agency, the Small Business Administration, the National Resource Conservation Service, or the U.S. Army Corps of Engineers.

F. OTHER CONSIDERATIONS FOR DISASTER RECOVERY INITIATIVE FUNDS

Except for the descriptions concerning the eligible applicants, eligible activities, and ineligible activities for Disaster Recovery Initiative funds, the Texas Community Development Program will follow the same general application submission and review procedures that apply to the Disaster Relief/Urgent Need Fund.

Applications for these funds can be submitted on an as-needed basis and the TCDP will review each application for compliance with the applicable requirements. The decision to fund all or some of the activities included in an application will be influenced by the requirement that at least fifty-percent (50%) of the Disaster Recovery Initiative funds be used for activities that principally benefit low and moderate income persons.

The maximum award from Disaster Recovery Initiative funds cannot exceed the amount of funds available under this allocation and the minimum award is set at $25,000. All applications received shall be given full consideration based on the merits of the application before any one applicant can be awarded the total allocation.

The monitoring standards for the Disaster Recovery Initiative funds will be the same as those described on Page 219 of the State of Texas Consolidated Plan.

A copy of State of Texas Action Plan for Disaster Recovery Initiative Funds is available for review at the Texas Department of Housing and Community Affairs, Texas Community Development Office, 507 Sabine, Suite 700, Austin. Written comments concerning this plan will be accepted for 15 days from the date of publication and should be submitted to Anne Paddock (apaddock@tdhca.state.tx.us), Deputy General Counsel, Texas Department of Housing and Community Affairs, 507 Sabine, P.O. Box 13941, Austin, Texas, 78711-3941.

TRD-9905221
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 17, 1999

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Texas Department of Human Services

Request for Information-Transitioning EBT Point-of-Sale Network

Introduction

For the last four years the Texas Department of Human Services (TDHS) has been operating an Electronic Benefits Transfer (EBT) system through a single vendor to deliver food stamp and TANF cash assistance to participating clients. The Department is replacing the current EBT system with one made of components furnished by multiple vendors. The Point of Sale (POS) network is one of the major EBT functions that TDHS expects to outsource when the contract with the current vendor expires in February 2001. The future EBT system (EBT-2) must be fully operational by the time the current contract ends.

Current System

Recipients use a magnetic stripe card to access benefits in retailer outlets located throughout Texas. Retailers in the Texas EBT system use either a shared commercial POS device, a POS device supplied by the State, or in emergency or low volume situations, manual vouchers. State-supplied POS equipment is either a VeriFone 330 or 340 with PIN pads and printers.

There are approximately 13,000 retailers in the current POS network. Of those, an estimated 10,000 retailers use State-supplied POS devices. The allowable number of State-supplied POS devices, per retailer, varies based on several factors. The total number of State-supplied POS devices is approximately 12,000. POS processing involves: an exchange of electronic messages requesting authorization from the originating POS terminal, a response or authorization from the on-line EBT host (sometimes through a third party processor), and a transaction completion message from the originating POS terminal to the EBT host.

The current POS transaction format is VISA 2 for State-supplied POS devices and ISO 8583 for third party processors. The department is willing to accept either format.

While transaction volumes fluctuate due to increased/decreased caseloads (as affected by State and Federal legislation), recent information indicates an estimated 6,000,000 EBT transactions are completed monthly. Of those transactions, approximately 45% originate from the State-supplied POS devices. Retailers using State-supplied POS devices have average monthly transaction volumes ranging from 0 to over 11,000. The remaining transactions come from certified third party processor connections and retailers that act as their own processors. Note: Of the approximately 10,000 retailers with State- supplied POS devices, approximately 7,300

of them process less than 300 food stamp transactions monthly. Of those 7,300 retailers, 4,500 process less than 150 food stamp transactions per month.

Strategies for the New EBT-2 System

In planning for the future Texas EBT system, TDHS is interested in developing new solutions for the EBT Point-of-Sale network. The primary strategy for cost containment is to transition from a State-supplied POS network to using existing commercial POS transaction processing environments or commercializing (through acquisition) the current State-supplied EBT network. Options under consideration are: contracting with a single third party processor to take over the State-supplied EBT network, contracting with multiple third party processors to commercialize existing State- supplied EBT retailers (retailers select from a list of third party processors), contracting with a gateway provider to execute EBT transactions through their network using existing POS equipment, or a combination of the above.

Request Synopsis

In this RFI, TDHS invites ideas and discussions on how best to transition the State- supplied EBT Point-of-Sale network as discussed above. In particular, the department would appreciate feedback on the options, warnings about pitfalls, suggestions on how to avoid mistakes, information on vendor/stakeholder preferences, cost estimates for key variables and options, and suggestions for new options.

Responses may be submitted in free form to Chris Wilson, Texas Department of Human Services, Lone Star Technology Department, P. O. Box 149030, Austin, Texas 78714-9030, (512) 231-5763, e-mail chris.wilson.dhs.state.tx.us. Please ensure that sufficient information is provided to answer the fundamental questions: should TDHS and the State of Texas continue to maintain this private EBT network (State-supplied equipment)? If not, what is the best approach to eliminate the current State-supplied POS network, and what is the best way to transition all (or nearly all) EBT transactions to a commercial network infrastructure?

In addition to potential vendors we also solicit responses from key stakeholders in the current EBT system. Answering the questionnaire and providing transition advice is a good way for key stakeholders to have a voice in the EBT system transition.

Schedule

RFI released in Texas Register on August 27, 1999

RFI conference on September 7, 1999, 2:00 - 4:00 P.M. (for location see below)

RFI responses due at close of business, September 17, 1999

RFI Conference will be held at: J.J. Pickle Research Campus - The Commons; corner of Braker Lane and Burnet Road in north Austin; for detailed directions link to: http://www.utexas.edu/business/prccommons/

NOTE: This is an abridged version of this document. Access to full version (with the inclusion of attachments and questionaire) can be obtained in the "Of Interest" section on DHS' homepage http://www.dhs.state.tx.us/

TRD-9905258
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: August 18, 1999

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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 the State of Texas by BANKERS LLOYDS INSURANCE COMPANY, a foreign lloyds company. The home office is in St. Petersburg, Florida.

Application to change the name of THE COLLEGE LIFE INSURANCE COMPANY OF AMERICA to THE AMERICO LIFE INSURANCE COMPANY, a domestic life company. The home office is in Dallas, Texas.

Application to change the name of AMERICAN CREDIT INDEMNITY COMPANY to EULER AMERICAN CREDIT INDEMNITY COMPANY, a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of THE FIRST REINSURANCE COMPANY OF HARTFORD to DEERFIELD INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Evanston, Illinois.

Application to change the name of FINANCIAL SAVINGS INSURANCE COMPANY to AMCORP INSURANCE COMPANY, a domestic fire and casualty company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9905261
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 18, 1999

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Third Party Administrator Applications

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 Administrative Concepts, Inc., a foreign third party administrator. The home office is Wayne, Pennsylvania.

Application for admission to Texas of MillsService Corp., a foreign third party administrator. The home office is Wilmington, Delaware.

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-9905222
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 17, 1999

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Texas Department of Licensing and Regulation

Vacancies on Service Contract Providers Advisory Board

The Texas Commission of Licensing and Regulation announces vacancies on the Service Contract Providers Advisory Board established by Acts of the 76th Legislature, Senate Bill 1775 which created Texas Civil Statutes, Article 9034, Service Contract Regulatory Act. This announcement is for all positions on the advisory board.

The service contract providers advisory board is an advisory body to the department. The advisory board advises the commissioner in adopting rules and enforcing and administering this article and advises the commission in setting fees. The advisory board is composed of six members appointed by the commissioner as follows: two members must be officers, directors, or employees of a provider of service contracts; two members must be officers, directors, or employees of a retail outlet or other entity located in this state that provides to consumers service contracts; one member must be an officer, director, or employee of an entity approved by the Texas Department of Insurance to sell reimbursement insurance policies; and one member must be a resident of this state who has, as a consumer, a service contract in force in this state at the time of the appointment. Providers must be registered by January 1, 2000.

A member of the advisory board serves a term of six years with terms expiring on February 1 of odd-numbered years. The commissioner shall designate one member of the advisory board to serve as presiding officer. The commissioner or the commissioner's designee shall serve as an ex officio nonvoting member of the advisory board. The commissioner shall fill any vacancy on the advisory board for the remainder of the unexpired term with an individual who represents the same interests with which the predecessor was identified. The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer. The advisory board shall meet at a location in this state designated by the advisory board. A decision of the advisory board is not effective unless it receives the affirmative vote of at least four members. The advisory board members serve without compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Interested persons should request an application from the Texas Department of Licensing and Regulation by **Telephone:** (512) 463-7348 or (512) 463-7357, **Fax:** (512) 475-2872 or **E-mail:** caroline@license.state.tx.us. Applications must be returned to the Department of Licensing and Regulation no later than August 30, 1999.

Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-9905071
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: August 12, 1999

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding JOE PHAN AND TUYET NGUYEN, Docket Number 1996-1421- PST-E; TNRCC ID Number 46980; Enforcement ID Number 5116 on July 30, 1999 assessing $16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CITY OF GROVETON, Docket Number 1998-0946-MSW-E; TNRCC ID Number 898; Enforcement ID Number 12800 on July 30, 1999 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Gooch, Staff Attorney at (817) 469-6750 or Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An default order was entered regarding TIM BRITTEN DOING BUSINESS AS JACKRABBIT FILTERS, Docket Number 1998-0481-AIR-E; SOAH Docket Number 582-99-0148 on July 28, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-3400 or Stacy Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GENE THOMPSON DOING BUSINESS AS BIG BEND MOTOR INN, Docket Number 1998-1079-PWS-E; PWS Number 0220027 on July 30, 1999 assessing $1,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Stewart, Enforcement Coordinator at (512) 239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OAK RIDGE VENTURE, INC., Docket Number 1999-0248-PWS-E; PWS ID Number 0490021 on July 30, 1999 assessing $7,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZEKE HOLLOWAY/HILL RIVER COUNTRY ESTATES, INC., Docket Number 1998-0515-PWS-E; PWS Number 1330151; Enforcement ID Number12500 on July 30, 1999 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512) 239-3915 or Paul Beasley, Enforcement Coordinator at (512) 239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH HUNT WATER SUPPLY CORPORATION, Docket Number 1998-0500-PWS-E; TNRCC ID Number 1160039; Enforcement ID Number 6695 on July 30, 1999 assessing $7,013 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512) 239-3506 or Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JIMMY LENAMOND DOING BUSINESS AS BIG CREEK WEST SUBDIVISION WATER SYSTEM, Docket Number 1998-0521-PWS-E; PWS Number 1470032; Enforcement ID Number 6779 on July 30, 1999 assessing $300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CORPUS CHRISTI, Docket Number 1998-1391-PWS-E; PWS ID Number 1780003; Enforcement ID Number 13041 on July 30, 1999 assessing $141,75 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512) 239-2029 or John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IMPACT CHRISTIAN YOUTH CAMP INC. DOING BUSINESS AS CAMP OF THE HILLS, Docket Number 1998-0636-PWS-E; PWS NUMBER 0270110; Enforcement ID Number 12596 on July 30, 1999 assessing $1,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE TEN COUNCIL OF THE BOY SCOUTS OF AMERICA DOING BUSINESS AS CAMP CHEROKEE, Docket Number 1998-1450-PWS-E; PWS Number 1070210 on July 30, 1999 assessing $938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Stewart, Enforcement Coordinator at (512) 239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ROGELIO IBARRA DOING BUSINESS AS A-1 MOBILE HOME PARK, Docket Number 1998-0692-PWS-E; TNRCC ID Number PWS 0150204 on July 30, 1999 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or Paul Beasley, Enforcement Coordinator at (512) 239-1759, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TETCO STORES, L.P. & NORTH DALLAS PETROLEUM, INC., Docket Number 1999-0016-PST-E; PST Facility ID Number 17533; Enforcement ID Number 13117 on July 30, 1999 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EVANS SYSTEMS, INCORPORATED, Docket Number 1998-0617- PST-E; PST Facility ID Number 0033606; Enforcement ID Number 12421 on July 30, 1999 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512) 239-3915 or Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRANITE INVESTMENTS, LTD. DOING BUSINESS AS OASIS TEXACO #1, Docket Number 1998-1183-PST-E; PST Facility ID 53301; Enforcement ID Number E12768 on July 30, 1999 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Randy Norwood, Enforcement Coordinator at (512) 239-1879, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KARMALI HOLDINGS, INC. DOING BUSINESS AS TWO WAY STOP, Docket Number 1998-1256-PST-E; PST Facility ID Number 2224; Enforcement ID Number 13009 on July 30, 1999 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Gayle Zapalac, Enforcement Coordinator at (512) 239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LOWERY PETROLEUM, INC., Docket Number 1998-0676-PST-E; TNRCC ID Number 5008; Enforcement ID Number 12610 on July 30, 1999 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Gross, Staff Attorney at (512) 239-1736 or Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ALYNA INC. AND RIYAZ NATHOO, Docket Number 1998-0942- PST-E; PST Facility Number 04039; Enforcement ID Number 4966 on July 30, 1999 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Hernandez, Staff Attorney at (512) 239-0612 or Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CITY OF DALLAS, Docket Number 1997-0196-MSW-E; Enforcement ID Number 10065 on July 30, 1999 assessing $106,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Gross, Staff Attorney at (512) 239-1736 or Craig Fleming, Enforcement Coordinator at (512) 239-2545, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF PINELAND, Docket Number 1998-1374-MSW-E; MSW Registration Number 40054; Enforcement ID Number 13027 on July 30, 1999 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding W.C. RICHARDSON, Docket Number 1998-0904-AIR-E; Air Account Number OC-0175-K; Enforcement ID Number 12771 on July 30, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512) 239-4706 or Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PREWASH AND PRESSING SERVICES, INCORPORATED, Docket Number 1999-0050-AIR-E; Account Number. EE-1515-V on July 30, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carol Dye, Enforcement Coordinator at (512) 239-1504, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHARLES BURGIN DOING BUSINESS AS KAR KORRAL, Docket Number 1998- 1341-AIR-E; Air Account Number KF-0073-I; Enforcement ID Number 13113 on July 30, 1999 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JOHN WILSON, Docket Number 1998-0202-OSI-E; OSSF Installer Certification Number 5410; Enforcement ID Number 12210 on July 30, 1999 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at (512) 239-1738 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONNIE R. GOINS DOING BUSINESS AS L.R. SEPTIC TANK SERVICE AND L.R. PLUMBING, Docket Number 1998-0495-SLG-E; Sludge Transporter Registration Number 20690 on July 30, 1999 assessing $5,000 in administrative penalties with $4,400 deferred.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548 or Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FARCO MINING, INC., Docket Number 1999-0103-IWD-E; WQ Permit Number 03595; Enforcement ID Number 13300 on July 30, 1999 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Eric Reese, Enforcement Coordinator at (512) 239-2611, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHILLIPS 66 COMPANY, Docket Number 998-1356-IWD-E; Registration Number L-111185; Enforcement ID Number 13025 on July 30, 1999 assessing $1,700 in administrative penalties with $340 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CITY OF NEEDVILLE, Docket Number 1998-1457-MWD-E; WQ Permit Number 10343-001; Enforcement ID Number 8815 on July 30, 1999 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS HAWAII, LTD., Docket Number 1998-1163-MWD-E; No TNRCC Permit; Enforcement ID Number 12930 on July 30, 1999 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CONROE, Docket Number 1998-1439-MSW-E; MSW Permit Number 81A; Enforcement ID Number 2606 on July 30, 1999 assessing $11,000 in administrative penalties with $2,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Gloria Stanford, Enforcement Coordinator at (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RAUL CHAVEZ AND ADELIO URIBE DOING BUSINESS AS ENCON ENVIRONMENTAL SERVICES, INC., Docket Number 1998-0862-IHW-E; SOAH Docket Number 582-99-0207 on July 28, 1999 assessing $69,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Z. Hernandez, Staff Attorney at (512) 239-0612 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOIS BARTON DOING BUSINESS AS THE GENERAL STORE, Docket Number 1998-1017-PWS-E; PWS ID Number 81A; Enforcement ID Number 12819 on July 30, 1999 assessing $495 in administrative penalties with $99 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9905002
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 10, 1999

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Notice of Application for District Creation and/or Standby Fee

Petitioners filed a petition for creation of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 373 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to: Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioners are owners of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 151.0716 acres located within Harris County, Texas; and (3) the proposed District is within the corporate limits of the City of Seabrook, Texas, and is not within such jurisdiction of any other city. The petition further states that the proposed District will: (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $8,000,000.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 19 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for authority to adopt and impose an annual non-uniform operations and maintenance (O&M) standby fee ranging from $3.65 in the unimproved acreage in the District to $78.23 in Riverwood Village, Sections One and Three, per vacant single-family connection (ESFC) for the calendar years 1999 through 2001. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TNRCC.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9905215
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 17, 1999

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Notices of Water Quality Applications

The following notices were issued during the period of August 4, 1999 through August 10, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105 , P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ACME BRICK COMPANY has applied for a Texas Pollutant Discharge Elimination System (TPDES) permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03844, which authorizes the discharge of settled mine pit water and stormwater runoff on an intermittent and flow variable basis via Outfall 001. The applicant operates a clay mine, which is located adjacent to the south side of U.S. Highway 380 immediately west of the intersection of U.S. Highways 380 and 377 near the city of Crossroads in Denton County, Texas.

CITY OF ALVIN has applied for a renewal of TNRCC Permit Number 10005-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The plant site is located approximately 3,000 feet west of the intersection of County Roads 160 and 158, and approximately 3.5 miles northeast of the intersection of State Highway 35 and Farm-to-Market Road 2917, south of the City of Alvin in Brazoria County, Texas.

AQUASOURCE UTILITY, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0075434 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11193-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The plant site is located approximately 2,000 feet southeast of the intersection of Fisher and Brittmore Roads in Harris County, Texas.

AQUA SOURCE UTILITY INC. has applied for a renewal of TNRCC Permit Number 12996-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located at 11400 Green River Drive on the northeast corner of the crossing of Greens Bayou by Green River Drive in Harris County, Texas.

CITY OF BELLEVUE has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11235-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,000

gallons per day. The plant site is located due north of Bellevue, approximately 0.3 miles north of the intersection of U.S. Highway 287 and Farm-to-Market Road 1288, and 900 feet east of Farm-to-Market Road 1288 in Clay County, Texas.

BERNARD TIMBERS WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit Number 12097-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day. The plant site is located north of U.S. Highway 90A, approximately 1.4 miles northeast of the intersection of U.S. Highway 90A and State Highway 60 in Wharton County, Texas.

CITY OF BONHAM has applied for a renewal of TNRCC Permit Number 10070-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located approximately 0.5 mile east of the City of Bonham on Seven Oaks Road in Fannin County, Texas.

CITY OF BOYD has applied for a renewal of TNRCC Permit Number 10131-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The plant site is located on the north side of State Highway 114, approximately 1,000 feet east-northeast of the intersection of Farm-to-Market Road 730 and State Highway 114 in Wise County, Texas.

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11866-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located approximately two miles west of the Interstate Highway 35 and 3,600 feet north of Farm-to-Market Road 3406 in Williamson County, Texas.

BUILDING MATERIALS CORPORATION OF AMERICA has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03828. The draft permit authorizes the discharge of process wastewater (contact cooling water) and stormwater at a daily average dry weather flow not to exceed 2,000 gallons per day via Outfall 001, and the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day via Outfall 002. The plant site is located at 13530-60 Industrial Road approximately one mile east of the intersection of Industrial Road and Federal Road in Harris County, Texas.

CITY OF BURKBURNETT has applied for a renewal of TNRCC Permit Number 10002-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The plant site is located on the east side of Kelly Street, just north of Third Street (State Highway 240) in the City of Burkburnett in Wichita County, Texas.

CITY OF CADDO MILLS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0024970 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10425-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 0.7 mile south of the intersection of State Highway 60 and Farm to Market Road 36 in Hunt County, Texas.

CITY OF CARTHAGE has applied for a renewal of TNRCC Permit Number 10074-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,600,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,600,000 gallons per day. The plant site is located east of the City of Carthage and south of Hoggs Bayou, approximately 1.5 miles east of the intersection of U.S. Highways 59 and 79 in Panola County, Texas.

CITY OF CLEBURNE has applied for a renewal of TNRCC Permit Number 10006-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,250,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,250,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10006-001 will replace the existing NPDES Permit Number TX0047155 issued on September 11, 1992 and TNRCC Permit Number 10006-001. The plant site is located on the north side of Buffalo Creek, approximately one mile southwest of the intersection of State Highway 174 and State Highway 171 in Johnson County, Texas.

CREEK PARK CORPORATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13868-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The plant site is located approximately 1 mile east of County Road 600 and approximately 1.5 miles south of the intersection of County Road 600 and Farm-to-Market Road 917 in Johnson County, Texas.

DAYTOP VILLAGE FOUNDATION, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13744-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located 2.5 miles east-southeast of the Community of Bois D'Arc and approximately 14 miles north of the City of Palestine in Anderson County, Texas.

DOOR TO RECOVERY, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13941-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located approximately 260 feet north-northeast of the intersection of County Road 6 and County Road 779, approximately 3,000 feet northeast of the intersection of County Road 203 and County Road 210 in Brazoria County, Texas

ECONO-RAIL CORPORATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03373. The draft permit authorizes the discharge of wash water and stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates the Port of Houston Authority Bulk Handling Facility. The plant site is located at 3100 Penn City Road in the City of Houston, immediately east-northeast of the confluence of Greens Bayou and Buffalo Bayou in Harris County, Texas.

CITY OF EDCOUCH has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13916-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day. The plant site is located approximately 0.5 mile northeast of the intersection of State Route 107 and Farm-to-Market Road 1015 in Hidalgo County, Texas.

CITY OF FALLS CITY has applied for a renewal of TNRCC Permit Number 10398-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 26 acres. The plant site is located approximately 600 feet northwest of the intersection of Panna Maria Street and Maverick Street in Karnes County, Texas.

FT. BEND PROPERTIES, INC. has applied for a renewal of TNRCC Permit Number 12812-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 27,000 gallons per day. The plant site is located 1518 Spring Cypress Road, City of Houston in Harris County, Texas.

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT Number 12 has applied for a renewal of TNRCC Permit Number 10435-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located 0.3 mile south and 1.0 mile west of the intersection of Interstate Highway 45 and State Highway 6 at Pompano Road and Neptune Road within the Bayou Vista Subdivision, in Galveston County, Texas.

GALVESTON COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NUMBER 1 has applied for a renewal of TNRCC Permit Number 10173-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,600,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,600,000 gallons per day. The plant site is located on the north side of Dickinson Bayou between the Galveston, Houston and Henderson Railroad and Nebraska Street in the City of Dickinson in Galveston County, Texas.

GALVESTON ENVIRONMENTAL SERVICES, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 02851, which authorizes the discharge of stormwater from diked tank farms on an intermittent and flow variable basis via Outfall 001. The applicant operates a crude oil and fuel blending operation and petroleum tank farm. The plant site is located adjacent to and north of Farm-to-Market (FM) Road 517 and about 1,200 feet east of the intersection of FM Road 517 and State Highway 146, approximately three miles southwest of the City of San Leon, Galveston County, Texas.

CITY OF GATESVILLE has applied for a renewal of TNRCC Permit Number 10176-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The plant site is located on Stillhouse Branch, 1,200 feet west of the point where State Highway 36 crosses Stillhouse Branch in Coryell County, Texas.

GREENWOOD UTILITY DISTRICT has applied for a major amendment to TNRCC Permit Number 11061-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 850,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The plant site is located at 11702 Tidwell Road and approximately 1,000 feet west of the intersection of John Ralston Road and Tidwell Road in Harris County, Texas.

TOWN OF HACKBERRY has applied for a renewal of TNRCC Permit Number 13434-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,500 gallons per day. The plant site is located at the southern end of Maxwell Road in the Town of Hackberry in Denton County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NUMBER 51 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0025062 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10032-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,300,000 gallons per day. The plant site is located located at 14701 Woodforest Boulevard, east of Carpenters Bayou in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 24 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11988-003, which authorizes the discharge of water treatment plant wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located approximately 7,500 feet north of Louetta Road, and the west side of Steubner Airline Road in the Community of Spring in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 102 has applied for a renewal of TNRCC Permit Number 11523-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,300,000 gallons per day. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for South Mayde Creek (in Addicks Reservoir) for incorporation into 30 TAC §307.10, Appendix D. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The renewed permit also authorizes a variance to the Texas Surface Water Quality Standards under 30 TAC 307.2(d)(4). The variance would authorize a three-year period in which the Commission will consider a recommended site- specific standard for South Mayde Creek (in Addicks Reservoir) and determine whether to adopt the standard or require the existing water quality standard to remain in effect. The plant site is located on the north bank of Langham Creek, approximately 2,400 feet east of State Highway 6 and 1.2 miles south of Farm-to-Market Road 529 (Spencer Road) in Harris County, Texas.

COUNTY OF HIDALGO has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10973-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The plant site is located approximately 2 miles north of the intersection of Farm-to-Market Roads 88 and 1422, east of Farm- to-Market Road 88, adjacent to the Monte Alto Reservoir in Hidalgo County, Texas.

RENE HINOJOSA has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13559-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located on Herman Street, 350 feet east of Suburban Drive and approximately

1,400 feet northeast of the intersection of Suburban Drive and Mount Houston Road in Harris County, Texas.

HOMETOWN MEADOW GLEN UTILITY SERVICE has applied for a renewal of TNRCC Permit Number 12768-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located in Hometown Meadow Glen Estates along the east side of Old Denton Road approximately 2.5 miles west of U.S. Highway 377 and 0.5 mile north of Keller-Hicks Road in Tarrant County, Texas.

CITY OF LAREDO has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0002542 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10681-001. The draft permit authorizes the discharge of water treatment plant wastewater at a daily average flow not to exceed 4,100,000 gallons per day. The plant site is located at 2519 Jefferson Street, adjacent to the Rio Grande in the City of Laredo in Webb County, Texas.

CITY OF LEXINGTON has applied for a renewal of TNRCC Permit Number 10016-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located 0.5 mile west of the intersection of Farm-to- Market Road 112 and State Highway Spur 123 and west of the City of Lexington, approximately 1 mile south in Lee County, Texas.

LOCHINVAR GOLF CLUB has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12141-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The plant site is located approximately 2,100 feet east-southeast of the intersection of Hardy Road and Farrell Road and 2.3 miles east-northeast of the intersection of Interstate Highway 45 and Kuykendahl Road in Harris County, Texas.

CITY OF LOCKNEY has applied for a renewal of Permit Number 10211-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via irrigation of 160 acres of non-food cropland. The wastewater treatment facilities and disposal area are located approximately 0.1 mile south of U.S. Highway 70 and 1.0 mile east of Farm-to-Market Road 378, and southeast of the City of Lockney in Floyd County, Texas.

LOWER COLORADO RIVER AUTHORITY has applied for a major amendment to TNRCC Permit Number 10100-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 520,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The plant site is located at 720 Cleveland Street, approximately 0.25 mile south of U.S. Highway 290 in the City of Elgin in Bastrop County, Texas.

CITY OF MABANK has applied for a renewal of TNRCC Permit Number 10579-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately 6000 feet west of the intersection of U.S. Highway 175 and Farm-to-Market Road 90 in Kaufman County, Texas.

CITY OF MANOR has applied for a renewal of TNRCC Permit Number 11003-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 192,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11003-001 will replace the existing NPDES Permit Number TX0027022 issued on March 15, 1993 and TNRCC Permit Number 11003-001. The plant site is located approximately 0.25 mile west of State highway 212 and 0.5 mile south of U.S. Highway 290 on the Old Austin Road in Travis County, Texas.

MEDINA COUNTY WATER CONTROL & IMPROVEMENT DISTRICT Number 2 has applied for a renewal of NPDES Permit Number TX0075779, which authorizes the discharge of treated domestic wastewater based on a daily average flow not to exceed 80,000 gallons per day. The plant site is located on the west side of Nester Lane approximately 2,000 feet south of the intersection of Nester Lane and South Street in the City of D'Hanis in Medina County, Texas.

CITY OF MINERAL WELLS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10585-004, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,260,000 gallons per day. The plant site is located approximately 1,700 feet northwest of the intersection of U.S. Highway 180 and Rock Creek in Parker County, Texas.

MOFFETT TWIN-OAKS MOBILE HOME PROPERTY TRUST has applied for a renewal of TNRCC Permit Number 11588-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on the west bank of Willis Creek approximately one mile south of the Willis Creek crossing of Farm-to-Market Road 842 and approximately two miles northeast of the intersection of Farm-to-Market Road 842 and State Highway 103E near the City of Lufkin in Angelina County, Texas.

CITY OF NEEDVILLE has applied for a renewal of TNRCC Permit Number 10343-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located at 14206 Church Street south of Buffalo Creek and south of the City of Needville, approximately 0.4 mile east and 0.8 mile south of the intersection of State Highway 36 and Farm-to-Market Road 1236 in Fort Bend County, Texas.

THE CITY OF NOCONA has applied for a renewal of TNRCC Permit Number 10355-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 224,000 gallons per day. The plant site is located 0.3 miles east of State Highway 175 (Montague Street); approximately 0.7 mile south of intersection of U.S. Highway 82 and State Highway 175 in the City of Nocona in Montague County, Texas.

NORTH MISSION GLEN MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TNRCC Permit Number 12379-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 565,000 gallons per day to an annual average flow not to exceed 1,180,000 gallons per day. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 565,000 gallons per day. The plant site is located at a point approximately $\frac{1}{2}$ mile west of Gaines Road and approximately 3/4 mile south of the intersection of Addicks-Clodine Road and Beechnut Street in Fort Bend County, Texas.

CITY OF OLNEY has applied for a renewal of TNRCC Permit Number 10050-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 790,000 gallons per day. The plant site is located approximately 1500 feet southeast of the intersection of Farm-to-Market Road 210 (Spring Creek Road) and State Highway 79 in Young County, Texas.

CITY OF ORANGE GROVE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant

Discharge Elimination System (NPDES) Permit Number TX0020397 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10592-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located on the east side of County Road 351, approximately 0.5 mile south of the City of Orange Grove and approximately 0.9 mile south of the intersection of County Road 351 and Farm-to-Market Road 624 in Jim Wells County, Texas.

PALO PINTO COUNTY has applied for a renewal of TNRCC Permit Number 11698-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on the east bank of Town Branch Creek approximately 1,200 feet due north of the intersection of U.S. Highway 180 and Farm-to-Market Road 4 at the end of North Ninth Avenue in the outskirts of the town of Palo Pinto in Palo Pinto County, Texas.

PANALPINA, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12418-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The plant site is located approximately 500 feet east of Lee Road at a point approximately 1,800 feet north of the intersection of Will Clayton Parkway and Lee Road in Harris County, Texas.

CITY OF PECOS has applied for a major amendment to Permit Number 10245-001, to authorize an increase in the land disposal site used for irrigation from 300 acres to 450 acres. The permitted flow will remain same per the current permit issued on June 26, 1989. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,600,000 gallons per day via irrigation of 300 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 1.5 miles east of the intersection of U.S. Highway 80 and U.S. Highway 285 in Reeves County, Texas.

PIONEER CONCRETE OF TEXAS, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 00679, which authorizes the discharge of treated process wastewater and storm water on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0001139 issued on March 30, 1979 and TNRCC Permit Number 00679 issued on February 9, 1996. The applicant operates a stone quarrying, crushing, and washing operation. The plant site is located on Farm-to-Market Road 1810 approximately one mile east of the intersection of State Highway 101 and Farm-to-Market Road 1810 in the City of Chico, Wise County, Texas.

CITY OF QUEEN CITY has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11225-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located on the south side of Cypress Creek approximately 1.1 mile east and 0.2 mile north of the intersection of Farm-to-Market Road 96 and U.S. Highway 59 in Cass County, Texas.

RANDOLPH WATER SUPPLY CORPORATION has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0027928 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 1143-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21, 800 gallons per day. The plant site is located on the south side of State Highway 11, approximately 600 feet east of the intersection of State Highway 11 and Loop 451 in Fannin County, Texas.

RED LICK INDEPENDENT SCHOOL DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0102580 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13392-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The plant site is located approximately 1.5 miles east of the intersection of Interstate Highway 30 and Farm-to- Market Road 2253; approximately 1,000 feet west of the intersection of Earnest Road and Farm-to- Market Road 2148 in Bowie County, Texas.

RED RIVER AUTHORITY OF TEXAS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0101818 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11445-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located on Arrowhead Ranch Estates property , approximately 2,300 feet east of Farm-to-Market Road 1954 and 5.4 miles southeast of the intersection of U.S. highway 281 and Farm-to-Market Road 1954 in Clay County, Texas.

RHODIA INC. has applied for a major amendment to TNRCC Permit Number 02537 to authorize an increase in the effluent limitations for biochemical oxygen demand (5-day) and ammonia-nitrogen at Outfall 001 and to authorize an extension of a temporary variance for dissolved oxygen. The current permit authorizes the discharge of treated process wastewater, first flush storm water, utility and sanitary wastewaters at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001, which will remain the same; and storm water on an intermittent and flow variable basis via Outfall 002, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0088781 issued on January 19, 1990 and TNRCC Permit Number 02537, issued on July 5, 1995. The applicant operates a guar processing plant. The plant site is located at 201 Harrison Street, approximately 0.2 miles north of Highway 287, and approximately one mile east of the intersection of Highway 287 and Highway 70 in the City of Vernon, Wilbarger County, Texas.

RIVIERA WATER CONTROL & IMPROVEMENT DISTRICT has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13374-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located 400 West Live Oak in the southwest corner of the City of Riviera, approximately 0.35 mile west of U.S. Highway 77 and approximately 0.4 mile east of State Highway 285 in Kleberg County, Texas.

ROBERT EDWARD PINE has applied for a renewal of TNRCC Permit Number 13735-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day. The plant site is located approximately 2.8 miles

north of the intersection of State Highway 6 and County Road 48 and 0.3 miles south of American Canal on County Road 48 in Brazoria County, Texas.

CITY OF ROCKPORT has applied for a renewal of TNRCC Permit Number 10054-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located on the west side of Farm-to-Market Road 2165, approximately 1,200 feet south of the intersection of Farm- to-Market Road 2165 and Enterprise Boulevard in Aransas County, Texas

CITY OF RUSK has applied for a renewal of TNRCC Permit Number 10447-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,750,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The current permit also authorizes the Distribution and Marketing of sewage sludge. The permittee has requested to have this authorization removed from the permit. The plant site is located approximately 0.35 mile west of Farm-to-Market Road 752 and approximately 1.5 miles south of mid-town Rusk in Cherokee County, Texas.

S.F. SULFUR CORPORATION has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0007099 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01518. The draft permit authorizes the discharge of the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates the Freeport Industrial Sulfur Plant. The plant site is located at 608 East Second Street in the City of Freeport, Brazoria County, Texas.

CITY OF SAN AUGUSTINE 301 South Harrison, San Augustine, Texas 75972, has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10268-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The plant site is located approximately 5,000 feet northeast of the intersection of U.S. Highway 96 and Farm-to-Market Road 147 in San Augustine County, Texas.

CITY OF SAN DIEGO has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0023361 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10270-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The plant site is located adjacent to and east of Benavides Street, approximately 800 feet south of San Diego Creek, 2,200 feet east of State Highway 359 and 3,300 feet south of State Highway 44 in Duval and Jim Wells County, Texas.

CITY OF SAVOY has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0023299 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10606-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 128,000 gallons per day. The plant site is located approximately 150 feet east of Brushy Creek, approximately 900 feet west of Farm-to-Market road 1752, and north to the City of Savoy in Fannin County, Texas.

CITY OF SEADRIFT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03954. The draft permit authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The applicant operates the Dallas Avenue water treatment plant. The plant site is located approximately 300 feet east of the intersection of Dallas Avenue and Main Street, on the north side of Dallas Avenue in the City of Seadrift, Calhoun County, Texas

CITY OF SEAGOVILLE has applied for a renewal of TNRCC Permit Number 10370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,700,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The plant site is located approximately 0.65 of a mile northeast of the intersection of Malloy Bridge Road and U.S. Highway 175 and approximately 0.5 of a mile north of U.S. Highway 175 in Dallas County, Texas.

SEIS LAGOS MUNICIPAL UTILITY DISTRICT AND NORTH TEXAS MUNICIPAL WATER DISTRICT have applied for a renewal of TNRCC Permit Number 11451-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located at 1007 Riva Ridge in the Seis Lagos Development approximately 0.8 mile southeast of the intersection of Farm-to-Market Road 3286 in Collin County, Texas.

SPECIFIED FUELS & CHEMICALS, L.L.C has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0084778 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02419. The draft permit authorizes the discharge of process wastewater, boiler blowdown, steam condensate, and stormwater at a daily average flow not to exceed 100,000 gallons per day via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfalls 002 and 003. The applicant operates the Channelview Plant, a toll chemicals distillation/petroleum refining facility. The plant site is located at 1201 South Sheldon Road, approximately 1.5 miles south of the intersection of Interstate Highway 10 and Sheldon Road near the City of Channelview in Harris County, Texas.

SPRING CENTER, INC. has applied for a renewal of TNRCC Permit Number 12637-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located approximately 1 1/2 miles north of the City of Spring at 22820 Interstate Highway 45 North in Harris County, Texas.

TXU ELECTRIC COMPANY has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01249. The draft permit authorizes the discharge of once-through cooling water, and previously monitored effluents (low volume waste water and/or metal cleaning waste) at a daily average flow not to exceed 594,000,000 gallons per day via Outfall 001, and low volume wastewater and stormwater on an intermittent and flow variable basis via Outfall 002. The applicant operates the North Lake Steam Electric Station. The plant site is located on the north shore of North Lake immediately southeast of

the Moore Road and Belt Line Road intersection approximately one mile east of the City of Coppell, Dallas County, Texas.

TAWAKONI WASTEWATER CORPORATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13889-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located on the north side of Farm-to-Market Road 429 and approximately 1,000 feet southwest of the intersection of Farm-to-Market Road 429 and Farm-to-Market Road 751 in Hunt County, Texas.

TENNESSEE PIPELINE CONSTRUCTION COMPANY has applied (TNRCC) for a renewal of NPDES Permit Number TX0075612. Related TNRCC Permit Number 11205-001 authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located at the Cuddihy Airfield, approximately 1.5 miles southwest of the intersection of Farm-to-Market Roads 665 and 763, west of the City of Corpus Christi, in Nueces County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TNRCC Permit Number 13804-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located on the east bank of Oyster Creek, on Farm-to-Market Road 655, approximately nine miles northwest of the City of Angelton in Brazoria County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of Permit Number 11660-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day via irrigation of 1.5 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located on the west side of Interstate Highway 37, approximately 2.0 miles north of the intersection of U.S. Highway 77 and Interstate Highway 37 in San Patricio County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11098-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,500 gallons per day. The plant site is located within Bentsen Rio Grande Valley State Park; adjacent of State Park Loop 43; approximately 3.5 miles south of the intersection of State Highway Loop 374 and Farm-to-Market Road 2062 in Hidalgo County, Texas.

TRUMAN ARNOLD COMPANIES has applied for a renewal of TNRCC Permit Number 02837, which authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001; and a renewal of Permit Number 02871, which authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfalls 001 and 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Numbers 02837 and 02871. The applicant operates a bulk fuel storage and transfer terminal. The plant site is located approximately one mile northeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 36, approximately three miles southeast of the City of Caddo Mills, Hunt County, Texas.

UTILITIES INVESTMENT COMPANY INC has applied for a renewal of TNRCC Permit Number 12251-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 51,000 gallons per day. The plant site is located approximately 2,000 feet northwest of the intersection of Farm-to-Market 1960 with Farm-to-Market Road 2100, immediately west of the community of Huffman in Harris County, Texas.

CITY OF WACO has applied for a renewal of TNRCC Permit Number 13971-002, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 370,000 gallons per day. The plant site is located southwest of the Brazos River, just southwest of University Parks Drive, just southeast of Colcord Avenue in the City of Waco, in McLennan County, Texas.

CITY OF WAELDER has applied for a renewal of TNRCC Permit Number 10327-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The plant site is located southeast of Waelder on the north bank of Baldridge Creek, approximately 0.5 mile south of U.S.Highway 90 and 0.5 mile east of State Highway 97 in Gonzales County, Texas.

CITY OF WESLACO has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0022471 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10619-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located at the southeast intersection of Farm-to Market Road 88 and Mile 9 North Road in Hidalgo County, Texas.

WHITE OAK DEVELOPERS, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14083-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The plant site is located approximately 1,000 feet due west of the confluence of Robinson Gully and White Oak Creek in Montgomery County, Texas.

HELEN JANE WILLIAMS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13995-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 13,050 gallons per day. The plant site is located 3.0 miles south of Burleson on Interstate Highway 35 in Johnson County, Texas.

WILLIAMSBURG REGIONAL SEWAGE AUTHORITY has applied for a renewal of TNRCC Permit Number 11598-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located at 22823 Franz Road, approximately 5,000 feet west and 5,600 feet north of the intersection of Interstate Highway 10 and Mason Road in Harris County, Texas.

Concentrated Animal Feeding Operation

JIMMY HUCKABEE, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of Permit Number 03699 to authorize the applicant to operate an existing dairy facility at a maximum capacity of 600 head in Hamilton County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the east side of Farm-to-Market Road 219 at the intersection of County Road 120 and

Farm-to-Market Road 219 in Hamilton County, Texas. The facility is located in the drainage area of North Bosque River in Segment Number 1226 of the Brazos River Basin.

PILGRIM POULTRY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04032 to authorize the applicant to operate a caged egg layer facility with a capacity of 400,000 birds at Strube Number 1 and 1,000,000 birds at Strube Number 2 and a total capacity at this site of 1,400,000 birds in Camp County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.The facility is located on Farm-to-Market Road 556 approximately seven miles southwest from the City of Pittsburg, Camp County, Texas. The facility is located in the drainage area of Little Cypress Bayou in Segment Number 0409 of the Cypress Creek River Basin.

HATCH C. SMITH has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of Permit Number 03127 to authorize the applicant to operate an existing auction barn facility at a maximum capacity of 600 head in Llano County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located at the intersection of Salem Street and Burnett Street in the County and City of Llano, Texas. The facility is located in the drainage area of Llano River in Segment Number 1415 of the Colorado River Basin.

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE ISSUE DATE OF THE NOTICE

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT Number 15 has applied for a renewal of TNRCC Permit Number 11395-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located on Gleneagles Drive, approximately 5,000 feet north of Needham Road in Montgomery County, Texas.

TRD-9905000

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 10, 1999

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The following notices were issued during the period of August 11, 1999 through August 17, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk,Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ADELPHI COMMUNITY COOPERATIVE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0083887 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12227-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.012 million gallons per day. The plant site is located on an unnamed county road, approximately one mile east of State Highway 34, and approximately five miles south of the City of Quinlan in Hunt County, Texas.

CITY OF ALICE has applied for a renewal of TNRCC Permit No. 10536-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,600,000 gallons per day. The plant site is located approximately 4,800 feet southeast of the intersection of Farm-to-Market Road 665 and Farm-to-Market Road 1931 on the south bank of Lattas Creek in Jim Wells County, Texas.

CITY OF ANDREWS has applied for a renewal of Permit No. 10119-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day via irrigation of 320 acres of City-owned agricultural land/golf course. The wastewater treatment facilities and disposal area are located approximately 1.1 miles east-southeast of the intersection of U.S. Highway 385 and State Highway 115 (Broadway Avenue), 2,000 feet south of the intersection of State Highway 115 and County Road No. 1. The evaporation/storage ponds are located to the south of the plant site. The 320 acres of agricultural irrigation land is to the east of County Road No. 1. The golf course is in the northeast quadrant of the City of Andrews in Andrews County, Texas.

AQUASOURCE DEVELOPMENT COMPANY has applied for a major amendment to TNRCC Permit No. 13433-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 2.2 miles east of the intersection of Farm-to-Market Road 1960 and Windfern Road and approximately 1.8 miles south of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 149 in Harris County, Texas.

AQUASOURCE DEVELOPMENT COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14061-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day. The plant site is located approximately 2.0 miles east of the intersection of Farm-to-Market Road 973 and Blake Manor Road in Travis County, Texas.

AQUASOURCE UTILITY, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14018-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The plant site is located approximately 9.9 miles west of the intersection of State Highway 105 and Interstate 45 and approximately 600 feet directly west of the intersection of State Highway 105 and Lake Conroe Village Boulevard in Montgomery County, Texas.

BEECHWOOD WATER SUPPLY CORPORATION has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11423-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on the west shoreline of Toledo Bend Reservoir, approximately 5 miles east of the intersection of State Highway 87 and Farm-to-Market Road 3315 in Sabine County, Texas.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3 has applied for a renewal of TNRCC Permit No. 10797-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 3/4 mile southeast of Nolanville, on South Nolan Creek in Bell County, Texas.

CANUTILLO INDEPENDENT SCHOOL DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0053554 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11561-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 3600 feet to the west of Interstate-10 (I-10) on the southeast corner of the high school campus, at the corner of Canutillo Street, in the City of Canutillo in El Paso County, Texas.

CASTLEWOOD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit No. 11883-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,367,000 gallons per day. The plant site is located on the north side of Interstate Highway 10, approximately 1,500 feet west of the intersection of Interstate Highway 10 and Fry Road and approximately 4,700 feet east of the Interstate Highway 10 crossing of Mason Creek in Harris County, Texas.

CHATEAU WOODS MUNICIPAL UTILITY DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 13700-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located 600 feet north of the intersection of Longleaf Drive and Beech Street in the Chateau Woods subdivision in Montgomery County, Texas.

CHIMNEY HILL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit No. 12304-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for Horsepen Creek (in Addicks Reservoir) for incorporation into 30 TAC §307.10, Appendix D. The renewed permit also authorizes a variance to the Texas Surface Water Quality Standards under 30 TAC 307.2(d)(4). The variance would authorize a three-year period in which the Commission will consider a recommended site-specific standard for Horsepen Creek (in Addicks Reservoir) and determine whether to adopt the standard or require the existing water quality standard to remain in effect. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 12304-001 will replace the existing NPDES Permit No. TX0085588 issued on October 20, 1995 and TNRCC Permit No. 12304-001. The plant site is located approximately 1,800 feet east of Jackrabbit Road and 4,500 feet north of Farm-to-Market Road 529 in Harris County, Texas.

CITY OF CHINA has applied for a renewal of TNRCC Permit No. 12104-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 228,000 gallons per day. The plant site is located adjacent to South China Road and approximately 1.5 miles south of U.S. Highway 90 in Jefferson County, Texas.

CITY OF CLARKSVILLE has applied for a renewal of TNRCC Permit No. 10148-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The plant site is located approximately 1.5 miles southeast of the intersection of U.S. Highway 82 and State Highway 37 and approximately 0.75 mile east of Farm-to-Market Road 910 in Red River County, Texas.

CONTINENTAL LAND OWNERS ASSOCIATION, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 12591-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 250 feet north of Atascocita Road and 300 feet northeast of the crossing of Williams Gully by Atascocita Road in Harris County, Texas.

COASTAL BEND YOUTH CITY has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0064408 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11689-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located on the north side of U.S. Highway 77, approximately two miles north of the intersection of Farm-to-Market Road 655 and U.S. Highway 77 in Nueces County, Texas.

DEL LAGO ESTATES UTILITY COMPANY has applied for a renewal of TNRCC Permit No. 12686-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located east of Waldon Road approximately one mile north of State Highway 105 in Montgomery County, Texas.

DOUBLE DIAMOND UTILITIES CO. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13786-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located 2.5 miles northwest of the intersection of Farm-to-Market Road 933 and Farm-to-Market Road 2604 in Hill County, Texas.

FORT WORTH INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11382-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via evaporation and/or irrigation of 20 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 1.5 miles northeast of the intersection (within the City of Briar) of Farm-to-Market Road 730 and Briar Road, and approximately 7.5 miles north-northeast of the City of Azle in Wise County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 24 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 11988-002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 60,000 gallons per day. The plant site is located approximately 4,000 feet north of Louetta Road, on and approximately 2,000 feet east of Steubner Airline Road in the Community of Spring in Harris County, Texas.

HARVESTFRESH SEAFOODS, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04000, to authorize the discharges of pond effluent at a daily average flow not to exceed 430,000 gallons per day via Outfall 001, a daily average flow of 86,000 gallons per day via Outfall 002, a daily average flow of 540,000 gallons per day via Outfalls 003, 004, 005, 006, 007, 008, and 009, a daily average flow of 400,000 gallons per day via Outfall 010, a daily average flow of 7,700,000 gallons per day via Outfall 011 and a daily average flow of 2,200,000 gallons per day via Outfall 012. The applicant operates an aquaculture facility. The plant site is located adjacent to Farm-to-Market 646 and

approximately 0.5 mile east of the intersection of Farm-to-Market 646 and West Bayshore Drive, near the City of Bacliff, Galveston County, Texas.

CITY OF HENDERSON has applied for a renewal of TNRCC Permit No. 10187-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The plant site is located approximately 2.3 miles north of U.S. Highway 259 and 0.8 mile west of Farm-to-Market Road 782 in Rusk County, Texas.

CITY OF HOUSTON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0063011 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10495-076. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The plant site is located approximately 0.25 mile west of the confluence of Cole Creek and Whiteoak Bayou and approximately 1.5 miles northeast of the intersection of U.S. Highway 290 and Antoine Drive in the City of Houston in Harris County, Texas.

CITY OF HOUSTON has applied for a Texas Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10495-077. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,250,000 gallons per day. The plant site is located at 625 Maxey Road in the City of Houston in Harris County, Texas.

CITY OF HUMBLE has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10763-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The plant site is located approximately 150 feet west of the intersection of Kingfisher and Pheasant Run and approximately 2,000 feet west of the crossing of Garners Bayou and Atascotia Road, south of the City of Humble in Harris County, Texas.

INTERNATIONAL PAPER COMPANY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0108341 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 03491. The draft permit authorizes the discharge of storm water and log wet deck water on an intermittent and flow variable basis. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0108341 issued on June 25, 1993 and TNRCC Permit No. 03491. The applicant operates a wood storage yard. The plant site is located 0.5 miles north of Highway 80, approximately 10.5 miles east of the City of Marshall, Harrison County, Texas.

CITY OF JEFFERSON has applied for a major amendment to TNRCC Permit No. 10801-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 550,000 gallons per day to a daily average flow not to exceed 750,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 620,000 gallons per day. The plant site is located approximately 2,200 feet east of U.S. Highway 59 at the north end of North Line Street in Marion County, Texas.

JOHANN HALTERMANN, LTD. has applied for a renewal of an existing watewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0085979 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 02458. The draft permit authorizes the discharge of process wastewater, utility wastewater, domestic wastewater, and stormwater at a daily average flow not to exceed 220,000 gallons per day via Outfall 001; storm water runoff on an intermittent and flow variable basis via Outfall 002; and non-contact heating water on an intermittent and flow variable basis via Outfall 003. The applicant operates a plant that recovers saleable products from off-specification petroleum products and solvents by fractional distillation. The plant site is located at 16717 Jacintoport Boulevard on the north bank of the Houston Ship Channel, approximately 1.6 miles east of the intersection of Sheldon Road and Jacintoport Boulevard near the community of Channelview, Harris County, Texas.

CITY OF KENEDY has applied for a major amendment to TNRCC Permit No. 10746-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 825,000 gallons per day to a daily average flow not to exceed 983,000 gallons per day. The plant site is located approximately 500 feet east of Farm-to-Market Road 792 and 600 feet north of Main Street in the City of Kenedy in Karnes County, Texas.

CITY OF KERENS has applied for a major amendment to TNRCC Permit No. 10745-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 207,000 gallons per day to a daily average flow not to exceed 210,000 gallons per day. The plant site is located approximately 1/2 mile southwest of the City of Kerens, adjacent to Farm-to-Market Road 633 in Navarro County, Texas.

CITY OF LA COSTE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0107743 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10889-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located at the easterly city limits of the City of La Coste, approximately 0.5 mile east-southeast of the intersection of Farm-to-Market Road 2790, 0.30 mile due south of the Southern Pacific Railroad in Medina County, Texas.

LAJITAS UTILITY COMPANY, INC. has applied for a major amendment without renewal to TNRCC Permit No. 12167-001 to authorize the change in the facility location. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation on 45 acres of golf course. The plant site for the interim phase is located approximately 1600 feet south of Ranch-to-Market Road 170 and 1800 feet east of the Rio Grande in Brewster County, Texas. The plant site for the final phase is located approximately 1600 feet south of Ranch-to-Market Road 170 and 1800 feet east of the Rio Grande in Brewster County, Texas.

CITY OF LAMESA has applied for a major amendment to Permit No. 10107-001, to authorize an increase the number of acres used for irrigation from 210 acres to 970 acres. The current permit authorizes the disposal of treated wastewater at a daily average flow not to exceed 1,880,000 gallons per day which will remain unchanged via irrigation of 210 acres of grassland, a private golf course and three City parks. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,880,000

gallons per day via irrigation of 150 acres of alfalfa, 253 acres of grass and 567 acres of cotton/wheat. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 1-1/4 miles southeast of the intersection of State Highway 137 and Sulphur Springs Draw southeast of Lamesa in Dawson County, Texas.

CITY OF LAREDO has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0002542 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10681-001. The draft permit authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 4,100,000 gallons per day. The plant site is located at 2519 Jefferson Street, adjacent to the Rio Grande in the City of Laredo in Webb County, Texas.

LAZY RIVER IMPROVEMENT DISTRICT has applied for a renewal of TNRCC Permit No. 11820-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 7500 feet southeast of the intersection of Interstate 45 and Farm-to-Market Road 1488, south of the City of Conroe in Montgomery County, Texas.

CITY OF MALONE has applied for a renewal of TNRCC Permit No. 10514-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located adjacent to and on the north side of Ash Creek, approximately 1000 feet south of State Highway 171 and approximately 3/4 mile southeast of the intersection of State Highway 171 and State Highway 308 in Hill County, Texas.

MILLS ROAD MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TNRCC Permit No. 11907-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The plant site is located at 10128 Peachridge Drive, approximately 3,000 feet southwest of the intersection of Perry Road and Mills Road, northwest of the City of Houston in Harris County, Texas.

BUFORD G. MOONEY has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0054801 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11589-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 153,000 gallons per day. The plant site is located immediately west of State Highway 87, approximately 4.5 miles north of the intersection of State Highway 87 and Interstate Highway 10 and approximately 6.9 miles north of the business district of the City of Orange in Orange County, Texas.

CITY OF MOUNT VERNON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0075540 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11122-001. The draft permit authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 20,000 gallons per day. The plant site is located between State Highways 37 and 115, approximately 0.5 miles south of Interstate Highway 30 and below the Mount Vernon Municipal Reservoir Dam in Franklin County, Texas.

NATIONAL-OILWELL, L.P. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12314-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The plant site is located in the southwest corner of a company-owned tract in the eastern part of the Jacintoport Industrial District and approximately 7500 feet east of the intersection of Sheldon Road and Jacintoport Boulevard in the City of Channelview in Harris County, Texas.

NORTHGATE CROSSING MUNICIPAL UTILITY DISTRICT NO. 2 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 12979-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 4,500 feet southeast from the intersection of Interstate Highway 45 and Spring Creek and approximately 1.3 miles northeast of the intersection of Stuebner Road and Interstate Highway 45 in Harris County, Texas.

RICETEC, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14068-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located at 1925 Farm-to-Market Road 2917, approximately 2,640 feet north of the intersection of Farm-to-Market Road 2917 and Farm-to-Market Road 2403 in Brazoria County, Texas.

ROYAL INDEPENDENT SCHOOL DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10873-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located immediately southeast of the intersection of Farm-to-Market Road 359 and North Street in the City of Pattison in Waller County, Texas.

SCHMIDT MANUFACTURING, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 12658-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day. The plant site is located 1.7 miles northwest of the intersection of State Highway 6 and Farm-to-Market Road 521 (the City of Arcola) in Fort Bend County, Texas.

SWILLEY INTERESTS has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11350-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located on the south side of Farm-to-Market Road 356 and the west end of Farm-to-Market Road 356 Bridge over the White Rock Creek Arm of Lake Livingston in Trinity County, Texas.

TAIWAN SHRIMP VILLAGE ASSOCIATION INC AND ARROYO N AQUACULTURE ASSOCIATION, INC. has applied for a renewal of TNRCC Permit No. 03596, which authorizes the discharge of process water (pond effluent) at a combined daily average flow not to exceed 100,000,000 gallons per day via Outfalls 001 and 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0103811 issued on September 11, 1998 and TNRCC Permit No. 03596, issued on July 20, 1995. The applicant operates an aquaculture facility. The plant site is located on the south side of Farm-to-Market Road 2925 and approximately 1.4 miles east of the intersection of Farm-to-Market Road 2925 and Farm-to-Market Road 1897 near the city of Arroyo City, Cameron County, Texas.

TEXAS PARADISE POINT, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13629-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on the north side of the Longstreet near the entrance to San Jo Cove, approximately 31/2 miles west of the intersection of Longstreet and Interstate Highway 45 in Montgomery County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TNRCC Permit No. 11692-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. The plant site is located adjacent to State Highway 87, approximately 12 miles west of the intersection of Farm-to-Market Road 3322 and State Highway 87 in Jefferson County, Texas.

UNITED CLAYS OF TEXAS, INC. has applied for a major amendment to TNRCC Permit No. 02973 to authorize two additional outfalls, proposed Outfalls 006 and 007, delete Outfall 003, revise existing effluent limitations for total copper and total zinc applicable to Outfall 001, delete existing authorization to dispose of wastewater via irrigation, and to revise monitoring frequencies applicable to Outfall 001. The current permit authorizes the discharge of storm water and mine groundwater via Outfalls 001, 002, 003, 004, and 005 on an intermittent and flow variable basis. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit No. 02973, issued on February 11, 1994. The applicant operates the Troup Operations, a ball clay mine. The plant site is located approximately 1 mile southwest of the intersection of Farm-to-Market Road 856 and Farm-to-Market Road 13, and 1.8 miles northwest of the town of Concord, Cherokee County, Texas.

CITY OF WEST TAWAKONI has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0064513 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11331-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located near the west shore of Lake Tawakoni approximately 1.5 miles south of Farm-to-Market Road 35 and 7 miles east of the City of Quinlan in Hunt County, Texas.

TRD-9905216
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 17, 1999

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Notices of Water Rights Applications

Hugh R. Goodrich, 1001 Fannin, Suite 4670 Houston, Texas, applicant, seeks a permit to appropriate public water pursuant to §11.121 and 11.085, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to divert and use water not to exceed 1,000 acre-feet water per year from Mill Creek, a tributary of the Sabinal River, a tributary of the Frio River, a tributary of the Atascosa River, a tributary of the Nueces River, at a maximum diversion rate of 1.66 cfs (620 g.p.m.) to irrigate 500 acres out of a 2203.5 acre tract of land in Bandera County, Texas. Applicant is requesting an interbasin transfer of 750 ac-ft/year from Mill Creek in the Nueces River Basin for irrigating that part of the applicant's property which lies within the adjacent San Antonio River Basin. The diversion point on Mill Creek is located at Latitude 29.783$\frac{1}{2}$ North, Longitude 99.542$\frac{1}{2}$ West, also being 14$\frac{1}{2}$ West (bearing) 300 feet from the Southeast corner of the J.A. Benson Survey, Abstract Number 1944, Bandera County, approximately four miles Northeast of Vanderpool, Texas. The applicant seeks authorization to divert water from Mill Creek to an existing off channel earthen pond for storage prior to irrigation. The surface area of the off channel pond is approximately 1/2 acre and the storage capacity is approximately six acre feet. The location of the storage tank is Latitude 29.825$\frac{1}{2}$ North, Longitude 99.583$\frac{1}{2}$ West, also 1,200 feet North of the Southwest corner of the J.A. Vinson Survey, Abstract Number 2406, in Bandera County, Texas. Ownership of the land is evidenced by a Quitclaim Deed filed July 1, 1996, in Volume 0445, page 044, and recorded in the Ofiicial Public Records of Bandera County, Texas.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/ we request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9905001
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 10, 1999

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MARLIN R. MARCUM, 1101 5th Street, Comfort, TX 78013, applicant, seeks authorization to divert and use public water pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Applicant has secured a Subordination Agreement with the Guadalupe-Blanco River Authority to use 1ac-ft of water per year from Cypress Creek, a tributary of the Guadalupe River, in Kerr County. Pursuant to the subordination agreement, applicant seeks authorization to divert and use 1 ac-ft of water per year from Cypress Creek, tributary of Guadalupe River, in Kerr County, for irrigation on 2 acres of land within a 39.993 acre tract of land described in a deed recorded in Volume 0767, Page 565, Real Property Records, Kerr County, Texas. The diversion point is approximately 7 miles east of Kerrville at Latitude 30.079? North, Longitude 98.958? West, also being 50 feet North-northeast of the Northwest corner of Rudolph Voight Survey, No. 467, Abstract No. 343, in the official public records of Kerr County. The maximum diversion rate will be 0.11 cfs (50 g.p.m.).

CITY OF KERRVILLE, 800 Junction Highway, Kerrville, TX 78208-5069, applicant, seeks an amendment pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Term Permit No. 3635, with a priority date of August 14, 1978, authorizes applicant to maintain 2 dams and reservoirs, known as reservoirs A and B, on Quinlan Creek, a tributary of the Guadalupe River, in Kerr County. The permittee is authorized to use the impounded water for recreational purposes and to divert and use not to exceed 80 ac-ft per year at a maximum rate of 1.7 cfs (750 gpm) from reservoir A on Quinlan Creek, for irrigation purposes on the Kerrville Municipal Golf Course, being 56 acres of land out of a 145.65 acre tract in the Benjamin F. Cage Survey, Abstract No. 106, and the Thomas Hand Survey, Abstract No. 193, in the Deed Records of Kerr County. Reservoir A impounds a maximum of 6 ac-ft. Station 0+82 on the centerline of the dam of reservoir A is South 45.25? West, 1310 feet from the North corner of the aforesaid Hand Survey, Abstract No. 193 and in the aforesaid Cage Survey, Abstract No. 106, Kerr County, also 1 1/2 miles Northeast of the Kerr County courthouse. Reservoir B impounds a maximum of 4 ac-ft. Station 0+57 on the centerline of the dam of reservoir B is South 85.50? West, 910 feet from the North corner of aforesaid Hand Survey. The permit includes a special condition on the use of water for irrigation, which expired on February 12, 1999. Applicant renewed a subordination agreement, (Upstream Diversion Contract) with Guadalupe-Blanco River Authority (GBRA) which allows the applicant as purchaser to divert and use not to exceed 80 ac-ft of water per year. The period of the renewed agreement extends from February 23, 1999 until December 31, 2020. Applicant seeks to amend permit No. 3635 by extending the terms until December 31, 2020, in accordance with the renewed Upstream Diversion Contract with GBRA and with no changes in use, total annual diversion amount, or maximum diversion rate. Applicant has indicated that the construction of a wastewater treatment plant effluent water reuse system is in progress.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9905214
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 17, 1999

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Proposals for Decision

The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on 07-27-99 Batesville Water Supply Corporation. SOAH Docket Number 582-99-0149; TNRCC Docket Number 97-1000-PWS-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9905003
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: August 10, 1999

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The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on 08-02-99. Petition of the Executive Director against Mike Sanders. SOAH Docket Number 582-99-0216 ; TNRCC Docket Number 97-1177-OSI-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 North. Interstate 35, Austin, Texas. This posting is Notice

of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9905079
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: August 13, 1999

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The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on July 19, 1999. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner vs Weldon B. Sewell, Jr., Respondent. SOAH Docket No. 582-98-0864; TNRCC Docket No. 97-1092-IHW-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9905213
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: August 17, 1999

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Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) is requesting nominations for five individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) for the following positions. Each appointment is for a six year term.

1. An official from a city or county solid waste agency (six year term)

2. A representative from the general public (six year term)

3. An elected official from a county with any population size (six year term)

4. An elected official from a municipality with a population fewer than 25,000 (six year term)

5. An elected official from a municipality with a population of 750,000 or more (six year term)

The Council was created by the 69th Legislature (1983). Members represent various interests; i.e., city and county solid waste agencies, public solid waste district or authority, a commercial solid waste landfill operator, planning regions, an environmentalist, city and county officials, a financial advisor, a professional engineer, a solid waste professional, a composting/recycling manager and general public representatives.

Upon request from the TNRCC commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas. Appointments will be made by the TNRCC commissioners.

A minimum of four Council meetings are held each year. The meetings usually last one full day and are held in Austin, Texas. Members who live outside the Austin area will be reimbursed per diem and travel expenses to attend the meetings.

To nominate an individual: ensure the individual is qualified for the position which he/she is being considered and submit a biographical summary with work experience.

The nominee should: submit a letter indicating his/her agreement to serve, if appointed.

Address: mail nomination and nominee letters to: Gary W. Trim, Program Administrator, Permits Division, TNRCC, P.O. Box 13087, MC 126, Austin, Texas 78711-3087 or fax to (512) 239- 2007.

Deadline: written nominations and letters from nominees must be received by the TNRCC by 5:00 p.m., on September 20, 1999.

Date of appointments: the appointments are to be considered at the TNRCC commission agenda meeting on October 13, 1999.

Questions regarding the Council can be directed to Gary W. Trim at (512) 239-6708 (phone), or E-mail address: gtrim@tnrcc.state.tx.us

TRD-9905191
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 16, 1999

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Texas Department of Protective and Regulatory Services

Notice of Child Welfare Demonstration Project Proposal

The Texas Department of Protective and Regulatory Services (DPRS) submitted a proposal to the federal Department of Health and Human Services, Administration for Children and Families, Children's Bureau, to conduct a child welfare "demonstration project" pursuant to Section 1130 of the Social Security Act. This proposal, which requests a waiver to Title IV-E of the Social Security Act, is currently under review by the Children's Bureau. Their decision is pending. The purpose of this notice is to advise the public of this pending request and to solicit feedback or input regarding the proposed demonstration project.

The demonstration project contains three separate components, each of which must be approved by the Children's Bureau. The first component proposes to pilot new approaches for the assessment of prospective adoptive families and children in order to decrease the amount of time that children spend in foster care. The second component proposes to pilot start up and maintenance funds for relative placements and support services to maintain these placements. The third component proposes to utilize Title IV-E funds flexibly in support of Phase II of the state's "Permanency Achieved through Coordinated Efforts" project, known as Project PACE.

Members of the public can obtain more detailed information regarding the Child Welfare Demonstration Project Proposal from the DPRS web site, at: http://www.tdprs.state.tx.us

Interested persons who do not have access to the Internet and would like to receive a written copy of information concerning this proposal may contact: Janis Brown, Texas Department of Protective and Regulatory Services, P.O. Box 149030, MC E-558, Austin, Texas, 78714-9030, Telephone: (512) 438-3412; Fax: (512) 438-3782.

Written comments regarding the proposal may be faxed or mailed to the above individual and must be received no later than September 10, 1999.

TRD-9905259
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: August 18, 1999

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Texas State Board of Public Accountancy

Quality Review Oversight Board Member

In accordance with the Texas Government Code, Chapter 2254, Subchapter B, the Texas State Board of Public Accountancy (board) requests proposals from persons wishing to serve on the board's quality review oversight board.

Description of services. The Board invites individuals to offer their part-time services to evaluate and identify specific technical issues as part of the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on the quality reviews established by the quality review rules of the board. Copies of the rules which provide greater detail of the Quality Review Program may be obtained by contacting the board. Individuals must meet the following minimum requirements: Have no less than 10 years experience in the preparation and/or use of financial statements at a senior level.

Term of contract. It is anticipated that the contract will begin September 1, 1999 and end August 31, 2000. The total amount awarded will not exceed $11,000 plus expenses which may not exceed $3,000.

Evaluation and selection. The Texas State Board of Public Accountancy intends to evaluate each proposal and may then award a contract based upon cost and the proposer's demonstrated competence, capabilities, knowledge, and qualifications for the expected services. The proposal should include a resume of relevant engagements, a proposed budget specifying consultant cost on an hourly basis, out-of-pocket expenses to be charged, and a not-to-exceed budget.

The previous contract was awarded to the following person at a contract price of $125 per hour for which the board is being provided the oversight and monitoring of sponsoring organizations for compliance with the minimum standards for performing and reporting on quality reviews: Priscilla Slade, Ph.D., Texas Southern University, Jesse H. Jones School of Business, Department of Accounting, 3100 Cleburne, Allen Building, Room 210, Houston, Texas 77004. The Board intends to award the contract for the consulting services to Dr. Priscilla Slade unless a better offer is received.

Contact person: For additional information contact William Treacy, Executive Director, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3900.

Closing Date: The closing date for receiving proposals is 30 days from the date of publication of this notice.

TRD-9905190
William Treacy
Executive Director
Texas State Board of Public Accountancy
Filed: August 16, 1999

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Public Utility Commission of Texas

Notices of Applications 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 August 9, 1999, 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 ePhone Co. for a Service Provider Certificate of Operating Authority, Docket Number 21219 before the Public Utility Commission of Texas.

Applicant intends to provide the entire range of resold-only local exchange and exchange access telecommunications services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

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 September 1, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905072
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 12, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 10, 1999, 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 Compass Telecommunications Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 21223 before the Public Utility Commission of Texas.

Applicant intends to provide resold-only integrated communications products and related services, including local dial tone, long distance, high-speed data, video transmission, on-site customer equipment installation, cellular, PCS, digital paging, and Internet related services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

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 September 1, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905073
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Filed: August 12, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 16, 1999, 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 Tel-Star Utility Corp. for a Service Provider Certificate of Operating Authority, Docket Number 21241 before the Public Utility Commission of Texas.

Applicant intends to provide local telecommunications service by reselling local services including basic residential services, residential custom calling and CLASS features.

Applicant's requested SPCOA geographic area includes those areas currently served by all incumbent local exchange companies throughout the state of Texas.

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 September 1, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905209
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 1999

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Notice of Application of Southwestern Bell Telephone Company to Offer Extended Area Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 30, 1999, seeking approval of optional, Extended Area Service (EAS) to the Longview, Tyler, and Marshall Calling Area, pursuant to Public Utility Commission Substantive Rule §23.49(b)(8).

Project Title and Number: Application of Southwestern Bell Telephone Company to Offer One-Way, Optional Extended Area Calling Service to the Longview, Tyler, Marshall and Surrounding Exchanges, Project Number 21193.

The Agreement: The proposed plan is an optional, EAS offering to which subscribing Southwestern Bell Telephone Company residence and business local exchange customers within the Longview, Tyler, and Marshall Calling Area will be able to call all other telephone customers within the calling area for a monthly, flat rate.

The Applicant has requested that the application be processed administratively pursuant to Public Utility Commission Substantive Rule §23.49(b)(8)(C). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection Division at (512) 936-7120 by October 18, 1999. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9905257
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 1999

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Notices of Applications Pursuant to Public Utility Commission Substantive Rule §23.94

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 5, 1999, pursuant to P.U.C. Substantive Rule §23.94 for approval of a rate change.

Tariff Title and Number: Application of Peoples Telephone Cooperative, Inc. to Implement a Minor Rate Change and Offer New Services Pursuant to Public Utility Commission Substantive Rule §23.94. Tariff Control Number 21209.

The Application: Peoples Telephone Cooperative, Inc. (Peoples or the cooperative) seeks approval to implement a minor rate change to its Residence, Residence Tel-Assistance, Business, and Business Key Trunk Monthly Local Exchange Access Line Rates. In addition, Peoples is proposing to implement a single set of nonrecurring service charge orders applicable to all exchanges. The affected service order rates include: Service Order, Line Connection, Maintenance of Service Charge, Restoration of Service Charge, and Premises Visit. And, Peoples requests to implement rates for Directory Assistance Service and Directory Assistance Call Completion. The cooperative estimates the proposed rate increase will result in an increase of $169,603 in intrastate gross annual revenues. Peoples proposes an effective date of December 1, 1999.

Subscribers of Peoples have a right to petition the commission for review of this proposed increase by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 613 affected local service customers, and must be received by the commission no later than October 31, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before October 31, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21209.

TRD-9905202
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 6, 1999, pursuant to Public Utility Commission Substantive Rule §23.94 for approval of a rate change.

Tariff Title and Number: Application of Wes Tex Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Public Utility Commission Substantive Rule §23.94. Tariff Control Number 21216.

The Application: Wes Tex Telephone Cooperative, Inc. (Wes Tex or the cooperative) seeks approval to implement a minor rate change to its Residence and Business Monthly Local Exchange Access Line Rates for the Sand Springs and Coahoma exchanges. In addition,

Wes-Tex proposes an increase of its nonrecurring Service Order charges and Returned Check charges for all exchanges. The affected service order charges include: Primary Service Ordering, Subsequent Service Ordering, Central Office Access Line, Premises Visit Charge and Returned Check charge. The cooperative estimates the proposed rate increase will result in an increase of $23,523 in intrastate gross annual revenue. The cooperative proposes an effective date of December 1, 1999.

Subscribers of Wes Tex have a right to petition the commission for review of this proposed increase by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 86 affected local service customers, and must be received by the commission no later than October 31, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before October 31, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21216.

TRD-9905203
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 6, 1999, pursuant to Public Utility Commission Substantive Rule §23.94 for approval of a rate change.

Tariff Title and Number: Application of Comanche County Telephone Company, Inc. to Implement a Minor Rate Change Pursuant to Public Utility Commission Substantive Rule §23.94. Tariff Control Number 21217.

The Application: Comanche County Telephone Company, Inc. (Comanche County or the company) seeks approval for a minor rate change to increase its Residence and Business Monthly Local Exchange Access Line Rates. The affected residential rates include: 1-Party and Tel- Assistance. The affected business rates include: 1-Party, Rotary Service, and PBX Trunk. The company estimates the proposed rate increase will result in an increase of $60,862 in intrastate gross annual revenues. The company proposes an effective date of December 1, 1999.

Subscribers of Comanche County have a right to petition the commission for review of this proposed increase by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 275 affected local service customers, and must be received by the commission no later than October 31, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before October 31, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21217.

TRD-9905204
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 1999

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Notices of Applications to Introduce New or Modified Rates or Terms Pursuant to Public Utility Commission Substantive Rule §26.212

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 11, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*

Tariff Title and Number: Application of GTE Southwest, Inc. to Add New 911 ALI Database and Tandem Routing Records Rates, Sections 1, 46, and 46D Pursuant to Substantive Rule §26.212. Tariff Control Number 21233.

The Application: GTE Southwest, Inc. has notified the Public Utility Commission of Texas that it is revising its Texas General Exchange Tariff to add a new rate element of "Per 1,000 Records" to the 911 ALI Database and Tandem Routing Services. The added rate elements are proposed to simplify the ordering and billing process when large quantities of records are involved. The new rate elements are simply 1,000 times the current per record rate and only apply when records exceed 1,000, in increments of 1,000.

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 September 3, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905192
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 16, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 11, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Application of Contel of Texas, Inc. to Add New 911 ALI Database and Tandem Routing Records Rates, Subject Index and Schedule Number A-12 Pursuant to Substantive Rule §26.212. Tariff Control Number 21234.

The Application: Contel of TX, Inc. has notified the Public Utility Commission of Texas that it is revising its Texas General Exchange Tariff to add a new rate element of "Per 1,000 Records" to the 911 ALI Database and Tandem Routing Services. The added rate elements are proposed to simplify the ordering and billing process when large quantities of records are involved. The new rate elements are simply 1,000 times the current per record rate and only apply when records exceed 1,000, in increments of 1,000.

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 September 3, 1999.

Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905193
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 16, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 10, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of GTE Southwest, Inc. to Revise Texas Facilities for State Access Tariff, Service Date Change Charge; Section 3, Page 5 Pursuant to Substantive Rule §26.212. Tariff Control Number 21226.

The Application: GTE Southwest, Incorporated has notified the Public Utility Commission of Texas that it is revising its Texas Facilities for State Access Tariff to reflect changes in the application of the Service Date Change Charge. Currently this charge applies for any due date changes after the scheduled issue date of the order. This revision extends the timeframe for customers to advise the company of changes and not incur the Service Date Change Charge until after the plant test date.

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 September 3, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905022
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 10, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Application of Contel of Texas, Inc. Access Service Tariff; Section 3, Sheet Numbers 7 and 8, Service Date Change Charge Pursuant to Substantive Rule §26.212. Tariff Control Number 21227.

The Application: Contel of Texas, Inc. has notified the Public Utility Commission of Texas that it is revising its Access Service Tariff to reflect changes in the application of the Service Date Change Charge. Currently this charge applies for any due date changes after the scheduled issue date of the order. This revision extends the timeframe for customers to advise the company of changes and not incur the Service Date Change Charge until after the plant test date.

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 September 3, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905023
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 1999

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Notice of Intent to File Revised Line Extension Tariff

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 6, 1999 to revise the line extension policy tariff pursuant to §§36.001- 36.004, and 36.102 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998), and Public Utility Commission Substantive Rule §25.241. A summary of the application follows.

Tariff Title and Number: Application of Southwestern Public Service Company for Authority to Revise Its Line Extension Policy Tariff. Tariff Control Number 21218.

The Application: Southwestern Public Service Company filed the proposed revised line extension policy to change its current line extension policy for overhead service only to include underground service as well. Many areas now being developed are using underground construction and developers want to use the Exhibit D provisions of the Rate Schedule V-17, but they refer only to overhead facilities.

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 within 10 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905068
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 12, 1999

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Public Notice of Amendment to Interconnection Agreement

On August 12, 1999, Southwestern Bell Telephone Company and Aerial Communications, Inc., collectively referred to as applicants, filed a joint application for approval of 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 21235. 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 21235. 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 September 13, 1999, 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 Public Utility Commission 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 21235.

TRD-9905218
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 1999

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Public Notices of Interconnection Agreements

On August 13, 1999, Fort Bend Telephone Company, SprintCom, Inc. doing business as Sprint PCS, and Sprint Spectrum, LP doing business as Sprint PCS (collectively, Sprint PCS), collectively referred to as applicants, filed a joint application for approval of interconnection agreements 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 21236. The joint application and the underlying interconnection agreements 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 agreements. 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 21236. 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 September 15, 1999, 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 Public Utility Commission 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 21236.

TRD-9905219
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 1999

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On August 13, 1999, Wholesale Network, Inc. doing business as Local Network and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 21237. 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 21237. 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 September 15, 1999, 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 Public Utility Commission 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 21237.

TRD-9905220
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 1999

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Railroad Commission of Texas

Clarification of Proposed Rulemaking and Extension of Comment Period

In the August 13, 1999, issue of the *Texas Register*, the Railroad Commission proposed new §9.9 relating to reciprocal examination agreements with other states (24 TexReg 6170). Proposed subsection (c)(1) states that individuals shall pay the examination fee "as specified in §9.4 of this title (concerning licenses and related fees)." In the preamble to proposed new §9.9, the fiscal note states that the examination fee is currently $10 and that "in a subsequent rulemaking, the commission will be considering increasing the $10 examination fee." In fact, the Commission has already adopted amendments to §9.4 (in a separate rulemaking) which increase the examination fee from $10 to $20; the adoption notice for §9.4 should be published in the August 27 issue of the *Texas Register* with an effective date of August 30. Although the proposed text of §9.9(c)(1) is correct, the Commission wanted to clarify the statement in the preamble that the examination fee would be increased in a "subsequent" rulemaking, when in fact the increased examination fee has already been adopted. Therefore, the Commission will extend the comment period for proposed new §9.9 from the current deadline of September 13, 1999, to a new comment deadline of September 27, 1999. For more information concerning this notice, call Thomas D. Petru, Assistant Director, Gas Services Division, LP-Gas Section, at (512) 463-6949 or email Mr. Petru at thomas.petru@rrc.state.tx.us.

TRD-9905223
Mary Ross McDonald
Deputy General Counsel, Office of the General Counsel
Railroad Commission of Texas
Filed: August 17, 1999

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Texas Department of Transportation

Public Notice

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Section 26.45 requires the recipients of federal funds, including the Texas Department of Transportation, to set overall goals for DBE participation in U.S. Department of Transportation assisted contracts. As part of this goal-setting process, the Texas Department of Transportation is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2000 DBE goals are 11.9% for highway design and construction, 12.4% for aviation and 8.6% for public transportation. The proposed goals and goal-setting methodology for each is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, beginning August 27, 1999 in the office of the Texas Department of Transportation, Construction Division, Business Opportunity Programs Section, 105 West Riverside Drive, Austin, Texas 78704.

The department will accept comments on the DBE Goals for 45 days beginning August 27, 1999 and ending October 11, 1999. Comments can be sent to Cynthia F. Gonzales, Construction Division, 125 E. 11th St., Austin, TX 78701; (512) 703-5837; Fax: (512) 703-5803; Email: cgonza3@mailgw.dot.state.tx.us.

TRD-9905251
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 18, 1999

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Willacy County

Corrected Notice of Intent

House Bill 606, 75th Legislature, the State of Texas, permits a County Commissioners' Court of a rural county (defined as a county with a population of 100,000 or less) to request that the Texas Department of Human Services (TDHS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate in available beds in the county.

Willacy County Commissioners Court is considering desirability of requesting that TDHS contract for more Medicaid nursing facility beds in Willacy County. The Commissioners Court is soliciting comments from all interested parties on the appropriateness of such a request. Additionally, the Commissioners Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid certified nursing facility beds. Comments and/or proposals should be submitted to Terry Flores, County Clerk of the Willacy County Commissioners Court, 540 West Hidalgo/First Floor, Courthouse Building, Raymondville, Texas 78580, telephone (956) 689-2710, no later than 5:00 p.m. on September 1, 1999. Action will be taken by the Commissioners Court at a Special Meeting on September 7, 1999 at 10 a.m.

TRD-9905078
Simon Salinas
County Judge
Willacy County
Filed: August 13, 1999

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Texas Workforce Commission

Request for Proposals

MICROENTERPRISE DEVELOPMENT PROGRAM

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is authorized by federal and state laws to establish a microenterprise development program to assist recipients of public assistance to start a business and become self-employed. This request for proposals (RFP) is to select a service provider/s that will offer Choices participants self-employment assistance services. 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.

Microenterprise Goals and Objectives: The goals of the microenterprise development program are to increase earnings and opportunities of welfare recipients, reduce welfare caseloads and costs and meet federal and state participation requirements. Objectives include:

Investing in the long-term success of welfare recipients in their transition from welfare to self-sufficiency by providing services leading to the start-up and maintenance of a viable enterprise, including but not limited to: job-readiness, vocational training in business development and management, ongoing business counseling, access to credit and technical assistance and case management.

Developing, implementing, including follow-up, a program for providing self-employment assistance services to Choices participants that may be replicated by local workforce development boards throughout the state.

Developing loan procedures, loan partners and criteria for loan approval.

Assisting in developing business plans and loans for equipment.

Developing time lines, along with marketing strategies.

Procuring office space and phones for the Choices participants.

Coordinating with local community colleges who will provide training for self-owned businesses.

Coordinating with local workforce development boards for outreach, recruiting and publicity of program.

B. AUTHORIZATION TO AWARD CONTRACT

All TWC services funded under this RFP must operate in accordance with the provisions of the Federal statutes in Title 42, United States Code (U.S.C.) Section 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193,) with the federal regulations for Health and Human Services in Title 45, Code of Federal Regulations (CFR); Parts 1-99 and 200-299, and the general provisions for operating the Temporary Assistance for Needy Families (TANF) Employment and Training Services as outlined in the approved State Plan for TANF. Copies of these documents may be obtained through the Texas Workforce Commission.

C. AVAILABLE FUNDING

Total amount of funds available under this RFP is $1,000,000. Contracts for services will be effective October 18, 1999 through August 31, 2001. Funding may be requested in any amount up to the maximum available. TWC contemplates making one or more awards under this RFP in order to utilize available funds to the greatest extent.

D. ELIGIBLE APPLICANTS

To be considered eligible to provide the Microenterprise Development program services, applicants submitting proposals must complete an Application Packet, provide the required documentation as requested in the packet and meet the following criteria: (1) the offer must have been submitted by the due date for proposals; (2) the offer must be complete with the required signatures; (3) the offer must be for the requested services described in the instructions; (4) the funding requested is not more than the maximum amount; (5) the offeror must agree to provide the services in collaboration with the communities and the community professionals and/or agencies within the local workforce development area. TWC will exclude from further consideration for contract award any non-responsive offer or portion of an offer. TWC will notify the offeror by certified mail of the decision.

E. PROJECT SCHEDULE

Offerors' Conference to be held on September 7, 1999

Application submission deadline is September 24, 1999

Notification of Award is October 1, 1999

Contract start date is October 18, 1999

Project end date is August 31, 2001

F. SCORING CRITERIA

The evaluation criteria and relative weight for this RFP are: Contractor experience in program development and delivery of self-employment assistance services for low-income clients and recipients of public assistance, 20 points; Contractor ability to leverage existing resources to offer services and non-state and non-federal financial support for extending service coverage and enhancing service quality, 10 points; Strength of contractor's program design for reconciling self-employment assistance services with a Work First philosophy and time limits, 20 points; Strength of contractor's program design for providing access to credit and maximizing the effect of state funds used to provide credit, 20 points; Strength of contractor's plan for

providing training to TWC and local board staff in client screening and referral, 10 points.; Cost-effectiveness expressed in cost per participant in allowable work activities, 10 points; Strength of proposed evaluation plan, 10 points, for a maximum of 100 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be evaluated by TWC and possible outside entities. Evaluation criteria will be described in the RFP packet. TWC anticipates completing the selection process and notifying applicants of the application status the week of October 1, 1999. TWC will score proposals received and determine those within the competitive range. If one proposal is clearly superior, then the award will be made to that offeror. If two or more proposals are rated similarly, TWC may use negotiation to obtain amended proposals upon which to base a final award(s.)

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels, and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to order an Application Packet, contact the primary TWC contact person. The primary contact person for this RFP is Monette Taylor, Program Specialist, Texas Workforce Commission, Room 342T, 101 East 15th Street, Austin, TX 78778-0001, (512) 936-2613, e-mail address monette.taylor@twc.state.tx.us.

TRD-9905250
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: August 18, 1999

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