TEXAS REGISTER

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This month's front cover artwork:

Artist: *Monique Chalmon*

5th Grade

Levi Fry Intermediate

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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WITHDRAWN RULES

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EXEMPT FILINGS

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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 Request

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than November 5, 1999.

ORQ-38. (ID# 130109) Requested by: Mr. Paul Hunn Walsh, Anderson, Brown, Schulze & Aldridge, P.O. Box 2156, Austin, Texas 78768. Re: The construction of §552.131 of the Government Code, enacted by House Bill 211, Act of May 30, 1999, 76th Legislature, Regular Session, public disclosure information held by a school district that identifies an informer.

ORQ-39. (ID#130102) Requested by: Mr. Leonard W. Peck, Jr., Assistant General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 75028. Re: The construction of §552.131 of the Government Code, enacted by House Bill 1379, Act of May 26, 1999, 76th Legislature, Regular Session, which excepts from public disclosure information held by the Texas Department of Criminal Justice concerning an inmate confined in a facility operated by or under a contract with the Texas Department of Criminal Justice.

TRD-9906834
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: October 13, 1999

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Opinions

JC-0122. (RQ-0052-JC) The Honorable Tim Curry, Criminal District Attorney, 401 West Belknap Street, Fort Worth, Texas 76196-0201. Re: Whether a purchase from jail-commissary proceeds is subject to statutory competitive procurement requirements.

S U M M A R Y. A sheriff may expend commissary proceeds under §351.0415 of the Local Government Code without complying with the County Purchasing Act, Chapter 262, subchapter C of the Local Government Code. To the extent Attorney General Opinion MW-439 (1982) concludes that an expenditure from commissary proceeds must be competitively bid by the county commissioners court, it has been superseded by the enactment of §351.0415.

JC-0123. (RQ-0067-JC) Mr. William H. Law, Polk County Auditor, 101 West Church Street, Livingston, Texas 77351. Re: Whether a county officer may be credited or compensated for unused vacation time he earned while a county employee).

S U M M A R Y. Where a county's personnel policy provides that an employee's unused vacation time is credited to the employee on the anniversary of the employee's starting date, and not before, a county employee who resigns before his anniversary date and becomes a county officer may not be credited with unused vacation time. A commissioners court may not adopt and apply retroactively a policy that would allow the officer to be credited or compensated for the lost vacation time.

JC-0124. (RQ-0069-JC) The Honorable Florence Shapiro, Chair, State Affairs Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711. Re: Whether Texas Department of Transportation may restrict material specifications to products of only one vendor if other vendors have similar products of equal quality, and related questions.

S U M M A R Y. In competitively bid contracts, TxDOT may not restrict material specifications to suit the products of only one vendor if other vendors have similar products of equal quality or include requirements in the specification that are unrelated to the quality or performance of the material. Whether TxDOT material specification DMS-6240 violates this prohibition is a question of fact that cannot be determined in the opinion process.

TRD-9906801
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: October 12, 1999

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Requests for Opinions

RQ-0114. Requested by: The Honorable Russell W. Malm, Midland County Attorney, 200 West Wall Street, Suite 104, Midland, Texas 79701. Re: Validity of an appropriation to construct a building to house a museum at the University of Texas at Permian Basin (Request No. 0114-JC). Briefs to be submitted by November 6, l999.

RQ-0115. Requested by: The Honorable Tim Curry, Tarrant County, Criminal District Attorney, 401 Belknap, Fort Worth, Texas 76196-

0201. Re: Whether the Tarrant Regional Water District may install a fiber optic cable to operate its pipelines (Request No. 0115-JC). Briefs to be submitted by November 8, l999.

RQ-0116. Requested by: The Honorable Ben W. -Bud- Childers, Fort Bend County Attorney, 301 Jackson, Suite 621, Richmond, Texas 77469-3108. Re: Application of the statute of limitations as it applies to an action brought by a county official for underpayment of salary (Request No. 0116-JC). Briefs to be submitted by October 8, l999.

RQ-0117. Requested by: The Honorable Tim Curry, Tarrant County, Criminal District Attorney, 401 Belknap - Justice Center, Fort Worth, Texas 76196-0201. Re: Management and disposition of cash bail bond balances for non-filed cases where a defendant cannot be located and related matters (Request No. 0117-JC). Briefs to be submitted by November 8, l999.

RQ-0118. Requested by: Mr. Vernon M. Arrell, Commissioner, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, TX 78751-2399. Re: Selective Service verification for state employment under §651.005, Government Code (Request No. 0118-JC). Briefs to be submitted by November 14, l999.

RQ-0119. Requested by: Ms. Karen F. Hale, Commissioner, Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711-2668. Re: Whether a state agency may require an employee to exhaust compensatory leave before receiving workers compensation benefits (Request No. 0119-JC). Briefs to be submitted by November 12, l999.

RQ-0120. Requested by: The Honorable Bob Turner, Chair, Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910. Re: Whether a reference to "extra job coordinator" in the Private Security Act, chapter 1702, Occupations Code, acts to prohibit county peace officers from serving in certain positions (Request No. 0120-JC). Briefs to be submitted by November 12, l999.

RQ-0121. Requested by: Ms. Gay Dodson, R.Ph. Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe, Tower 3, Suite 600, Austin, Texas 78701-3942. Re: Whether a pharmacy may dispense prescription drugs by machine at an off- site facility (Request No. 0121-JC). Briefs to be submitted by October 8, l999.

RQ-0122. Requested by: Mr. Robert A. Swerdlow, Chair, Texas Council on Purchasing From People With Disabilities, 1100 San Jacinto Austin, Texas 78711. Re: Whether the state auditor is authorized to audit a "central nonprofit agency" contract with the Texas Council on Purchasing from People with Disabilities (Request No. 0122-JC). Briefs to be submitted by November 12, l999.

RQ-0123. Requested by: The Honorable Laura Garza Jimenez, Nueces County Attorney, 901 Leopard, Room 207, Corpus Christi, Texas 78401-3680. Re: What constitutes a "change of employment status" for purposes of the nepotism prohibition (Request No. 0123-JC). Briefs to be submitted by November 13, l999.

TRD-9906830
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: October 13, 1999

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EMERGENCY RULES

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

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

TITLE 34. PUBLIC FINANCE

Part 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 25. MEMBERSHIP CREDIT

Subchapter L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.161

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §25.161 concerning the purchase of service credit for certain work experience required for certification as a career or technology teacher. The new rule will implement Government Code, §823.404, which was passed by the 76th Legislature, 1999, in House Bill 3660. The rule is simultaneously proposed as new §25.161 in the proposed section of this issue of the *Texas Register*.

In accordance with the new law, the rule sets forth the cost to purchase one or two years of equivalent membership service credit for applicable work experience. The rule adopts actuarial tables, and language describing their operation, for use in calculating the cost of purchasing this type of service credit. In addition, the rule describes the certification needed to establish that the member is entitled to salary step credit under the Education Code, §21.403(b) and makes clear that the five-year permissive service credit purchase restrictions for non-qualified service under Government Code, §823.006 may be applicable.

This section is adopted on an emergency basis to enable the retirement system to process any person who wishes to purchase eligible service credit as early as September 1999. The agency finds that requirements of state law (specifically those found in House Bill 3660) require the adoption of this new rule on fewer than 30 days notice. The rule is simultaneously being proposed for permanent adoption.

The new section is adopted on an emergency basis under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. It is also adopted under Government Code, Chapter 823, §823.404, which requires the Board of Trustees to adopt the rates and tables recommended by the actuary and Government Code, Chapter 825, §825.506, which authorizes the Board to adopt rules necessary for the retirement system to be a qualified plan.

Other laws affected by this proposed rule are Education Code §21.403(b) and Government Code, §823.006.

§25.161. Work Experience Service Credit.

(a) An eligible member may purchase one or two years of equivalent membership service credit for eligible work experience in accordance with Government Code, §823.404 and subject to any plan qualification requirements, including permissive service credit purchase restrictions. Permissive service credit purchase restrictions may limit the purchase of non-qualified service as defined in Government Code, §823.006 to five years. A member is eligible to establish equivalent membership service credit for eligible work experience if the member is employed by a TRS-covered employer and has at least five years of TRS membership service credit.

(b) Equivalent membership service credit for eligible work experience may be established by depositing with TRS the amounts described in subsection (c) of this section and by submitting certification in the form and manner prescribed by TRS that the member is entitled to salary step credit under §21.403(b) of the Education Code and is eligible to purchase the service credit.

(c) For each year of equivalent membership service credit described in this section, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the conversion of the work experience into service credit. Upon receipt by TRS of the required amount, the member will be credited with the additional year(s) of service credit up to the maximum years of permissive service credit allowed.

(d) To calculate these amounts, TRS will use the cost factors obtained from the Service Purchase Tables furnished by the TRS actuary of record. The tables cross reference the member's age with years of credited service (before purchase). Table 1 sets forth the cost, per $1,000 of annual salary, to purchase one year of service. Table 2 shows the cost, per $1,000 of annual salary, to purchase two years of service. The shaded regions of the tables reflect age and service

combinations where the purchase of service results in the immediate eligibility for unreduced retirement benefits.

Figure 1: 34 TAC 25.161(d)

Figure 2: 34 TAC 25.161(d)

Figure 3: 34 TAC 25.161(d)

Figure 4: 34 TAC 25.161(d)

(e) The cost factor reflected at the intersection of the eligible member's age and service in the non-shaded areas reflects the cost per $1,000 of current annual salary to purchase one year of service (Table 1) or two years of service (Table 2). The cost factor reflected at the intersection of the eligible member's age and service in the shaded areas is the cost per $1,000 of final average compensation. The final average compensation will be used in calculating the cost where the purchase of the service results in immediate eligibility for unreduced retirement benefits and will be calculated as if the member were retiring at the time the service credit is purchased. The cost factor remains constant after 30 years of service. Therefore, when an eligible member's service exceeds 30 years, the applicable cost factor is found at the intersection of the member's age and 30 years of service. TRS will calculate the cost to purchase service under this section by dividing either the current annual salary or the final average compensation (as applicable) by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables.

(f) The purchase cost described in subsection (e) of this section assumes a lump-sum deposit will be made. If deposits are made over a period of time as allowed by TRS, the purchase cost will be adjusted to reflect the actuarial present value of the benefits attributable to the purchased service.

Filed with the Office of the Secretary of State, on October 6, 1999.

TRD-9906667
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: October 6, 1999
Expiration date: February 3, 2000
For further information, please call: (512) 391-2115

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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 10. COMMUNITY DEVELOPMENT

Part 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 186. SMART JOBS FUND PROGRAM

Subchapter A. GENERAL PROVISIONS

10 TAC §§186.101-186.106

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

The Texas Department of Economic Development (Department) proposes the repeal of 10 Texas Administrative Code, Chapter 186. Smart Jobs Fund Program, Subchapter A. General Provisions, §§186.101-186.106, relating to the administration of the Department's Smart Jobs Fund program. The repeal is necessary to accurately reflect current law and to allow for the adoption of new rules.

Stella Gutierrez, Director of Smart Jobs, has determined that for each year of the first five years that the repeal will be in effect there will be no fiscal implications to the state or to local governments as a result of the repeal. No cost to either government or the public will result from the repeal. There will be no impact on small businesses or microbusinesses. No economic cost is anticipated to persons as a result of the repeal.

Ms. Gutierrez has also 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 avoidance of any confusion that may be caused by rules adopted under previous legislation. No economic costs are anticipated to persons as a result of the proposed repeal.

Written comments on the proposed repeal may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0415, within 30 days of publication.

The repeals are proposed pursuant to Government Code, Subchapter J, §481.151 et seq., and Government Code, §481.0044(a), which direct the governing board of the department to adopt rules for administration of the Smart Jobs Program, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 481, Subchapter J, is affected by this proposal.

§186.101. Authority.

§186.102. Purpose.

§186.103. Governing Board Monitoring.

§186.104. Definitions.

§186.105. Waivers.

§186.106. Modifications.

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 October 11, 1999.

TRD-9906773
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 936-0177

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Subchapter B. METHODOLOGIES FOR DETERMINING CERTAIN VARIABLES

10 TAC §§186.201-186.203

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

The Texas Department of Economic Development (Department) proposes the repeal of 10 Texas Administrative Code, Chapter 186. Smart Jobs Fund Program, Subchapter B. Methodologies for Determining Certain Variables, §§186.201-186.203, relating to the methodologies used in determining variables related to the administration of the Department's Smart Jobs Fund program. The repeal is necessary to accurately reflect current law and to allow for the adoption of new rules.

Stella Gutierrez, Director of Smart Jobs, has determined that for each year of the first five years that the repeal will be in effect there will be no fiscal implications to the state or to local governments as a result of the repeal. No cost to either government or the public will result from the repeal. There will be no impact on small businesses or microbusinesses. No economic cost is anticipated to persons as a result of the repeal.

Ms. Gutierrez has also 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 avoidance of any confusion that may be caused by rules adopted under previous legislation. No economic costs are anticipated to persons as a result of the proposed repeal.

Written comments on the proposed repeal may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0415, within 30 days of publication.

The repeals are proposed pursuant to Government Code, Subchapter J, §481.151 et seq., and Government Code, §481.0044(a), which direct the governing board of the department to adopt rules for administration of the Smart Jobs Program, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 481, Subchapter J, is affected by this proposal.

§186.201. Prevailing Occupational Wage.

§186.202. Full-Time Employment.

§186.203. Maintenance of Effort.

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 October 11, 1999.

TRD-9906774
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 936-0177

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Subchapter C. APPLICATION FOR GRANTS

10 TAC §§186.301-186.308

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

The Texas Department of Economic Development (Department) proposes the repeal of 10 Texas Administrative Code, Chapter 186. Smart Jobs Fund Rules, Subchapter C. Application for Grants, §§186.301-186.308, relating to applications for grants from the Department's Smart Jobs Fund program. The repeal is necessary to accurately reflect current law and to allow for the adoption of new rules.

Stella Gutierrez, Director of Smart Jobs, has determined that for each year of the first five years that the repeal will be in effect there will be no fiscal implications to the state or to local governments as a result of the repeal. No cost to either government or the public will result from the repeal. There will be no impact on small businesses or microbusinesses. No economic cost is anticipated to persons as a result of the repeal.

Ms. Gutierrez has also 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 avoidance of any confusion that may be caused by rules adopted under previous legislation. No economic costs are anticipated to persons as a result of the proposed repeal.

Written comments on the proposed repeal may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0415, within thirty days of publication.

The repeals are proposed pursuant to Government Code, Subchapter J, §481.151 et seq., and Government Code, §481.0044(a), which direct the governing board of the department to adopt rules for administration of the Smart Jobs Program, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 481, Subchapter J, is affected by this proposal.

§186.301. Eligibility.

§186.302. Application Requirements.

§186.303. Technical Assistance.

§186.304. Application Packet; Review.

§186.305. Funding; Grants.

§186.306. Funding Priorities.

§186.307. Provider Eligibility.

§186.308. Contracts and Contract Amendments.

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 October 11, 1999.

TRD-9906775
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 936-0177

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Chapter 186. SMART JOBS FUND PROGRAM

10 TAC §§186.101-186.121

The Texas Department of Economic Development (Department) proposes new rules for 10 Texas Administrative Code, Chapter 186. Smart Jobs Fund Program, §§186.101-121, relating to the administration of the Department's Smart Jobs Fund Program. The new rules are necessary to accurately reflect current law and agency practices.

These rules implement the Smart Jobs Fund Program in accordance with Texas Government Code, Chapter 481, Subchapter J, as reauthorized by House Bill 3657 of the 76th Legislature. The new rules provide definitions for the program, set procedures for waivers and modifications, specify certification requirements for provision of a group health benefit plan, set the details for implementing the county average weekly wage, specify eligibility for the program and application requirements, provide for technical assistance by the Department, specify a timeline for review of applications, set funding priorities and assign a point system for ranking applications, set out contracting guidelines, provide for contract monitoring, and set specific provisions on contract reconciliation and closeout.

Stella Gutierrez, Director of Smart Jobs, has determined that for each year of the first five years that the rules will be in effect there will be no fiscal implications to the state or to local governments as a result of the new rules. No cost to either government or the public will result from the rules. There will be no impact on small businesses or microbusinesses. No economic cost is anticipated to persons required to comply with the new rules.

Ms. Gutierrez has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules will be a clearer understanding of program eligibility and operations. No economic costs are anticipated to persons who choose to comply with the proposed rules through program participation.

Written comments on the proposed rules may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0415, within 30 days of publication.

The rules are proposed pursuant to Government Code, Subchapter J, §481.153, and Government Code, §481.0044(a), which direct the governing board of the department to adopt rules for administration of the Smart Jobs Program, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 481 is affected by this proposal.

§186.101. Authority.

Pursuant to the authority granted by the Texas Government Code, Subchapter J, §481.153, and Texas Government Code, §481.0044(a), the Texas Department of Economic Development prescribes §§186.102-186.121 implementing the Smart Jobs Fund.

§186.102. Purpose.

The Smart Jobs Fund is established as a business incentive program to enhance employment opportunities for Texans and to increase the job skills of the existing workforce by providing job training assistance to businesses operating in, or relocating to, Texas.

§186.103. Governing Board Monitoring.

The Governing Board will monitor the goals and results of the program on a quarterly basis.

§186.104. Definitions.

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

(1) Authorized employer representative-An employee authorized to bind the company under the terms of the contract.

(2) Benefits Perquisites offered by an employer to an employee, either voluntarily or by collective bargaining agreement, in addition to the employee's wages.

(3) Business-A corporation, partnership, sole proprietorship or other legal entity which is formed for the purpose of making a profit.

(4) Business relocation-The process of a business moving its operations, in whole or in part, to Texas and creating new jobs in Texas.

(5) Classroom training-Training provided by an instructor to a group of trainees on a predetermined structured curriculum.

(6) Community-based organization-A public or private nonprofit entity authorized to do business within the State of Texas and exempt from taxation under the United States Internal Revenue Code, §501(c), and which has as a purpose of the organization providing education, employment, or training services.

(7) Competencies-The level of skills that the employer determines to be necessary for the participant to successfully perform a specific job. This includes the employer's measures of the participant's expected learning gains or skill mastery for which they are being trained.

(8) Completed application-A document submitted by an applicant on the forms provided by the department that provides the information specified in §186.112 of this title (relating to Application Requirements) in sufficient detail as determined by the department to write a contract for a grant awarded under this chapter.

(9) Consortium-A group of no more than eight businesses applying for a grant that:

(A) have similar training needs;

(B) are using the same training provider; and

(C) along with their appointed agent, are jointly and severally liable for performance under a single Smart Jobs Fund contract.

(10) Contractor-A business with a current Smart Jobs Fund contract.

(11) County Average Weekly Wage-A salary published for each county in Texas by the Texas Workforce Commission on a quarterly basis. The Texas Workforce Commission bases this figure on wages reported by employers in the Quarterly Employer Report (Form C-3). Included in this figure are all forms of compensation or remuneration, excluding benefits, payable for a specific period for personal services rendered by an employee. These forms of compensation include but are not limited to bonuses, commissions, cost-of-living adjustments, hazard pay, on- call pay, overtime, tips, non production bonuses, vacation pay, holiday pay, and stock options.

(12) Department-The Texas Department of Economic Development.

(13) Employee-An individual who performs services indefinitely for another under a contract for hire, whether expressed or implied, or oral or written, who is eligible for benefits and is a resident of this state.

(14) Employer-A business that employs one or more employees.

(15) Employer organization-An organization funded by a group of employers that provides employment based training.

(16) Enterprise Zone-An area designated as an enterprise zone under Texas Government Code, Chapter 2303.

(17) Evaluation form-A scoring tool that evaluates the economic impact of a project and is used to rank applications for review and funding.

(18) Executive director-The executive director of the department.

(19) Existing employer-A business that:

(A) has been liable to pay contributions under Labor Code, Title 4, Subtitle A, for more than one year;

(B) has employees; and

(C) is in compliance with the reporting and payment requirements of Labor Code, Title 4, Subtitle A, as determined by the Texas Workforce Commission.

(20) Existing job-A position for which there has been an incumbent employee or a job opening for more than one year prior to the date the project is scheduled to begin.

(21) Exporting-The shipment of goods or services to regions outside this state's borders.

(22) Full-time employment-Employment of at least 35 hours a week for a single employer, including normal days not worked by an employee such as a weekend or holiday, for a period of at least 26 consecutive weeks.

(23) Group Health Benefit Plan-One of the following:

(A) a health plan provided by a health maintenance organization established under the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A);

(B) a health benefit plan approved by the commissioner of insurance; or

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U. S. C. Section 1001 et seq.), as amended.

(24) Governing board-The governing board of the Texas Department of Economic Development.

(25) In-kind contribution-A non-cash contribution of goods and/or services provided by an employer as all or part of the employer's matching share of a grant or project.

(26) Job-related basic skills-The knowledge and abilities necessary to communicate and to function effectively in the workplace. These skills must be integrated as part of the job-related occupational skills training curricula and must be consistent with the requirements of the employer's business plan. Such skills may include reading, writing, mathematics, English as a Second Language, and Spanish as a Second Language if these skills are necessary for the job in which the participant will be employed at the end of the project consistent with the employer's certification.

(27) Job-related occupational skills-The knowledge and abilities the employer specifies as necessary to perform the duties and tasks required for a specific job. These skills specifications shall be consistent with the requirements of the employer's business plan.

(28) Labor organization-Any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(29) Large business-A business that employs at least 500 employees.

(30) Matching costs-The dollar value of the private contributions from the employer required under the Smart Jobs Fund, whether cash or in-kind contributions.

(31) Medium business-A business that employs more than 99 but fewer than 500 employees.

(32) Micro business-A business that is independently owned and operated and employs one to 20 employees. In order for the business to be considered independently owned and operated, both the employees and the gross receipts must be independent of a parent company or subsidiary.

(33) Minority employer-A business entity at least 51% of which is owned by minority group members or, in the case of a corporation, at least 51% of the shares of which are owned by minority group members and that:

(A) is managed and its daily operations are controlled by minority group members; and

(B) is a domestic business entity with a home or branch office located in this state and is not a branch or subsidiary or a foreign corporation or other foreign business entity.

(34) Minority Group Members include:

(A) African Americans;

(B) American Indians;

(C) Asian Americans;

(D) Mexican-Americans and other Americans of Hispanic origin; and,

(E) Women.

(35) New job-A position in the employer's business which did not exist in Texas and which had no incumbent employee for more than one year prior to the date the project is scheduled to begin. This may include a position which is filled by an existing employee who is being retrained for a new job with new skill requirements.

(36) On-the-job training-Supervised training conducted during normal or extended working hours, including weekends, at an employer work site.

(37) Program-The Smart Jobs Fund program created under Texas Government Code, Chapter 481, Subchapter J.

(38) Project-A specific employment training activity for which an employer develops and implements a plan and enters into a contract under the Texas Government Code, Chapter 481, Subchapter J.

(39) Quarter-A three month period of the year, based upon the State of Texas fiscal year, beginning either September 1, December 1, March 1 or June 1.

(40) Small business-A business that is independently owned and operated and employs more than 20 but fewer than 100 employees. In order for a business to be considered independently owned and operated, both the employees and gross receipts must be independent of a parent company or subsidiary.

(41) Technological change-An advance in product design or production technique that enhances production efficiency or product performance.

(42) Total project cost-The sum of costs related to direct training plus administrative costs funded by a grant awarded under this chapter.

(43) Training Provider-A person or entity that provides employment-related training. The term includes employers, employer associations, labor organizations, community-based organizations, training consultants, public and private schools, community colleges, senior colleges, universities, technical colleges, and other higher education entities as defined in the Education Code, §61.003, and proprietary schools as defined in the Education Code, §32.11.

(44) Wages-All forms of compensation or remuneration, excluding benefits, payable for a specific period for personal services rendered by an employee. The wages to be included in this definition include wages reported by employers in Quarterly Employer Report (Form C-3) to the Texas Workforce Commission, including bonuses, commissions, cost-of-living adjustments, hazard pay, on-call pay, overtime, tips, non-production bonuses, vacation pay, holiday pay, and stock options.

§186.105. Waivers.

(a) The executive director may suspend or waive a section, not statutorily imposed, in whole or in part, upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

(b) The executive director may suspend or waive the requirement that a particular job under a project be covered by a group health benefit plan for which the business pays at least 50% of the premiums or other charges assessed for employee-only coverage under the plan if the affected employee voluntarily waives the coverage. The employer must provide documentation, signed by the employee, verifying that the employee voluntarily waives the coverage.

§186.106. Modifications.

(a) For purposes of modifying the requirements of Government Code, §481.155(d), the executive director may approve a modification which would reduce the wage increase called for in §481.155(d) over the wage in effect on the day before the date on which the project is scheduled to begin for that job. To request this modification, the employer must specify the modification that it is requesting the executive director to make, including a justification for the modification. In addition the employer must certify:

(1) that it is required to reduce or eliminate the employer's work force because of reductions in overall employment within an industry;

(2) that a substantial change in the skills required to continue the employer's business exists because of technological changes, and the cost to the employer's business of implementing this change will restrict the available resources for an increase in wages;

(3) that the business is creating jobs in an area of the state with an unemployment rate of at least one and one-half times the latest available annual statewide unemployment rate as designated by the Texas Workforce Commission;

(4) that the training project will contribute to the retention of jobs; or

(5) that other reasonable factors exist, as determined by the executive director.

(b) For purposes of modifying the requirements of Government Code, §481.155(g), the executive director may approve a modification if the executive director finds that:

(1) the employer has been in business for less than three years and has not developed a training program for non-managerial employees;

(2) the employer is a micro business and has not established a training program for non- managerial employees; or

(3) the employer has reduced the amount of private money spent on non-managerial training due to economic necessity caused by downturns in the overall economy, increased competition, or technological change.

§186.107. County Average Weekly Wage.

(a) The department will contact the Texas Workforce Commission to determine the most recent county average weekly wage within each county of the state. The county average weekly wage may be calculated as the average of the most recent consecutive four calendar quarters for which data is available from the Texas Workforce Commission.

(b) Employers shall report all trainee wages as an average weekly wage. In providing information to verify the wage increase required by Government Code, §481.155(d), employers may calculate an average weekly wage paid to a trainee during the 90-day retention period that follows the training project.

§186.108. Full-Time Employment.

Except as provided by this section, the department may not award a grant to a project that does not train employees for full-time employment.

§186.109. Cost per Trainee.

The cost per trainee is calculated by dividing the total project cost by the number of employees to be trained under the contract.

§186.110. Group Health Benefit Plans.

By signing the application for a grant, the employer certifies that each job under the project is covered by a group health benefit plan for which the business pays or offers to pay at least 50% of the premiums or other charges assessed for employee-only coverage.

§186.111. Eligibility.

(a) The department shall evaluate applications submitted by an employer, a consortium, or one or more employer organizations, labor organizations, community-based organizations or providers acting in partnership with one or more employers.

(b) Only businesses that have been in operation for at least one year are eligible to receive a grant.

(c) An employer or training provider that is rendering services to a Smart Jobs Fund contractor and receiving grant monies for these services is not eligible to receive a grant during the contract period.

(d) All businesses must demonstrate financial soundness and fulfillment of state tax obligations, to the satisfaction of the department, before they can receive a grant from the department.

(e) Employee leasing firms, including temporary agencies, are not eligible for a grant. Employees obtained under agreements with such firms are not eligible to participate as trainees unless the employer complies with the applicable certification requirements of this chapter.

§186.112. Application Requirements.

(a) Grant applications must be filed in a form approved by the department and must include a complete business and training plan and a project budget with a line item breakdown of costs.

(b) The grant application must be signed by an owner or an authorized employer representative who can bind the company contractually.

(c) For purposes of coordinating applications for the Smart Jobs Fund and the Skills Development Fund that is administered under the Labor Code, Chapter 303, by the Texas Workforce Commission (TWC), the following shall apply:

(1) A certification at the time of application to the department or TWC shall be filed indicating whether the application is a "concurrent application" for both the Smart Jobs Fund and the Skills Development Fund.

(2) For purposes of this subsection "concurrent application" shall mean either:

(A) an application for Smart Jobs Funds that has been filed and is pending at the time the applicant applies for Skills Development Funds with TWC; or

(B) an application for Skills Development Funds that has been filed and is pending at the time the applicant applies for Smart Jobs Funds.

(3) A joint application, on a form approved by the executive director or his designee and the executive director of TWC or his designee, may be used for coordinating applications for both the Skills Development Fund and the Smart Jobs Fund.

(d) Business and Training Plan. Grant funds awarded hereunder shall pay for job-related occupational skills training and job-related basic skills training that enhance the employer's ability to carry out its business plan. Job-related basic skills must be integrated as part of the job- related occupational skills training curricula. An approved business and training plan will become part of any contract for grant funds awarded. The business and training plan will specify project start dates and project end dates. Up to six project periods may be specified by the employer. Each business and training plan must contain the information required by the Government Code, §481.156(b). Each business and training plan shall also:

(1) describe how the proposed training is consistent with and will enhance the employer's ability to carry out its business plan to retain and increase its competitiveness;

(2) describe the skills training curricula for each project, including the number of hours each participant will spend in classroom training, on-the-job training, and/or other employer-designed training components to be funded by the grant and specify the training provider for each curricula;

(3) describe the skills and the competencies the employer expects the participant to achieve upon completion of training. Competencies must be specified by the employer, by industry associations, or by inclusion in courses approved by the Texas Higher Education Coordinating Board, and must be consistent with certification standards, or other credible sources as acceptable to the employer and as essential to the business' competitiveness;

(4) specify the projected cost per trainee;

(5) specify the geographic location, number and kind of jobs that will be available at the end of the project and the wages to be paid on completion of the project; and

(6) specify the geographic location of all training to be provided with grant funds that may require travel.

(e) The application must include the following information:

(1) whether the employer is a micro-business, small business, medium business or large business; and

(2) whether the employer is a minority group member, and if so, to which minority group the employer belongs.

(f) Budget. Each application must include a budget with line item breakdown of costs consistent with the requirements of the program. The budget must include three parts:

(1) specification of costs related to direct training;

(A) Costs related to direct training may include the following:

(i) tuition, fees, books and classroom materials;

(ii) instructor wages and salaries and reasonable benefits if the instructor is not an employee of a public education institution and grant funds are paying tuition and fees;

(iii) instructor and trainee travel outside the employer's specified region of the state (limited to 10% of the total costs related to direct training) with expenses not to exceed the State of Texas allowable rates as discussed in paragraph 2(B) of this subsection;

(iv) reasonable equipment lease or rental costs during the term of the project excluding equipment lease agreements which include additional costs to cover the option to purchase;

(v) reasonable costs of pre- and post-training participant assessment;

(vi) costs of purchasing approved curricula specified in the applicant's business and training plan if there is not already a course offering at a convenient public education institution for which the grant is paying tuition and fees;

(vii) wages, salaries, and reasonable benefits of instructional aides and trainees' counselors if such personnel are not employees of a public education institution and grant funds are paying tuition and fees; and,

(viii) other such reasonable costs related to direct training.

(B) Costs related to direct training must not include the following:

(i) lease, rental, purchase, or construction of facilities;

(ii) the purchase of capital equipment, salaries, wages, or benefits paid to personnel assigned to manage or report on the project or the contract agreement;

(iii) training conducted before the effective date of the contract; or,

(iv) costs incurred in the application process.

(2) specification of administrative and trainee travel costs;

(A) Administrative costs are limited to 10% of costs related to direct training incurred by the training project(s). Administrative costs may include:

(i) the lease or rental of facilities except those facilities belonging to public education institutions where the curriculum specified in the business and training plan will be provided and for which the grant is paying tuition and fees;

(ii) salaries, wages, and reasonable benefits paid to personnel assigned to manage or report on the project or the contract agreement; and,

(iii) other such reasonable expenses not included in costs related to direct training as are necessary to the successful completion of the project.

(B) Instructor and trainee travel must not exceed 10% of total direct training-related costs. No trainee travel will be reimbursed from grant funds for any purpose other than training as specified in the employer's training plan. Travel costs are only reimbursable in an amount not to exceed the following state rates: $70 per day for lodging, $25 per day for meals, and $.28 per mile for travel in a personally owned vehicle. All travel costs incurred shall be for the least expensive mode of transportation, considering all relevant circumstances.

(3) specification of matching contributions.

(A) An employer who is a medium or large business must provide a matching amount of private funds or in-kind contributions in an amount equal to 100% of the total project costs.

(B) An employer who is a micro or small business must provide a matching amount of private funds in an amount at least equal to 10% of the total project cost.

(C) Projects that provide significant economic benefits to an entire region of the state may have all matching requirements waived at the discretion of the executive director. Such projects must provide information describing the region to which benefits will accrue and projected economic information which may include other relevant macroeconomic and microeconomic data that shows positive effects on the region's average weekly wage, tax base, employment rates, family income, purchasing power, expenditures on unemployment insurance, Aid to Families with Dependent Children, Medicaid, and other public assistance, and the availability of job openings.

(D) Documentation for in-kind contributions, which are submitted as part of the employer's match, must specify the dollar value of facilities, equipment, personnel, and consumable supplies contributed to the project. In-kind contributions may not include the value of facilities, equipment, or personnel existing in public education institutions where such resources already are available to the employer as part of the institution's course offerings and for which the grant is paying tuition and fees.

(i) New equipment will be valued at cost.

(ii) Existing equipment and facilities will be valued on a pro rata basis for the time used for training consistent with the United States Internal Revenue Service depreciation schedules for such assets based on data provided by the employer.

(iii) Personnel contributions will be valued on a pro rata basis for the time spent on the project.

(E) The sum of costs related to direct training and administrative costs will be used to determine the total matching costs required for any grant awarded.

(g) Application process and time line.

(1) Any eligible entity desiring to request funds from the program must submit an application for funding.

(2) The department will send an application packet within three business days after receiving an oral or written request for an application.

(3) The department will accept and process applications from all micro businesses and from small businesses requesting less than $100,000 on a continuous basis.

(4) Within five business days from receipt of an application, the department will notify the applicant whether all necessary application components are complete in order for the department to perform a comprehensive evaluation.

(5) An applicant will have 10 business days from the date notified to submit application information necessary for grant award consideration. Failure of an applicant to submit the required information within the 10 business days will disqualify the application.

(6) The department will directly contact the business for information regarding an application.

(7) The department may require an employer to submit documentation showing the amount it has spent on non-managerial training during a period of not more than two years preceding the year in which the application is made.

§186.113. Technical Assistance and Training for Application Preparation.

(a) The department may provide technical assistance to applicants and give priority to assisting small or micro-businesses.

(b) Technical assistance will be delivered in the following priority and manner:

(1) The department will provide technical assistance via telephone.

(2) To the greatest extent possible, the department will provide applicant workshops in all regions of the state.

(3) The department will provide on-site assistance, as resources allow.

(c) The department may provide structured technical assistance training to local or regional service providers, such as Small Business Development Centers, Manufacturing Assistance Centers, Local Workforce Development Boards, local or regional economic development corporations, chambers of commerce, business and trade associations, or such other non-profit organizations at the request of the organization.

(d) The department, at its discretion, may refer employers to service providers for technical assistance or the department may provide technical assistance.

§186.114. Application Packet; Review.

(a) The department will design and the executive director will approve an application packet.

(b) Annually, the department shall review and evaluate the application packet to ensure that:

(1) the packet contains all information necessary to allow the applicant to complete the application form and participate in the grant application and approval process;

(2) the application form is no longer than is necessary to adequately describe the applicant, the participating employers, and the training project to the department;

(3) the application form does not contain unreasonable demands for information that inhibit an applicant from participating in the program;

(4) the application requests all the information necessary to fulfill statutory requirements as outlined in Texas Government Code, Chapter 481, Subchapter J.

§186.115. Funding.

The executive director will attempt to award a grant for all approved projects, subject to the availability of funds. To ensure availability of funds throughout the fiscal year, the executive director may award grants based on a quarterly allocation of funds. In deciding which projects to fund, the executive director will be guided by the funding priorities set forth in §186.116 of this title (relating to Funding Priorities).

§186.116. Funding Priorities.

(a) Only program objectives and priorities outlined in the Smart Jobs Fund Act and these rules will be considered in evaluating applications for funding, including but not limited to the following:

(1) At least 60% of the money spent under the program shall be used for projects that assist existing employers.

(2) At least 20% of the money spent under the program will be used for business relocations.

(3) To the greatest extent practical, money from the Smart Jobs Fund will be spent in all areas of the state.

(b) The department will develop an evaluation form, providing for a possible total of 150 points. Program data used to evaluate paragraphs (1) through (4) of this subsection, will be based upon the most recent consecutive four quarter period preceding the submission of this application, for which data is available. Priority for funding applications, as set out in the department's evaluation form, will be based on the following criteria:

(1) Under served region. The criteria listed in subparagraphs (A) through (D) of this paragraph, are worth 10 points each. At least 51% of the jobs proposed to be trained as identified in the application, are located in an under served region based upon the following:

(A) proportion of the region's share of the state's total population according to the most recent population estimates from the State Data Center in relation to the region's share of program funding compared to the total program funding provided statewide;

(B) proportion of the region's share of the state's civilian labor force according to the Texas Workforce Commission's Annual Civilian Labor Force estimates compared to the region's share of program funding in relation to the total program funding provided statewide;

(C) proportion of the region's share of the state's unemployed population according to the Texas Workforce Commission's Annual Civilian Labor Force estimates compared to the region's share of program funding in relation to the total program funding provided statewide;

(D) proportion of the region's share of total Smart Jobs applications submitted to the department compared to the region's share of program funding in relation to the total program funding provided statewide.

(2) Under served business size. The business is an under served business size if program grants have not been made to this size business in proportion to the number of persons employed by this size business statewide, based upon the four quarters immediately preceding the submission of this application. Data on the number of persons employed by a certain size business is based upon information published by the U.S. Census Bureau in County Business Patterns. This criteria is worth 15 points.

(3) Under served minority-owned business. The business is a minority-owned business that is under served if program grants have not been made to minority-owned businesses in proportion to the number of persons employed by minority owned business for the four quarters immediately preceding the submission of this application. Data on the number of persons employed by a minority-owned business is based upon the most recent five year Survey of Minority-Owned Business by the U.S. Census Bureau. This criteria is worth 15 points.

(4) Under served women-owned business. The business is a woman-owned business that is under served if program grants have not been made to women-owned business in proportion to the number of persons employed by women-owned business for the four quarters immediately preceding the submission of the application. Data on the number of persons employed by a women-owned business is based upon the most recent five year Survey of Women Owned Business by the U.S. Census Bureau. This criteria is worth 15 points.

(5) Economic impact criteria.

(A) Unemployment rates. Unemployment rates are determined by the most recent Texas Workforce Commission's Annual Civilian Labor Force estimates. If at least 51% of the jobs proposed to be trained, as identified in the application, are located in a county with:

(i) 1.01 to 1.49 times the statewide unemployment rate, applicant will receive 3 points;

(ii) 1.50 to 1.99 times the statewide unemployment rate, applicant will receive 5 points;

(iii) 2.00 to 2.49 times the statewide unemployment rate, applicant will receive 10 points; or,

(iv) 2.50 or more times the statewide unemployment rate, applicant will receive 15 points.

(B) New jobs. If the new jobs proposed to be trained in the application represent at least a 10% expansion in the company's labor force within the State of Texas, applicant will receive 10 points.

(C) Enterprise zone. If at least 51% of the jobs proposed to be trained in the application are located in an enterprise zone, applicant will receive 10 points.

(D) Texas Department of Criminal Justice (TDCJ) or Texas Youth Commission (TYC) residents. If any of the jobs proposed to be trained in the application are or will be filled by Texas residents formerly sentenced to the custody of TDCJ or TYC, applicant will receive 5 points.

(E) Defense related product conversion. If the project involves training of employees for an applicant who is a defense

contractor and is in the process of converting its operation to peacetime commodities, applicant will receive 5 points.

(F) Economically disadvantaged individuals. If applicant will hire and train under this project individuals identified as follows, then applicant will receive 10 points:

(i) individuals who are unemployed for at least 3 months out of the past 12 month period;

(ii) individuals who are receiving public assistance benefits including but not limited to the programs referred to Texas Human Resource Code, Chapter 31; or

(iii) individuals who, based upon their total family income, qualify for housing under 42 U.S.C.A. §1437f.

(G) First time contractor. If applicant has not previously entered into a contract for a Smart Jobs Fund grant, then applicant will receive 5 points.

(H) Exports. If applicant is currently exporting at least 10% of its products or services, then applicant will receive 5 points.

(c) The department will rank applications for grant awards based upon the score received on the evaluation form.

§186.117. Provider Eligibility.

A contractor cannot receive Smart Jobs Fund grant monies for services rendered to another Smart Jobs Fund contractor.

§186.118. Contracts.

(a) The department will provide a copy of the proposed contract training plan and budget to the applicant prior to providing a written contract. Each applicant has three business days to acknowledge receipt of the proposed training plan and budget and accept or decline the proposal. Requested changes to the proposal must be in writing and received by the department within the three business days.

(b) The department will enter into a contract with each employer participating in the project.

(c) Contracts must be executed by the employer's authorized representative and the executive director or the executive director's designee.

(d) Department reserves the right to directly contact the contractor concerning any issue that arises with the contract.

§186.119. Contract Amendments.

(a) Contract amendments requested by a contractor must be requested in writing at least 30 days prior to the proposed changes and must be approved by department before changes are implemented.

(b) Amendments will not be made during the final quarter of the training project.

(c) Acceptance of the requested amendment is within the discretion of the executive director or the executive director's designee.

(d) Contract amendments must be executed by the contractor's authorized representative and the executive director or the executive director's designee.

§186.120. Contract Performance and Monitoring.

(a) The contractor must notify the department whether contractor will submit cost reimbursement requests on a monthly or quarterly basis.

(b) The department will withhold 25% of the total dollar amount of each approved cost reimbursement until the end of the contract's final reconciliation period.

(c) The contractor must notify the department immediately of any specific downturn in its financials that may result in its inability to fulfill the contract requirements.

(d) Each contract will be evaluated for performance upon receipt of the required reporting documentation.

(e) Department staff may perform on-site monitoring visits to a contractor's business. Among other information relevant to performance under the program, department may verify availability and coverage under a group health benefit plan during an on-site monitoring visit.

§186.121. Contract Reconciliation and Closeout.

(a) In order to comply with the terms of this program, contractor must provide training to trainees who successfully achieve the required skills and competencies, must pay these trainees the agreed wage rates or increases, and must retain these trainees as employees for a 90-day retention period following the project period of the contract, unless the trainee voluntarily leaves for a better paying job.

(b) Within 30 calendar days after the expiration of the final 90-day retention period, the contractor shall submit to the department the employment records for each trainee and other such data as required by the department. If complete information is not received by the deadline, the contract may be reconciled as non-compliant.

(c) Notwithstanding any other provisions of this title, a trainee attrition rate of 15% is allowed based upon the actual number of jobs that have received training. If the total number of trainees estimated in the contract to receive training have not received training, the grant amount will automatically be reduced, without requiring a formal contract amendment, through the following calculation:

(1) The total number of jobs that actually received training multiplied by the contractual cost per trainee will be used to determine the reduced grant amount;

(2) If a trainee leaving employment with the contractor for a better paying job causes the trainee attrition rate to exceed the allowed 15% level, the contractor may request that each trainee in excess of the allowed 15% not be considered in the trainee attrition calculation by completing a form furnished by the department. The department will withhold final reimbursement until verification of better paying employment. Verification will be accomplished by the earlier of:

(A) Contractor submitting a signed verification of employment and wage level from the new employer for each trainee that puts the contractor in excess of the 15% allowed attrition rate; or

(B) The department verifying the trainee's new employment and wage through the Texas Workforce Commission.

(3) For attrition beyond the 15% level, the grant amount will be reduced for each trainee by the contractual cost per trainee. If there is a negative balance based upon previous reimbursements and the reduced grant amount, the contractor shall remit the negative balance to the department not later than the 30th day after the date of correspondence on which the contractor is notified of the negative balance by department.

(d) If a contractor does not meet the required matching amount as provided by the contract, a reduced grant amount will automatically be recalculated, without requiring a formal contract

amendment, so that the matching amount actually provided meets the requirements of §186.112(f)(3) of this title (relating to application requirements).

(e) The administrative costs reimbursable under the contract may not exceed 10% of the reduced grant amount.

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 October 11, 1999.

TRD-9906776
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 936-0177

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TITLE 16. ECONOMIC REGULATION

Part 1. RAILROAD COMMISSION OF TEXAS

Chapter 3. OIL AND GAS DIVISION

16 TAC §§3.26, 3.28, 3.52, 3.53

The Railroad Commission of Texas proposes amendments to §3.26, regarding separating devices, tanks, and surface commingling of oil; §3.28, regarding requirements to ascertain and report potential and deliverability of gas wells; §3.52, regarding oil well allowable production; and §3.53, regarding annual well tests and well status reports. The proposed amendments reduce the regulatory burden on oil and gas wells and reduce operating costs for industry by reducing well testing and reporting requirements.

The Commission simultaneously proposes the review and readoption of each of these rules, with the proposed changes, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist. The notice of proposed review was filed with the *Texas Register* concurrently with this proposal.

Rita E. Percival, Oil and Gas Division planner, has determined that for each year of the first five years the rules, as proposed for amendment, will be in effect, the fiscal implications as a result of enforcing or administering the amended rules will be a cost to the state of approximately $13,000 in fiscal year 2000, with no costs in fiscal years 2001 through 2004. The fiscal year 2000 costs to the state are for computer program modifications relating to changing testing frequencies, when tests are conducted, and the wells subject to testing. Specifically, the fiscal implications in fiscal year 2000 as a result of enforcing or administering proposed §3.26 will be a cost to the state of approximately $4,160. The fiscal implications in fiscal year 2000 as a result of enforcing or administering proposed §3.28 will be a cost to the state of approximately $8,528. There will be no fiscal implications as a result of enforcing or administering proposed §3.52. The fiscal implications in fiscal year 2000 as a result of enforcing or administering proposed §3.53 will be a cost to the state of approximately $208.

There will be no effect on local government. Rather than there being a cost of compliance with the proposed amendments for the small business, micro-business, or individual producer, there will be a cost savings as a result of eliminating some tests and allowing other tests to be run at more cost-effective times.

Mark Tittel, Hearings Examiner, Office of General Counsel, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adopting the amendments will be the economic benefit to operators associated with reduced reporting to the commission and reduced expense in well-testing. Reduced operating costs may enable operators to continue producing hydrocarbons that otherwise would not be produced due to unfavorable economic conditions, thus providing the public with lower cost oil and gas.

Comments may be submitted to Mark Tittel, Hearings Examiner, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, or via electronic mail to Mark.Tittel@rrc.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register.* Comments should refer to the docket number of this rulemaking proceeding: 20-0222749. For further information, call Mark Tittel at (512) 463-6923.

These amendments are proposed under the Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.046, 85.053, 85.054, 85.201, 85.202, 86.011, 86.012, 86.041, and 86.042, which authorize the Railroad Commission of Texas to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to distribute, prorate and apportion allowable production; to adjust correlative rights and opportunities; to determine the daily allowable production for each well; to effectuate the provisions and purposes of the Natural Resources Code; and to conserve and prevent waste of oil and gas.

Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.046, 85.053, 85.054, 85.201, 85.202, 86.011, 86.012, 86.041, and 86.042, are affected by the proposed amendments.

Issued in Austin, Texas on October 5, 1999.

§3.26. Separating Devices, Tanks, and Surface Commingling of Oil.

(a) (No change.)

(b) In order to prevent waste, to promote conservation or to protect correlative rights, the Commission may approve surface commingling of oil, gas, or oil and gas production from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different commission-designated reservoirs as follows:

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

(3) Reasonable allocation required. The applicant must demonstrate to the Commission or its designee that the proposed commingling of hydrocarbons will not harm the correlative rights of the working or royalty interest owners of any of the wells to be commingled. The method of allocation of production to individual interests must accurately attribute to each interest its fair share of aggregated production.

(A) In the absence of contrary information, such as indications of material fluctuations in the monthly production volume of a well proposed for commingling, the Commission will presume that allocation based on the daily production rate for each well as determined and reported to the Commission by periodic well tests conducted at the same interval as the periodic well tests for non-

commingled wells in the Commission-designated field proposed for commingling having the greatest frequency of testing of the fields proposed for commingling [~~intervals provided in this section~~] will accurately attribute to each interest its fair share of production without harm to correlative rights. [~~As used in this section, "daily production rate" for a well means the 24 hour production rate determined by the most recent well test conducted and reported to the Commission in accordance with Statewide Rules 28, 52, 53, and 55 (§§3.28, 3.52, 3.53, and 3.55 of this title (relating to Potential and Deliverability of Gas Wells Go Be Ascertained and Reported, Oil Well Allowable Production, Well Status Reports Required, and Reports of Gas Wells Commingling Liquid Hydrocarbons before Metering)).~~]

~~*[(i)* For applications proposing to commingle production from wells which each have a daily production rate of 100 mcf of gas or less and four barrels or less of oil or condensate, the production rate for each well shall be measured by well tests conducted annually;]~~

~~*[(ii)* For applications proposing to commingle production from wells which each have a daily production rate of 250 mcf of gas or less and less than 10 barrels of oil or condensate, the production rate for each well shall be measured by well tests conducted semi-annually; and,]~~

~~*[(iii)* For applications proposing to commingle production from one or more wells having a daily production rate of more than 250 mcf of gas or 10 or more barrels of oil or condensate, the production rate for each well shall be measured by well tests conducted quarterly.]~~

[~~(B)~~] [~~An applicant may test less frequently than the applicable minimum frequencies set out in subparagraph (A)(ii) and (iii) of this paragraph with the written consent of all royalty and working interest owners.~~] Allocation of commingled production shall not be based on well tests conducted less frequently than annually.

(C) Nothing in this section prohibits allocations based on more frequent well tests than the minimums set out in subparagraph (A) of this paragraph. Additional tests used for allocation do not have to be filed with the commission but must be available for inspection at the request of the commission, working interest owners or royalty interest owners.

(D) Allocations may be based on a method other than periodic well tests if the Commission or its designee determines that the alternative allocation method will insure a reasonable allocation of production as required by this paragraph.

(4) (No change.)

(c)-(d) (No change.)

§3.28. Potential and Deliverability of Gas Wells to be Ascertained and Reported.

(a) The information necessary to determine the [~~The~~] absolute daily open flow potential of each producing associated or nonassociated gas well shall be ascertained, and a report shall be filed as required on the appropriate Commission form in the appropriate Commission office within 30 days of completion of the well. The test shall be performed in accordance with the commission's publication, Back Pressure Test for Natural Gas Wells, State of Texas, or other test procedure approved in advance by the Commission and shall be reported on the Commission's prescribed form. An operator, at his option, may determine absolute open flow potential from a stabilized one-point test. For a one-point test, the well shall be flowed on a single choke setting until a stabilized flow is achieved, but not less than 72 hours. The shut-in and flowing bottom hole pressures shall be calculated in the manner prescribed for a four-point test. [~~A back pressure curve to determine a calculated absolute open flow shall be drawn at an angle of 45 degrees through the point representing this rate of flow when plotted in the manner specified for a four-point test.~~] The Commission may authorize a one-point test of shorter duration for a well which is not connected to a sales line, but a test which is in compliance with this section must be conducted and reported after the well is connected before an allowable will be assigned to the well. Back-dating of allowables will be performed in accordance with §3.31 of this title (relating to Gas Well Allowables).

(b) (No change.)

(c) Unless applicable special field rules provide otherwise or the director of the oil and gas division or the director's delegate authorizes an alternate procedure due to a well's producing characteristics, deliverability tests shall be performed as follows. Deliverability tests shall be scheduled by the producer within the testing period designated by the Railroad Commission, and only the recorded data specified by the Form G-10 is required to be reported. All deliverability tests shall be performed by producing the subject well at stabilized rates for a minimum time period of 72 hours. A deliverability test shall be conducted under normal and usual operating conditions using the normal and usual operating equipment in place on the well being tested, and the well shall be produced against the normal and usual line pressure prevailing in the line into which the well produces. The average daily producing rate for each 24-hour period, the wellhead pressure before the commencement of the 72-hour test, and the flowing wellhead pressure at the beginning of each 24-hour period shall be recorded. In addition, a 24-hour shut-in wellhead pressure shall be determined either within the six-month period prior to the commencement of the 72-hour deliverability test or immediately after the completion of the deliverability test. The shut-in wellhead pressure that was determined and the date on which the 24-hour test was commenced shall be recorded on Form G-10. Exceptions and extensions to the timing requirements for deliverability tests and shut-in wellhead pressure tests may be granted by the Commission for good cause. [~~before or after the flow test and recorded.~~] The flow rate during each day of the first 48 hours of the test must be as close as possible to the flow rate during the final 24 hours of the test, but must equal at least 75% of such flow rate. The deliverability of the well during the last 24 hours of the flow test shall be used for allowable and allocation purposes. If pipeline conditions exist such that a producer believes a representative deliverability test cannot be performed, the producer with pipeline notification may request in writing that the commission use either of the following as a representative deliverability:

(1) the deliverability test performed during the previous testing period; or

(2) the maximum daily production from any of the 12 months prior to the due date of the test as determined by dividing the highest monthly production by the number of days in that month.

(d)-(e) (No change.)

(f) [~~The appropriate district office shall be notified at least 24 hours prior to any test.~~] Tests of wells connected to a pipeline shall be made in a manner that no gas is flared, vented, or otherwise wastefully used.

§3.52. Oil Well Allowable Production.

(a)-(e) (No change.)

(f) The operator of any lease or unitized area in the State of Texas may be permitted to produce the total allowable for any such lease or unitized area subject to the following provisions:

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

(4) Annual well test or allocation:

(A) An annual well test, or an allocation pursuant to §3.53(a)(2) of this title (relating to Well Status Reports Required) shall be made and reported on the oil well status report form on each lease or unit property to which a lease production basis has been granted showing an individual well test or allocation on each oil well on the property made during the prescribed test period determined by the commission. Annual well tests [~~Offset operators must be notified of any test to be reported to the commission 24 hours in advance of the test and such test~~] may be witnessed by offset operators. An offset operator that desires to witness an annual well test shall give the testing operator written notice of its desire to witness the next scheduled annual well test of a specific well. A testing operator that has received prior written notice that an offset operator desires to witness an annual well test shall give that offset operator at least 24 hours advance notice of the date of the next annual well test for that well. The Commission will use the test or allocation data in the preparation of the oil proration schedule. The total schedule daily lease allowable shall be the sum of the individual well allowables as determined under applicable rules and the lease production basis shall be designated on the oil proration schedule by an appropriate symbol. All wells on the lease for which an allowable is requested shall have their production volumes reported pursuant to §3.53(a) of this chapter, relating to well status reports required.

(B) (No change.)

(5)-(7) (No change.)

§3.53. Annual Well Tests and Well Status Reports Required.

(a) Oil wells.

(1) (No change.)

(2) For any oil well capable of producing no more than five [~~two~~] barrels of oil per 24-hour period, the operator of such well may report the required oil, gas and water volumes based on an allocation of that well's production on a prorated daily basis, rather than an actual well test. This option of using production allocation instead of actual well tests does not apply to surface-commingled wells, swabbed wells, the East Texas Field or the following Panhandle fields: Panhandle Carson County Field (Field Number 68845-001); Panhandle Collingsworth County Field (Field Number 68859-001); Panhandle Gray County Field (Field Number 68873-001); Panhandle Hutchinson County Field (Field Number 68887-001); Panhandle Moore County field (Field Number 68901-001); Panhandle Potter County Field (Field Number 68915-001); and Panhandle Wheeler County Field (Field Number 68929-001). [~~Both the two-barrel limit and the list of excluded wells and fields are subject to modification by the commission.~~]

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

(b) (No change.)

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

Filed with the Office of the Secretary of State, on October 5, 1999.

TRD-9906620

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: November 21, 1999

For further information, please call: (512) 475-1295

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Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter A. GENERAL PROVISIONS

16 TAC §25.5

The Public Utility Commission of Texas (commission) proposes an amendment to §25.5, relating to Definitions. The proposed amendment is necessary to add new definitions and modify existing definitions in §25.5 to conform to the Public Utility Regulatory Act (PURA) as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service, 2543 (Vernon) (SB 7). The proposed amendments also update citations to the commission's rules and clarify defined terms as necessary. Project Number 21232 has been assigned to this proceeding.

Harold Hughes, Senior Electric Utility Engineer, Office of Regulatory Affairs - Electric Industry Analysis, 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. Hughes 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 definitions that conform to statute as amended by SB 7 and that more accurately reflect the commission's rules and current regulations in support of the objectives of SB 7. 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. Hughes 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 amendment (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 21232 - Amendment to §25.5 relating to Definitions.

The commission requests specific comments on the term "person" as defined in §25.5 and whether the current definition is still appropriate in light of recent statutory changes. The term "person" as defined and used in Chapter 25 has been a more all-inclusive term than the PURA definition. The commission also 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.

This amendment 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 §§11.003, 14.002, 31.002, 39.151, 39.156, 39.251, 39.353, 39.354, 39.3545, and 39.904.

§25.5. Definitions.

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

(1) Above-market purchased power costs - Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) [~~(1)~~] Administrative review - A process under which an application may be approved without a formal hearing.

(3) [~~(2)~~] Affected person - means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(4) [~~(3)~~]Affiliate - means:

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(5) Affiliated power generation company - A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(6) Affiliated retail electric provider - A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(7) Aggregator - A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(8) Aggregation - Includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

(9) [~~(4)~~] Ancillary service - A service necessary to support the transmission of energy from resources to loads while maintaining reliable operation of the [~~transmission service providers'~~] transmission system [~~systems~~] in accordance with good utility practice.

(10) [~~(5)~~] Ancillary service provider - An electric or municipally owned utility, or power generation company that provides an ancillary service or an independent system operator that provides such services.

(11) [~~(6)~~] Base rate - Generally, a rate designed to recover the costs of electricity other than costs recovered through a fuel factor, power cost recovery factor, or surcharge.

(12) [~~(7)~~] Commission - The Public Utility Commission of Texas.

(13) [~~(8)~~] Control area - An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

~~[(9) Cooperative corporation .]~~

~~[(A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or]~~

~~[(B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.]~~

(14) [~~(10)~~] Corporation - A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

(15) Customer choice - The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(16) [~~(11)~~] Customer class - A group of customers with similar electric usage service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.

(17) [~~(12)~~] Demand-side management - Activities that affect the magnitude and/or timing of customer electricity usage[~~to produce desirable changes in the utility's load shape~~].

(18) [~~(13)~~] Demand-side resource or demand-side management resource - Activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

(19) [~~(14)~~] Distribution line - A power line operated below 60,000 volts, when measured phase-to-phase.

(20) [~~(15)~~] Distributed resource - A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (60,000 volts and below), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

(21) Electric cooperative -

(A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(22) [~~(16)~~] Electric Reliability Council of Texas (ERCOT) - Refers to the organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

(23) [~~(17)~~] Electric utility - Except as provided in Subchapter I, Division 1 of this Chapter, an electric utility is:

[~~(A)~~] A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) [~~(i)~~] a municipal corporation;

(B) [~~(ii)~~] a qualifying facility;

(C) a power generation company;

(D) [~~(iii)~~] an exempt wholesale generator;

(E) [~~(iv)~~] a power marketer;

(F) [~~(v)~~] a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer; [~~or~~]

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) [~~(vi)~~] a person not otherwise an electric utility who:

(i) [~~(I)~~] furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) [~~(II)~~] owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) [~~(III)~~] owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.

~~[(B) With respect to transmission service and ancillary service, the term includes municipally owned utilities and river authorities that are not otherwise subject to the commission's ratesetting authority.]~~

(24) [~~(18)~~] Eligible ancillary service customer - Any person who[~~that~~] is an eligible transmission service customer.

(25) [~~(19)~~] Eligible transmission service customer - A transmission service provider (for all uses of its transmission system) or any electric utility, municipally owned utility, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be an eligible transmission service customer.

~~[(20) Energy efficiency - Management of energy resources through efficacy in the utilization of electrical energy through: end-user conservation (a single device, measure, or practice, or a grouping thereof, to reduce energy or demand and that can be measured at the customer meter); utility-controlled options such as optimization of existing and planned generation, transmission, and distribution facilities through direct load management (reduction in peak demand on an electric utility system by direct control of electric devices), cogeneration (reduction in additions to electric utility planned generation expansion as a result of using firm and reliable capacity from an industrial company), peak shaving (reduction in peak demand on an electric utility system by the storage of energy produced during an off-peak period and then utilizing it to serve loads during the peak period), small power production (reduction in additions to electric utility planned generation additions by the installation of dependable, long-life generating plants utilizing~~

~~direct conversion of renewable resources of electric energy), power plant productivity improvement (reduction in additions to electric utility planned generation expansion as a result of improvements in the productivity of existing or new generating units), and power plant efficiency improvement (reduction in the utilization of natural resources in their conversion to electrical energy as a result of improvements in the efficiency of existing and new generating units); and optimal conversion of renewable resources to electrical energy.]~~

(26) [~~(21)~~] Exempt wholesale generator - A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators and Qualifying Facilities) [~~§23.19 of this title (relating to Registration of Power Marketers and Exempt Wholesale Generators)~~].

(27) Existing purchased power contract - A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(28) [~~(22)~~] Facilities - All the plant and equipment of an electric utility, including all tangible and intangible property, [~~real and personal property~~] without limitation, [~~and any and all means and instrumentalities in any manner~~] owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any electric utility[~~, including any construction work in progress allowed by the commission~~].

(29) Freeze period - The period beginning on January 1, 1999, and ending on December 31, 2001.

(30) Generation assets - All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(31) [~~(23)~~] Good utility practice - Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

(32) [~~(24)~~] Hearing - Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(33) Independent organization - An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.

(34) Independent system operator - An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(35) [~~(25)~~] License - The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(36) [~~(26)~~] Licensing - The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(37) Market power mitigation plan - A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.

(38) Market value - For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(39) [~~(27)~~] Municipality - A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(40) [~~(28)~~] Municipally-owned utility - Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(41) [~~(29)~~] Native load customer - A wholesale or retail customer on whose behalf an electric utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

(42) [~~(30)~~] Person - Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(43) [~~(31)~~] Planned resources - Generation resources owned, controlled, or purchased by a transmission customer, and designated as planned resources for the purpose of serving load.

~~[(32) Planned transmission service Use by a transmission service customer of a transmission service provider's transmission system for the delivery of power from planned resources to the customer's loads.]~~

(44) [~~(33)~~] Pleading - A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(45) [~~(34)~~] Power cost recovery factor - A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(46) Power generation company - A person that:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility

not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(47) [~~(35)~~] Power marketer - A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators and Qualifying Facilities)[~~§23.19 of this title (relating to Registration of Power Marketers and Exempt Wholesale Generators)~~].

(48) Power region - A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

(49) [~~(36)~~] Pre-existing transmission contract - A contract for transmission or wheeling services that took effect prior to March 4, 1996.

(50) [~~(37)~~] Premises - A tract of land or real estate including buildings and other appurtenances thereon.

(51) [~~(38)~~] Proceeding - A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

(52) [~~(39)~~] Public utility or utility - A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(53) [~~(40)~~] Public Utility Regulatory Act (PURA) - The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 64.158[~~63.063~~], (Vernon 1999[~~1998~~]).

(54) Purchased power market value - The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(55) [~~(41)~~] Qualifying cogenerator - The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(56) [~~(42)~~] Qualifying facility - A qualifying cogenerator or qualifying small power producer.

(57) [~~(43)~~] Qualifying small power producer - The meaning as assigned this term by 16 U.S.C. §796(17)(D).

(58) [~~(44)~~] Rate A [~~Includes:~~]

[~~(A)~~] [~~any~~] compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric[~~a public~~] utility for a service, product, or commodity described in the definition of electric utility in this section [~~in the Public Utility Regulatory Act, §31.002;~~]and

[~~(B)~~] a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(59) [~~(45)~~] Rate class - A group of customers taking electric service under the same rate schedule.

(60) [~~(46)~~] Rate year - The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(61) Ratemaking proceeding - A proceeding in which a rate is changed.

(62) [~~(47)~~] Regulatory authority - In accordance with the context where it is found, either the commission or the governing body of a municipality.

(63) [~~(48)~~] Renewable energy technology - Any technology that exclusively relies on an energy source that is naturally regenerated over a short time [~~time scale~~] and derived directly from the sun,[~~(solar-thermal, photochemical, and photoelectric)~~] indirectly from the sun [~~(wind, hydropower, and biomass),~~]or from moving water or other natural movements and mechanisms of the environment[~~(geothermal and tidal energy)~~]. Renewable energy technologies include solar, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(64) [~~(49)~~] Renewable resource[~~resources~~] - A resource that relies on renewable energy technology.

(65) Retail customer - The separately metered end-use customer who purchases and ultimately consumes electricity.

(66) Retail electric provider - A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(67) Retail stranded costs - That part of net stranded cost associated with the provision of retail service.

(68) [~~(50)~~] Rule - A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(69) [~~(51)~~] Rulemaking proceeding - A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, §§2001.021 - 2001.037 to adopt, amend, or repeal a commission rule.

(70) Separately metered - Metered by an individual meter that is used to measure electric energy consumption by a retail

customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(71) [~~(52)~~] Service - Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by [~~a public utility or~~]an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(72) [~~(53)~~] Spanish-speaking person - A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(73) Stranded cost - The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act, Chapter 39. For purposes of §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under §39.262(h), whichever is earlier, and shall include stranded costs incurred under §39.263.

(74) [~~(54)~~] Submetering - Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

(75) [~~(55)~~] Supply-side resource - A resource, including a storage device, that provides electricity from fuels or renewable resources.

(76) [~~(56)~~] Tariff - The schedule of a utility containing all rates and charges stated separately by type of service and the rules and regulations of the utility.

(77) [~~(57)~~] Tenant - A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(78) [~~(58)~~] Test year - The most recent 12 months for which operating data for an electric utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(79) Transmission and distribution utility - A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative.

(80) [~~(59)~~] Transmission facilities study - An engineering study conducted by a transmission service provider subsequent to a system security study to determine the required modifications to its transmission system, including the detailed costs and scheduled completion date for such modifications, that will be required to provide a requested transmission service.

(81) [~~(60)~~] Transmission interconnection agreement - An agreement that sets forth requirements for physical connection or other terms relating to electrical connection between an eligible transmission service customer and a transmission service provider, including contracts or tariffs for transmission service that include provisions for interconnection. Transmission service providers must have such an agreement with all transmission service providers to whom they are physically connected.

(82) [~~(61)~~] Transmission line - A power line that is operated at 60,000 volts or above, when measured phase-to-phase.

(83) [~~(62)~~] Transmission losses - Energy losses resulting from the transmission of power.

(84) [~~(63)~~] Transmission service - Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

(85) [~~(64)~~] Transmission service customer - A[~~An eligible~~] transmission customer receiving transmission service. Where consistent with the context, "transmission service customer" includes an eligible transmission service customer seeking transmission service.

(86) [~~(65)~~] Transmission service provider - An electric or municipally- owned utility that owns or operates facilities used for the transmission of electricity and provides transmission service.

(87) [~~(66)~~] Transmission system - The transmission facilities at or above 60 kilovolts owned, controlled, operated, or supported by a transmission provider or transmission customer that are used to provide transmission service.

(88) [~~(67)~~] Transmission system security study - An assessment by a transmission service provider of the adequacy of the transmission system to accommodate a request for transmission service and whether any costs are anticipated in order to provide transmission service.

(89) [~~(68)~~] Transmission upgrade - A modification or addition to transmission facilities owned or operated by a transmission service provider.

(90) [~~(69)~~] Unplanned resources - Generation resources owned, controlled or purchased by the transmission customer that have not been designated as planned resources.

[~~(70) Unplanned transmission service - Use by a transmission service customer of a transmission service provider's transmission system for the delivery of power from resources that the customer has not designated as planned resources to the customer's loads.~~]

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 October 8, 1999.

TRD-9906746
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 936-7308

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Subchapter H. ELECTRICAL PLANNING

16 TAC §25.173

The Public Utility Commission of Texas (commission) proposes new §25.173, relating to the Goal for Renewable Energy. Proposed §25.173 will implement the legislative goal for renewable energy development in the state of Texas as set forth in the Public Utility Regulatory Act (PURA), as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service 2543, 2598 (Vernon) (to be codified as Public Utility Regulatory Act, Texas Utilities Code Annotated §39.904). Project Number 20944 has been assigned to this proceeding.

In proposing this rule, the commission's objectives are to define the requirement of renewable energy purchases by competitive retailers and to establish a renewable energy credits trading program. The resulting programs will: (1) implement the statutory mandate in PURA §39.904 to promote the development of renewable energy technologies; (2) encourage the construction and operation of new renewable energy projects at those sites in this state that have the greatest potential for capture and development of environmentally beneficial renewable resources in Texas; (3) reduce air pollution in Texas that is associated with the generation of electricity using fossil fuels; (4) respond to customer preferences that place a high value on environmental quality and reflect a willingness to pay a higher price for "clean" energy acquired from renewable resources; (5) increase the amount of renewable energy available to supply electricity to consumers in Texas; and (6) ensure that all customers have access to energy from renewable energy resources pursuant to PURA §39.101(b)(3).

Texas possesses a vast amount of untapped renewable resources, perhaps more than any other state. The Legislature recognized that economic and environmental benefits would accrue to Texas citizens from the development of those resources by enacting §39.904 which mandates that an additional 2,000 megawatts (MW) of generating capacity from renewable technologies be installed in Texas by January 1, 2009.

The Integrated Resource Planning (IRP) process adopted by the Legislature in 1995 required that renewable resources and conservation resources be considered for inclusion in each Texas generating utility's resource mix. The IRP process was intended to focus on meeting the increased demands for electricity with resources that were cost-effective, reliable, and environmentally sound.

The Legislature's commitment to development of the state's abundant renewable resources is derived from the preferences expressed by Texas consumers in favor of renewable power. The IRP process required that utilities assess customer values and preferences and consider these preferences in their resource plans. In an effort to assess customer values and preferences, many of the utilities used the Deliberative Poll™ process. Customers participating in this process indicated a preference for better air quality and a willingness to purchase electricity that was generated by renewable energy resources that improve air quality in their communities. The customers' preferences, revealed in the IRP process, are reflected in PURA §39.904: cleaner sources of energy should be deployed to develop the state's economic resources and improve the quality of the air in Texas.

Texas has long been a leader in the direct use of energy produced by burning fossil fuels. Although Texas has historically been one of the largest energy consumers in the nation, it has continued to be near the bottom in the production and use of renewable energy. The continued growth of the Texas economy and population will continue to make it one of the leaders in energy consumption. Relying on energy produced by burning fossil fuels has contributed to the degradation of air quality in much of Texas and over reliance on fossil-fueled energy sources in the future will continue this trend. Texas electric customers have placed a high value on environmental quality and have shown a willingness to pay a premium for clean energy sources that benefit their communities and the state of Texas. The renewable energy mandate, coupled with the requirement that the commission establish a program for the trading of renewable energy credits (RECs), provides a mechanism for bringing new renewable resources to Texas by allowing industry participants from Texas and elsewhere to compete for that market.

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe relevant "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute and the topics of this rule, rather than broad citations to other state restructuring efforts.

The commission requests that interested parties provide relevant comments on the proposed rule. Specifically, the commission requests comments on several matters:

First, the commission seeks comment on the penalty provisions set forth in this section. Are meaningful penalties necessary to ensure that competitive retailers comply with the requirements set forth in this section? When explaining your answer, please give examples of penalty provisions included in other trading programs, such as the Acid Rain Program administered by the Environmental Protection Agency (EPA). Section 25.173 states that the penalty for non- compliance shall be $50 per megawatt-hour or, upon suitable evidence of market value by a competitive retailer, shall be 200% of the market value of credits for that year. Is $50 per megawatt-hour applied to the portion of deficient credits an appropriate fee? If your answer is yes, please explain why. If your answer is no, please suggest an appropriate monetary fee that you believe is suitable and provide an explanation of why it is preferable. Moreover, is it reasonable to assess a penalty based on the average market value of credits if disclosure of the price is not required in connection with the transfer of renewable energy credits? If your answer is yes, please clarify how a competitive retailer would reasonably estimate the average price paid for credits during the previous year.

Second, the commission seeks comments on the appropriate start and end date for the renewable energy credits trading

program. Please explain, using mathematical examples where possible, how the commission can ensure that 400 megawatts (MW) of new renewable generating capacity is installed in Texas by January 1, 2003 if: the credits trading program (1) begins in 2003, (2) allows 5.0% deficit banking for the first two compliance periods, and (3) does not require a new capacity conversion factor to be used until 2006. If you believe that the trading program can not adequately facilitate and support the efficient installation of the mandated capacity targets using the above requirements, please explain, using mathematical examples where possible, what combination of requirements would ensure that the electric industry collectively achieves the state's capacity goals in the most economically efficient manner. Regarding the trading program's end date, should the rule specify a definitive date? Are there economic benefits such as the reduction in overall program costs to customers that would justify ending the program in 2019 as opposed to another date? Moreover, does ending the program in 2019 help to achieve the required renewable energy goals?

Third, the commission seeks comment on the metering and verification of renewable energy output as required by this section. Which parties should be responsible for the metering and verification of renewable energy output data? For example, should all output be metered and verified by the program administrator or the renewable energy power generators? Please explain how the metering and verification would work in the context of answering the above question.

Fourth, the commission seeks comment on the banking provisions currently proposed in this section. Will a three-year banking provision help ensure that 2,000 MW of new capacity is installed in Texas by 2009 and, if so, how? If you believe that three-year banking limitations will not contribute to meeting the goal for renewable energy, please give examples of how this section should be modified to ensure that 2,000 MW of new renewable capacity is installed in Texas by 2009. Additionally, should renewable power generators be allowed to receive credits for energy produced before the first compliance period (early banking)? In your answer, please explain, using mathematical examples where possible, the impact of early banking on achieving the statutory goal of the installation of 2,000 MW of new generating capacity in Texas.

Fifth, the commission seeks comment on the cumulative capacity goals required by 39.904. Specifically, if any of the renewable resources in the state are retired before 2009, is it necessary to build new renewable resources to offset this reduction in capacity?

Sixth, the commission seeks comment on the obligation of municipally-owned utilities, distribution cooperatives, and retail electric providers to purchase new renewable resources in the credits trading program if they have existing renewable resources sufficient to cover their renewable energy purchase requirement. Should parties with existing resources have their obligation to purchase RECs proportionately reduced to reflect the percent of existing renewables they have under contract? If your answer is yes, please explain the allocation methodology that should be used to incorporate existing renewable resources into the trading program. Specifically, if existing resources are accounted for in a party's purchase obligation, is it necessary to allow those resources to produce credits for sale in the trading program? If your answer is no, please explain how all of the following conditions could be met: (1) a party's purchase obligation is offset by existing resources, (2) renewable credits associated with those existing resources are excluded from producing credits for sale in the trading program, and (3) the capacity requirements set forth in PURA §39.904 are achieved in a timely, economical, and efficient manner.

Seventh, the commission seeks comment on alternative ways to restructure the credits trading program and specifically requests comments on the proposal outlined in Chairman Wood's October 8, 1999 memo filed under this project number. Specifically, should existing renewables be incorporated into the credits trading program? If existing renewables were allowed to produce RECs, what impact would this have on (1) the cost or value of RECs over time, (2) the level of financial incentive offered to new renewable resources, and (3) the overall cost of the trading program. Additionally, please explain any necessary changes in the REC allocation methodology set forth in subsection (h) of this section and the capacity factor calculation methodology set forth in subsection (i) of this section to accommodate existing and new renewables.

Gillan Taddune, Senior Economic Analyst in the Office of Policy Development, 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.

Ms. Taddune 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 the economic and environmental benefits associated with capturing, conserving, and developing the vast amount of untapped renewable resources in Texas, including an improvement in the air quality of the state of Texas, that will result in an improvement to the public health. There will be no effect on small businesses or micro-businesses as a result of enforcing this section.

It is anticipated that there will be no economic costs incurred by persons who are required to comply with the new section as proposed beyond those costs caused by the underlying statute that this section implements. The benefits accruing from implementation of the statute by this proposed section, however, are expected to outweigh the costs.

Ms. Taddune 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.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, November 22, 1999, at 9:30 a.m.

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 14 days after publication. Reply comments may be submitted within 28 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. All comments should refer to Project Number 20944.

This new section 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, Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service, 2543, 2558 (Vernon) (to be codified as the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.904) which directs the commission to establish a renewable energy credits trading program and to adopt rules necessary to enforce and administer the program outlined in this section.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 39.101(b)(3), and 39.904.

§25.173. Goal for Renewable Energy.

(a) Purpose. The purpose of this section is to ensure that an additional 2,000 megawatts (MW) of generating capacity from renewable energy technologies is installed in Texas by 2009 pursuant to the Public Utility Regulatory Act (PURA)§39.904, to establish a renewable energy credits trading program that would ensure that the new renewable energy capacity is built in the most efficient and economical manner, to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources, to protect and enhance the quality of Texas' environment through increased use of renewable resources, to respond to customers' expressed preferences for renewable resources by ensuring that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA § 39.101(b)(3), and to ensure that the cumulative installed renewable capacity in Texas will be at least 2,880 MW by January 1, 2009.

(b) Application. This section applies to power generation companies as defined in §25.5 of this chapter, and competitive retailers as defined in subsection (c) of this section (relating to definitions).

(c) Definitions.

(1) Competitive retailer - A municipally-owned utility or distribution cooperative that offers customer choice in the restructured competitive electric power market in Texas or a retail electric provider (REP) as defined in §25.5 of this chapter.

(2) Compliance period - A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a competitive retailer.

(3) Designated representative - A responsible natural person authorized by the owners or operators of each renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of each renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Early banking - Awarding renewable energy credits (RECs) to generators for sale in the trading program prior to the program's first compliance period.

(5) Existing resources - Renewable resources installed in Texas before September 1, 1999.

(6) Generation offset technology - Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(7) New resources - Renewable resources installed in Texas and placed in service on or after September 1, 1999.

(8) Off-grid generation - The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Program administrator - The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

(10) Qualifying existing resources - Renewable energy resources installed in Texas on or after September 1, 1995 but before September 1, 1999, and whose costs are not in any utility's base rates, in a power cost recovery factor (PCRF), or in a utility's stranded cost recovery calculation on the date the trading program begins.

(11) Renewable energy resource (renewable resource) - A resource that produces energy derived from renewable energy technologies.

(12) Renewable energy technology - Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, or waste products from inorganic sources.

(13) Renewable energy credit (REC or credit) - An REC represents one megawatt hour (MWh) of renewable energy that is generated and metered in Texas and meets the requirements set forth in subsection (e) of this section.

(14) Renewable Energy Credit account (REC account) - An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(15) Renewable energy credits trading program (trading program) - The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(16) Repowering - Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(17) Settlement period - The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.

(18) Small producer - A renewable resource that is less than two megawatts (MW) in size.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generators, competitive retailers, and other market participants as set forth in this section.

(1) The program administrator shall apportion a renewable resource requirement among all competitive retailers as a percentage of retail sales of each competitive retailer as set forth in subsection (h) of this section. Each competitive retailer shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to purchase

RECs pursuant to this section becomes effective on the date each competitive retailer begins serving retail electric customers in Texas.

(2) A power generating company may participate in the program and may generate RECs and sell RECs as set forth in subsection (j) of this section.

(3) RECs shall be credited on an energy basis as set forth in subsection (j) of this section.

(4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice are not obligated to purchase RECs. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to competitive retailers as set forth in subsection (j) of this section.

(5) Except where specifically stated the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Resources eligible for producing RECs in the renewable energy credits trading program. For a renewable resource to be eligible to produce RECs in the trading program it must be either a qualifying existing resource, a new resource, or a small producer as defined in subsection (c) of this section and must also meet the requirements of this subsection:

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (m) of this section.

(2) For a resource other than a new resource, the resource's above-market costs must not be included in the rates of any utility, municipally-owned utility, or distribution cooperative through base rates, a power cost recovery factor (PCRF) or stranded cost recovery calculation on the date the trading program begins.

(3) For an existing resource, the credits must be issued for the incremental capacity and associated energy achieved from repowering the resource.

(4) For a renewable energy technology that requires fossil fuel, the resource's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a british thermal unit (BTU) or equivalent basis.

(5) The output of the resource must be readily capable of metering and verification by the program administrator. A resource is not ineligible by virtue of the fact that the resource is a generation-offset, off-grid, or on-site distributed renewable resources if it otherwise meets the requirements of this section.

(f) Resources not eligible for producing RECs in the renewable energy credits trading program. Renewable resources are not eligible to produce RECs in the trading program if the resource is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.01593, that is used to satisfy the permit requirements in Health and Safety Code §382.0159;

(2) An existing resource that is not a qualifying existing resource as defined in subsection (c) of this section; or

(3) An existing fossil plant that is repowered to use a renewable fuel.

(g) Responsibilities of program administrator. No later than June 1, 2000, the commission shall approve an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs for each participant in the trading program;

(2) Award RECs to registered renewable energy resources on a monthly basis based on verified meter reads;

(3) Annually retire RECs that each competitive retailer submits to meet its renewable energy requirement;

(4) Retire RECs at the end of each REC's three-year life;

(5) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(6) Allocate the renewable energy responsibility to each competitive retailer in accordance with subsection (h) of this section; and

(7) Submit an annual report to the commission. Beginning with the program's first compliance period, the program administrator shall submit a report to the commission on or before April 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and competitive retailers. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each month during the previous year for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all competitive retailers participating in the trading program, each competitive retailer's renewable energy credit purchase requirement and the number of credits retired by each competitive retailer, a listing of all competitive retailers that were in compliance with the REC purchase requirements for the compliance period, a listing of all competitive retailers that have failed to purchase sufficient RECs to meet the purchase requirement for that compliance period, and the deficiency of each competitive retailer that failed to purchase sufficient RECs to meet its previous year's REC requirement.

(h) Allocation of REC purchase requirement to competitive retailers. The program administrator shall allocate REC purchase requirements among competitive retailers. The program administrator shall use the following methodology to determine the total annual REC requirement for a given year, the statewide percentage purchase requirement for all competitive retailers, and the REC requirement for individual competitive retailers:

(1) The total statewide REC requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the renewable capacity target multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (i) of this section. The renewable energy capacity targets for the compliance period beginning January 1, of the year indicated shall be:

(A) 400 MW of new resources plus any qualifying existing resources in 2002;

(B) 400 MW of new resources plus any qualifying existing resources in 2003;

(C) 850 MW of new resources plus any qualifying existing resources in 2004;

(D) 850 MW of new resources plus any qualifying existing resources in 2005;

(E) 1,400 MW of new resources plus any qualifying existing resources in 2006;

(F) 1,400 MW of new resources plus any qualifying existing resources in 2007;

(G) 2,000 MW of new resources plus any qualifying existing resources in 2008; and

(H) 2,000 MW of new resources plus any qualifying existing resources in 2009 through 2019.

(2) Each competitive retailer's REC purchase percentage for that compliance period equals the competitive retailer's compliance period retail energy sales in Texas divided by the total retail sales in Texas of all competitive retailers.

(3) The REC requirement for an individual competitive retailer for a compliance period shall be equal to the competitive retailer's REC purchase percentage as calculated in paragraph (2) of this subsection multiplied by the total statewide REC requirement for that compliance period as calculated in paragraph (1) of this subsection.

(i) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate credits to competitive retailers shall be calculated as follows:

(1) The capacity conversion factor (CCF) shall be administratively set at 35% for 2002 and 2003, the first two compliance periods of the program.

(2) During the fourth quarter of the second compliance year (2003), the CCF shall be readjusted to reflect actual generator performance data associated with all renewable resources in the trading program. The CCF shall be adjusted every two years thereafter and shall:

(A) be based on all renewable energy resources in the trading program for which at least 12 months of performance data is available;

(B) represent a weighted average of generator performance;

(C) use all valid performance data that is available for each renewable resource; and

(D) ensure that the renewable capacity goals are attained.

(j) Production and transfer of RECs. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) A REC will be awarded to the owner of a renewable resource when a MWh is metered at that renewable resource. The program administrator shall record the amount of metered MWh and credit the REC account of the renewable resource that generated the energy on a monthly basis;

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator;

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction receipt to parties upon provision of adequate information to carry out the transaction. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number that shall include the REC issue date and the renewable resource that produced that REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) Each competitive retailer must surrender RECs to the program administrator for retirement from the market in order to meet its REC allocation for the compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by competitive retailers and have reached the end of their three-year life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(k) Settlement process. Beginning in January 2003, the first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each competitive retailer of its total REC requirement for the previous compliance period based on the competitive retailer's actual retail sales MWh for the previous year.

(2) By March 31, each competitive retailer must retire credits from its account equivalent to its REC requirement for the previous year. If the competitive retailer has insufficient credits in its account to satisfy its obligation, and this shortfall exceeds the applicable deficit allowance as set forth in paragraph (l)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (n) of this section.

(l) Trading program compliance cycle.

(1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. No RECs will be awarded prior to the first compliance period. The program's first settlement period shall take place during the first quarter of 2003.

(2) A competitive retailer may incur a deficit allowance equal to 5.0% of its REC purchase requirement in 2002 and 2003 (the first two compliance periods of the program). This 5.0% deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall that is greater than 5.0% of its REC allocation pursuant to subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 5.0% of the second year REC allocation. All competitive retailers incurring a 5.0% deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.

(3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods after which the program administrator will retire them from the trading program.

(4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.

(5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.

(m) Registration and certification of renewable energy resources. The commission shall register and certify all renewable resources that will produce RECs in the trading program. To be awarded RECs, a power generator must complete the registration process described in this subsection. The program administrator shall not award credits for a power generator before it has completed the registration process.

(1) The designated representative of the generating capacity shall file an application at the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria as set forth in subsection (e) of this section.

(2) No later than 60 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable resource has met the certification requirements. At that time, the commission shall either certify the renewable resource as eligible to receive RECs or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended by 30 days.

(3) Upon receiving notice of certification, the program administrator shall create an REC account for the designated representative of the renewable resource.

(4) The commission may make periodic on-site visits to any certified unit of a renewable energy resource and may decertify any unit if it is not in compliance with the provisions of this subsection.

(n) Penalties and enforcement. If by April 1 of the year following a compliance year it is determined that a competitive retailer with an allocated REC purchase requirement has insufficient credits to satisfy its allocation, the competitive retailer shall be subject to the administrative penalty provisions of PURA §15.023 as specified in this subsection.

(1) Except as provided in paragraph (4) of this subsection, a penalty will be assessed for that portion of the deficient credits.

(2) The penalty shall be the lesser of $50 per MWh or, upon presentation of suitable evidence of market value by the competitive retailer, 200% of the average market value of credits for that compliance period.

(3) There will be no obligation on the competitive retailer to purchase RECs for deficits, whether or not the deficit was within or was not within the competitive retailer's reasonable control, except as set forth in subsection (l)(2) of this section.

(4) In the event that the commission determines that events beyond the reasonable control of a competitive retailer prevented it from acquiring the allocated number of credits, acquiring the allocated number of credits, there will be no penalty assessed.

(5) A party is responsible for conducting sufficient advance planning to acquire its allotment of RECs. Failure of the spot or short-term market to supply a party with the allocated number of RECs shall not constitute an event outside the competitive retailer's reasonable control. Events or circumstances that are outside of a party's reasonable control include weather related damages, mechanical failure, lack of transmission or transmission capacity or availability, strikes, lockouts, actions of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a purchaser.

(o) Renewable resources eligible for sale in the Texas wholesale and retail markets. Any energy produced by a renewable resource may be bought and sold in the Texas wholesale market or to retail customers in Texas and marketed as renewable energy if it is generated from a resource that meets the definition in subsection (c)(11) of this section.

(p) Periodic review. The commission shall periodically assess the effectiveness of the energy- based credits trading program in this section to maximize the energy output from the new capacity additions and ensure that the goal for renewable energy is achieved in the most economically-efficient manner. If the energy-based trading program is not effective, performance standards will be designed to ensure that the cumulative installed renewable capacity in Texas meets the requirements of PURA §39.904.

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 October 8, 1999.

TRD-9906747
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 936-7308

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Part 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

Chapter 37. LEGAL

Subchapter A. RULES OF PRACTICE

16 TAC §37.1

The Texas Alcoholic Beverage Commission proposes a new §37.1 relating to payment for the record in the appeal of contested administrative cases. The rule would require parties seeking judicial review of commission orders to pay the cost of preparing the record for review.

This rule is identical to currently existing §37.45(c). Repeal of §37.45 is proposed simultaneously with this action because subsections (a) and (b) of that rule have been superseded by rules adopted by the State Office of Administrative Hearings. Repeal of this rule requires readoption of subsection (c) of the rule as a new rule.

Lou Bright, General Counsel, has determined that for the first five years this rule is in effect, there will be no fiscal implications for units of state or local government.

Mr. Bright has determined that for the first five years this rule is in effect the public will benefit from this rule in that the costs associated with appeal of administrative appeals will be borne by the parties seeking such appeal rather than by a

public agency. There is no anticipated costs to owners of small businesses as a result of this rule.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas, 78711.

This action is proposed under Alcoholic Beverage Code, §5.31, which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §5.43, is affected by this action.

§37.1. Payment for the Record on Appeal.

The party seeking judicial review of a commission order shall pay all costs for the preparation of the record required to be sent to the reviewing court.

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 October 8, 1999.

TRD-9906734
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 206-3204

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16 TAC §37.45

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

The Texas Alcoholic Beverage Commission proposes the repeal of §37.45 relating to the record in contested administrative cases.

This repeal is proposed because subsections (a) and (b) of the rule have been superseded by rules adopted by the State Office of Administrative Hearings under the authority of Texas Government Code, §2003.050.

Lou Bright, General Counsel, has determined that for the first five years this repeal is in effect, there will be no fiscal implications for units of state or local government.

Mr. Bright has also determined that for the first five years the repeal is in effect the public will benefit from this action in that a rule without legal effect will be removed from the Texas Administrative Code. There is no anticipated costs to owners of small businesses as a result of this action.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas, 78711.

This action is proposed under Alcoholic Beverage Code, §5.31, which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §5.43, is affected by this action.

§37.45. The Record.

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-9906733
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 53. REGIONAL EDUCATION SERVICE CENTERS

Subchapter AA. COMMISSIONER'S RULES

19 TAC §53.1001

The Texas Education Agency (TEA) proposes an amendment to §53.1001, concerning regional education service centers (RESC) boards of directors. The section provides a procedure for appointment to fill unexpired terms on the RESC board of directors and for the election of members of RESC board of directors.

The proposed amendment to §53.1001 clarifies the list of qualifications for candidates to the RESC board of directors and provides for a process to review and report the results of contested and uncontested elections.

Ed Flathouse, Associate Commissioner for Finance and Operations, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Flathouse and Criss Cloudt, Associate Commissioner for Policy Planning and Research, have 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 continued provisions for the local selection, appointment, and continuity of membership of RESC board of directors. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §8.003(b), which authorizes the commissioner education to adopt rules for the local selection, appointment, and continuity of membership of regional education service center boards of directors.

The proposed amendment implements the Texas Education Code, §8.003(b).

§53.1001. Board of Directors.

(a) (No change.)

(b) Election procedures.

(1) A member of an RESC board of directors must be a United States citizen, at least 18 years of age, and a resident of that education service center region. He or she may not be engaged professionally in education [~~in a public school district,~~] or be a member of a board [~~school district board of trustees, or be a member of the board of trustees~~] of any educational agency or institution [~~of higher education~~]. The eligibility of an RESC board member under this subsection is determined by the requirements specified in this subsection as they existed on the date the RESC board member was elected or appointed to office.

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

(6) The provisions described in subsection (b)(2) and (5) of this section do not apply if all positions in the election are uncontested. In the event of an uncontested election, the RESC board of directors may determine that no election will be held. The RESC board of directors must make this determination prior to March 1. If, due to an uncontested election, the RESC board of directors determines that an election should not be held, the RESC board shall declare the unopposed candidates elected to office. The RESC executive director shall notify the commissioner of education of the results of an election, whether contested or uncontested.

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 October 11, 1999.

TRD-9906782
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
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For further information, please call: (512) 463-9701

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Chapter 75. CURRICULUM

Subchapter BB. COMMISSIONER'S RULES CONCERNING SPECIAL PROVISIONS FOR CAREER AND TECHNOLOGY EDUCATION

19 TAC §§75.1022-75.1025

The Texas Education Agency (TEA) proposes amendments to §§75.1022-75.1025, concerning career and technology education. The sections provide general provisions for career and technology education; provide for career and technology education to members of special populations; provide opportunities for students to participate in student leadership organizations; and ensure that school districts will evaluate their career and technology education programs annually. The sections ensure that school districts receiving funds under the Carl D. Perkins Vocational and Technical Education Act of 1998 and the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 comply with the provisions of those laws.

The proposed amendments to §§75.1022-75.1025 are necessary to incorporate changes in the Carl D. Perkins Vocational and Technical Education Act of 1998 (Public Law 105-332) and to remain consistent with the IDEA Amendments of 1997 (Public Law 105-17). The proposed amendments revise language describing services to students who are members of special populations, add language on enrollment as it relates to the "harmful effect" described in the IDEA, and modify language related to vocational student organizations.

Robert Muller, Associate Commissioner for Continuing Education and School Improvement Initiatives, 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 as a result of enforcing or administering the sections.

Mr. Muller and Criss Cloudt, Associate Commissioner for Policy Planning and Research, have 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 quality assurance for career and technology education programs and increased local control over programs offered. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §29.185, which directs TEA to prescribe requirements for career and technology education in public schools as necessary to comply with federal law; and §29.001, which directs TEA to develop and implement a statewide plan with programmatic content that includes procedures designed to ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology classes, in addition to participating in regular or special classes.

The proposed amendments implement the Texas Education Code, §29.185 and §29.001.

§75.1022. Career and Technology Education Program General Provisions.

(a) The state shall distribute federal funds available under the Carl D. Perkins Vocational and Technical Education Act of 1998, Public Law 105-332 (Carl D. Perkins Act of 1998), to eligible institutions.

(b) An eligible secondary entity seeking financial assistance under the Carl D. Perkins Act of 1998 shall submit a local plan to the Texas Education Agency (TEA) as described in 20 United States Code (USC), §2354, in accordance with requirements established by the TEA.

(c) Each eligible recipient that receives funding under the Carl D. Perkins Act of 1998 shall use the funds to improve career and technology education programs in compliance with 20 USC, §2355.

[(b) A career and technology education program shall provide competency-based, applied learning leading to both academic and occupational competencies through a coherent sequence of courses in which academic and career and technology education are integrated.]

[(c) A career and technology education program shall be of such size, scope, and quality as to be effective in improving academic and occupational skill competencies of students, while providing strong experience and understanding of all aspects of the industry the students are preparing to enter.]

§75.1023. Provisions for Individuals Who Are Members of Special Populations.

(a) An individual who is a member of a special population as defined in 23 United States Code, §2302(23), shall be provided career and technology services in accordance with all applicable federal law and regulations, state statutes, and rules of the State Board of Education (SBOE) and commissioner of education.

(b) A student with a disability shall be provided career and technology services in accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), Public Law 105-17, as amended through the 1997 Amendments, and implementing regulations, state statutes, and rules of the SBOE and commissioner of education relating to services to students with disabilities.

[(a) An individual who is a member of a special population (an individual with a disability; an individual who is educationally or economically disadvantaged, including a foster child; an individual with limited English proficiency; or an individual who participates in programs designed to eliminate sex bias) shall be provided equal access to recruitment, enrollment, and placement activities.]

[(b) An individual who is educationally or economically disadvantaged or a student of limited English proficiency shall be taught in the most integrated setting possible.]

[(c) A student who is a member of a special population as described in subsection (a) of this section shall be provided the following to help the student successfully complete career and technology education:]

[(1) a coherent sequence of courses leading to job skill attainment and encouragement through counseling to pursue a coherent sequence;]

[(2) equal access to the full range of career and technology education programs available to an individual who is not a member of a special population;]

[(3) guidance, counseling, and career development activities conducted by trained counselors and teachers associated with such special services;]

[(4) counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities and/or postsecondary training opportunities; and]

[(5) supportive and supplementary services the student needs to succeed in the programs, such as curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.]

[(d) A school district shall provide information concerning the following to each student who is a member of a special population and to the student's parents at least one year before the student enters, or is of an appropriate age for, the grade level in which career and technology education programs are first generally available, but not later than the beginning of the ninth grade:]

[(1) opportunities available in career and technology education;]

[(2) eligibility requirements for enrollment in career and technology education;]

[(3) specific courses that are available;]

[(4) special services that are available;]

[(5) employment opportunities; and]

[(6) placement.]

[(e) The information described in subsection (d)(3) of this section shall, to the extent practicable, be provided in a language and form that the parents and student understand.]

(c) [(f)] A student with a disability shall be instructed in accordance with the student's individualized education program (IEP) in the least restrictive environment , as determined by the admission, review, and dismissal (ARD) committee. If a [A] student is unable to receive a free appropriate public education (educational benefit) [succeed] in a regular career and technology education program, using supplementary aids and services, the student may be served in separate programs designed to address the student's occupational/ training needs, such as career and technology education for students with disabilities (CTED) [the handicapped (CTEH)] programs.

[(g) A student with a disability who is unable to succeed in regular career and technology education without modifications, special supplementary aids, or services shall be placed in career and technology education by the committee (the committee) composed of the persons required under 20 USC, §1401(20), to develop the student's individualized education program (IEP). Whenever appropriate, career and technology education activities shall be included as a component of a student's IEP.]

(d) [(h)] A student with a disability identified in accordance with provisions of Public Law 105-302 [101-392; Public Law 476;] and the IDEA Amendments of 1997, Public Law 105-17, [Individuals with Disabilities Education Act (IDEA)] is an eligible participant in career and technology education when the requirements of this subsection are met.

(1) The ARD committee shall include a representative from career and technology education, preferably the teacher, when considering initial or continued placement of a student in career and technology education.

(2) Planning for students with disabilities shall be coordinated among career and technology education, special education, and state rehabilitation agencies and should include a coherent sequence of courses.

(3) A school district shall monitor to determine if the instruction being provided students with disabilities in career and technology education classes is consistent with the IEPs developed for the students.

(4) A school district shall provide supplementary services that each student with a disability needs to successfully complete career and technology education, such as curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

(5) A school district shall help fulfill the transitional service requirements of the IDEA Amendments of 1997, Public Law 105-17, and implementing regulations, state statutes, and rules of the commissioner of education [~~IDEA~~] for each student with a disability who is completing a coherent sequence of career and technology education courses.

(6) When determining placement in a career and technology classroom, the ARD committee shall consider a student's graduation plan, the content of the individual transition plan and the IEP, and classroom supports. Enrollment numbers should not create a harmful effect on student learning for a student with or without disabilities in accordance with the provisions in the IDEA Amendments of 1997, Public Law 105-17, and its implementing regulations.

§75.1024. Career and Technology Education Student Organizations.

A school district may use federal career and technology education funds to provide opportunities for student participation in [~~local chapters of~~] approved student leadership organizations and assist vocational student organizations in accordance with all applicable federal and state laws, rules, and regulations [~~related to each career and technology education program being conducted~~]. The following provisions apply to career and technology education student organizations.

(1) A student shall not be required to join such an organization.

(2) Student participation in vocational student organizations shall be governed in accordance with Chapter 76 of this title (relating to Extracurricular Activities). [~~Except as specified under provisions of this title related to student absences for extracurricular or other activities, a student shall not be released from classes for the purpose of attending a meeting of a career and technology education student organization.~~]

§75.1025. Program Evaluations.

Each district and consortium shall annually evaluate [~~the size, scope, quality, and effectiveness of~~] its career and technology education programs.

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 October 11, 1999.

TRD-9906783
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
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For further information, please call: (512) 463-9701

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Chapter 102. EDUCATIONAL PROGRAMS

Subchapter AA. COMMISSIONER'S RULES CONCERNING HEAD START EDUCATIONAL COMPONENT GRANT PROGRAM

19 TAC §102.1001

The Texas Education Agency (TEA) proposes new §102.1001, concerning the Head Start Educational Component Grant Program. The new section establishes the eligibility and expenditure requirements for the Head Start Educational Component Grant Program as authorized by Texas Education Code (TEC), §29.156, added by Senate Bill (SB) 4, 76th Texas Legislature, 1999.

SB 4 and SB 955, 76th Texas Legislature, 1999, created the new Head Start Educational Component Grant Program. The commissioner of education is authorized to make grants from funds appropriated for use in providing an educational component to federal Head Start programs or similar government-funded early childhood care and education programs. The commissioner is required to adopt rules for implementation, including rules prescribing eligibility criteria for receipt of a grant and for expenditure of grant funds.

Robin Gilchrist, Assistant Commissioner for Statewide Initiatives, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the new section. There will be fiscal implications for local government. The 76th Texas Legislature appropriated $15 million for the FY2000/FY2001 biennium to fund a Head Start Educational Component Grant Program. Eligible applicants funded through the grant program will receive an increase in revenue.

Ms. Gilchrist and Criss Cloudt, Associate Commissioner for Policy Planning and Research, have 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 establishing educational services designed to enable each child participating in the Head Start Educational Component Grant Program to be prepared to enter school and ready to learn. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposed new section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §29.156, as added by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules to implement the grants for the educational component of Head Start, including prescribing the eligibility criteria for receipt of a grant and expenditure of grant funds.

The new section implements the Texas Education Code, §29.156, as added by Senate Bill 4, 76th Texas Legislature, 1999.

§102.1001. Head Start Educational Component Grant Program.

(a) Each applicant seeking funding through the Head Start Educational Component Grant Program under the Texas Education Code, §29.156, must submit an application in a format prescribed by the commissioner of education through a request for application (RFA). Once funded, the applicant shall comply with the provisions of the Texas Education Code, §29.156, and the Texas Human Resources Code, Chapter 72.

(b) Eligible applicants include public, private, nonprofit, or for-profit organizations or agencies operating a federal Head Start

Program or similar government-funded early childhood care and education programs. Head Start Program is defined as the federal program established under the Head Start Act (42 United States Code, §9831 et seq.) and its subsequent amendments.

(c) An eligible applicant receiving funds under this program must provide educational services to all children participating in the program so that each child is prepared to enter school and is ready to learn after completing the program. The educational services must include components designed to enable a child to:

(1) develop phonemic, print, and numeracy awareness, including the ability to:

(A) recognize that letters of the alphabet are a special category of visual graphics that can be individually named;

(B) recognize a word as a unit of print;

(C) identify at least ten letters of the alphabet; and

(D) associate sounds with written words;

(2) understand and use language to communicate for various purposes;

(3) understand and use an increasingly complex and varied vocabulary;

(4) develop and demonstrate an appreciation of books; and

(5) progress toward mastery of the English language, if the child's primary language is a language other than English.

(d) Minimal levels of overall program performance, including education performance standards, must be incorporated into the program to ensure the school readiness of children participating in the program upon completion of the Head Start Program and prior to entering school.

(e) Applicants will be required to assess the impact of the services provided to children to ensure that the children participating in the program are able to demonstrate the educational components specified in subsection (c) of this section.

(f) Program funds must be used in accordance with the requirements stated in the RFA. All costs under the Head Start Educational Component Grant Program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

(g) For audit purposes, applicants must maintain documentation to support each of the requirements of 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 October 11, 1999.

TRD-9906784

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

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For further information, please call: (512) 463-9701

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TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 37. FINANCIAL ASSURANCE

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Chapter 37, Subchapter A, §§37.1, 37.11, 37.21, 37.31, 37.41, 37.51, 37.52, 37.61, and 37.71, concerning general financial assurance requirements; Subchapter B, §§37.100, 37.101, 37.111, 37.121, 37.131, 37.141, 37.151, and 37.161, concerning financial assurance requirements for closure, post closure, and corrective action; Subchapter C, §§37.201, 37.211, 37.221, 37.231, 37.241, 37.251, and 37.261, concerning financial assurance mechanisms for closure, post closure, and corrective action; Subchapter D, §§37.301, 37.311, 37.321, 37.331, 37.341, 37.351, and 37.361, concerning wording of the mechanisms for closure, post closure, and corrective action; Subchapter E, §37.400 and §37.411, concerning financial assurance requirements for liability coverage; Subchapter F, §§37.501, 37.511, 37.521, 37.531, 37.541, and 37.551, concerning financial assurance mechanisms for liability; Subchapter G, §§37.601, 37.611, 37.621, 37.631, 37.641, 37.651, and 37.661, concerning wording of the mechanisms for liability; Subchapter J, §§37.901, 37.911, 37.921, and 37.931, concerning financial assurance for permitted compost facilities; Subchapter K, §§37.1001, 37.1011, and 37.1021, concerning financial assurance requirements for Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities; Subchapter L, §§37.2001, 37.2011, and 37.2021, concerning financial assurance for used oil recycling; Subchapter M, §37.3001 and §37.3011, concerning financial assurance requirements for scrap tire sites; Subchapter N, §§37.4001, 37.4011, and 37.4021, concerning financial assurance requirements for the Texas Risk Reduction Program rules; and to Subchapter O, §37.5011, concerning financial assurance for public drinking water systems and utilities.

The commission proposes the repeal of §§37.271, 37.281, 37.371, 37.381, and 37.401.

The commission proposes new §§37.200, 37.271, 37.281, 37.371, 37.381, 37.402, 37.404, 37.671, 37.1005, 37.2003, 37.2013, 37.2015, 37.3003, 37.3021, 37.3031, and 37.4031.

The commission also proposes new Subchapters P-U, relating to financial assurance issues that are specific to particular program areas. New Subchapter P, §§37.6001, 37.6011, 37.6021, 37.6031, and 37.6041, concern financial assurance for hazardous and nonhazardous industrial solid waste facilities and for municipal hazardous waste facilities; new Subchapter Q, §§37.7001, 37.7011, 37.7021, 37.7031, 37.7041, and 37.7051, concern financial assurance for underground injection control wells; new Subchapter R, §§37.8001, 37.8011, 37.8021, 37.8031, 37.8041, 37.8051, 37.8061, and 37.8071, concern financial assurance for municipal solid waste facilities; new Subchapter S, §§37.9001, 37.9005, 37.9010, 37.9015, 37.9020, and 37.9025, concern financial assurance for alternative methods of disposal of radioactive material; new Subchapter T, §§37.9030, 37.9035, 37.9040, 37.9045, 37.9050, and 37.9055, concern financial assurance for near-surface land disposal of radioactive waste; and finally, new Subchapter U, §§37.9060, 37.9065, 37.9070, 37.9075, 37.9080, and 37.9085, concern financial assurance for medical waste transporters.

This action constitutes the commission's proposal to review the rules contained in Chapter 37, in accordance with Texas

Government Code, §2001.39, implementing the requirements of Senate Bill (SB) 178, 76th Legislature, 1999.

REVIEW OF AGENCY RULES

The commission proposes to review the rules contained in Chapter 37, concerning Financial Assurance, as mandated by Texas Government Code, §2001.39, implementing the requirements of SB 178, 76th Legislature, 1999. Chapter 37 does not currently contain a Subchapter H or Subchapter I; nor does the commission propose to add these subchapters as part of this rulemaking. SB 178 requires state agencies to review and consider for readoption those rules that are adopted under the Administrative Procedure Act. The reviews must include an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 37 and determined that the rules continue to be necessary because they implement critical provisions of Texas Water Code, §26.352 and §27.073; and Texas Health and Safety Code, §§341.035, 341.0355, 361.085, and 371.026, which provide authority for the commission to require demonstrations of financial assurance, and because the provisions implement the financial assurance requirements of federal programs delegated from the United States Environmental Protection Agency (EPA) to the State of Texas. The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities. Chapter 37 provides necessary rules to carry out the statutory mandates which require evidence of financial assurance regarding certain waste facilities. The proposed rule review is concurrently published in the Rule Review Section of this issue of the *Texas Register*.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 37 as the result of ongoing efforts by the commission for regulatory reform. This chapter focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 305, 324, 330, 331, 334, 335, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, consistency with commission rules and federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073, provides the commission with the authority to require financial assurance for underground injection well facilities. Sections 341.035 and 341.0355 of Texas Health and Safety Code provide the commission with authority to require financial assurance for public drinking water supply systems. The provisions of Texas Health and Safety Code, §361.085, necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may

have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments, repeals, and new provisions added to Chapter 37.

SUBCHAPTER A: GENERAL FINANCIAL ASSURANCE REQUIREMENTS

Section 37.1 is proposed to be amended for the purpose of simplification and clarification as to whom these rules apply. The term "owner or operator" is proposed to be used throughout the entirety of Chapter 37 to represent the applicable owner, operator, licensee, permittee, registrant, or person who is subject to the requirements of the relevant portion or portions of Chapter 37. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered.

Section 37.11 is proposed to be amended to add definitions for closure plan, corporate guarantor, current cost estimate, current post closure cost estimate, parent corporation, permit, post closure, and post closure plan and to amend several existing definitions to provide the requirements necessary for consolidation of the various technical program rules into Chapter 37.

Section 37.21 is proposed to be amended to include post closure and corrective action in the cross-reference.

Section 37.31 is proposed to be amended to consolidate provisions concerning closure, post closure, and liability coverage, to clarify to whom mechanisms are to be submitted, and to clarify when the financial assurance mechanism is to be in effect. Additional information is proposed to be added to provide clarification for corrective action. The requirements are consistent with federal regulations and allow for consistency between the commission's financial assurance requirements.

Section 37.41 is proposed to be amended to clarify the use of a financial statement when using multiple mechanisms.

Section 37.51 is proposed to be amended to add a requirement for detailed information about each facility that is covered under a single mechanism for multiple facilities.

Section 37.52 is proposed to be amended to clarify the appropriate use of a financial test for liability coverage.

Section 37.61 is proposed to be amended to add that a request to terminate must be in writing and to clarify when a mechanism can be terminated.

The title of §37.71 is proposed to be amended to more accurately reflect the broader provisions of financial assurance and for the purposes of consolidation. In accordance with the ongoing regulatory reform initiative, a proposed amendment in §37.71 also corrects a gender-specific reference.

SUBCHAPTER B: FINANCIAL ASSURANCE REQUIREMENTS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

The title of Subchapter B is proposed to be amended from *Financial Assurance Requirements for Closure* to *Financial Assurance Requirements for Closure, Post Closure, and Corrective Action* to more accurately reflect the changes made to the subject matter of the subchapter. For the purposes of consolidation, the subchapter is proposed to be modified to include post closure and corrective action requirements, and is proposed to be modified to clarify requirements relating to financial assurance for closure with the consolidation of all technical financial assurance requirements.

Section 37.100 is proposed to be amended to clarify to whom these rules apply. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered.

Section 37.101 is proposed to be amended for the purpose of clarification and consistency and to include post closure and corrective action in the requirements.

The title of §37.111 is proposed to be amended from *Continuous Coverage Required* to *Continuous Financial Assurance Required* to more accurately reflect the subject matter of the section and for the purposes of consolidation. Further proposed amendments are made to accommodate consolidation.

The title of §37.121 is proposed to be amended from *Closure Cost Estimate* to *Current Cost Estimate* to more accurately reflect the subject matter of the section and for the purposes of consolidation. Further proposed amendments are made for consolidation.

The title of §37.131 is proposed to be amended from *Annual Inflation Adjustments to Closure Cost Estimates* to *Annual Inflation Adjustments to Current Cost Estimates* to more accurately reflect the subject matter of the section and for the purposes of consolidation. Proposed changes also provide an additional option for annual adjustments to include recalculation, clarify the time period over which adjustments are required, and require that annual inflation adjustments to current costs estimates are to be made in current dollars. Owners and operators of underground injection facilities will find that with regard to the adjustment of current cost estimates, application of proposed §37.131 will create a timing change from 30 days after the anniversary date to 60 days prior to the anniversary date in order to accommodate consolidation of the financial assurance requirements.

The title of §37.141 is proposed to be amended from *Increase in Closure Cost Estimate* to *Increase in Current Cost Estimate* to more accurately reflect the subject matter of the section and for the purposes of consolidation. Further proposed amendments are made for compatibility with federal requirements and consistency with commission rules. The proposed amendments include a timing adjustment from 30 days to 60 days and an additional requirement to increase a cost estimate when notified by the executive director to then continue adjusting for inflation. Owners and operators of municipal solid waste facilities will find that application of proposed §37.141 is more expansive with regard to the time frames and the steps involved.

The title of §37.151 is proposed to be amended from *Decrease in Closure Cost Estimate Estimates* to *Decrease in Current Cost*

Estimate to more accurately reflect the subject matter of the section and for the purposes of consolidation. Further proposed amendments to §37.151 are made for consolidation, to include the requirement that reduction requests are to be in writing, and to clarify that a revised current cost estimate is required to be increased for inflation.

Section 37.161 is proposed to be amended for the purposes of consolidation, clarification, and to correct a cross-reference.

SUBCHAPTER C: FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

The title of Subchapter C is proposed to be amended from *Financial Assurance Mechanisms for Closure* to *Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action* to more accurately reflect the subject matter of the subchapter, for the purposes of consolidation, and to clarify that the requirements relating to financial assurance mechanisms for post closure and corrective action, as well as for closure, can all be located in this subchapter.

New §37.200 is proposed to be added to clarify to whom these rules apply. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. Section 37.200 is also proposed for the purpose of clarification and consistency.

The title of §37.201 is proposed to be amended from *Trust Fund for Closure* to *Trust Fund* to more accurately reflect the subject matter of the section, for the purposes of consolidation, and to indicate that the section is applicable to items other than closure. Further proposed amendments to the text and figures of §37.201 are made for the purposes of consolidation and to correct a cross-reference. For consistency and compatibility with federal regulations, a proposed change from 30 days to 60 days will allow the owner or operator additional time to modify or update the Schedule A of the trust agreement following an approved change in the amount of the current cost estimate. An additional proposed change will require that reimbursement requests from trusts for expenditures will require an explanation of expenses and require all applicable itemized bills in order that a determination can be made during the processing of the requests as to whether the expenditures are applicable to closure, post closure, or corrective action requirements. The proposed rule will allow the executive director to withhold reimbursements if the remaining costs of closure, post closure, or corrective action are greater, rather than significantly greater, than the value of the trust. This proposed change clarifies the requirements since other provisions of the section state that reimbursement may only be requested if sufficient funds remain in the trust fund to cover maximum costs of closure, post closure, or corrective action. Proposed amendments also clarify the requirements when a pay-in trust is used or may be used to provide financial assurance. The provisions of proposed §37.201 include a pay-in trust methodology for use in corrective action activities which was previously located in §330.285(b)(4). Some provisions of proposed §37.201 will be more expansive to owners and operators of municipal solid waste facilities with regard to schedule updates, initial payment, acceleration of payments, reimbursement of funds, evaluation, and substitution of the trust. Application of these provisions will provide consistency with federal regulations. In order to be consistent with federal regulations, application of the provision of §37.201(f) prohibits the use of a pay-in trust for post closure. This requirement will be new to owners and operators of municipal solid waste facilities. Finally, in accordance with the ongoing regulatory reform initiative, a proposed amendment in §37.201 corrects a gender-specific reference.

The title of §37.211 is proposed to be amended from *Surety Bond Guaranteeing Payment for Closure* to *Surety Bond Guaranteeing Payment* to more accurately reflect the subject matter of the section, for the purpose of consolidation, and to indicate that the section is applicable to items other than closure. Further proposed amendments to §37.211 are for clarification of the requirements of the penal sum of a bond and to correct a cross-reference. Some provisions of proposed §37.211 will be more expansive to owners and operators of municipal solid waste facilities with regard to funding the standby trust fund, the amount of the penal sum, and cancellation. Application of these provisions will provide consistency with federal regulations.

The title of §37.221 is proposed to be amended from *Surety Bond Guaranteeing Performance for Closure* to *Surety Bond Guaranteeing Performance* to more accurately reflect the subject matter of the section, for the purpose of consolidation, and to indicate that the section is applicable to items other than closure. Further proposed amendments to §37.221 are to clarify the requirements of the use of a surety bond guaranteeing performance and to correct a cross-reference. Some provisions of proposed §37.221 will be more expansive to owners and operators of municipal solid waste facilities with regard to the guarantees of the surety bond, the cancellation process, the amount of the penal sum, and a surety requirement. Application of these provisions will provide consistency with federal regulations.

The title of §37.231 is proposed to be amended from *Irrevocable Standby Letter of Credit for Closure* to *Irrevocable Standby Letter of Credit* to more accurately reflect the subject matter of the section, for the purpose of consolidation, and to indicate that the section is applicable to items other than closure. Further proposed amendments are for the purposes of adding a new provision requiring both the physical and mailing address; adding a new provision clarifying that when a letter of credit is terminated, the letter of credit will be returned to the issuing institution for consistency with federal regulations; and adding necessary cross-references. Some provisions of proposed §37.231 will be more expansive to owners and operators of municipal solid waste facilities with regard to the cancellation notice, the amount and return of the letter of credit, and drawing conditions. Application of these provisions will provide consistency with federal regulations.

The title of §37.241 is proposed to be amended from *Insurance for Closure* to *Insurance* to more accurately reflect the subject matter of the section, for the purpose of consolidation, and to indicate that the section is applicable to items other than closure. Proposed amendments also clarify the requirements for use of insurance as a means of providing financial assurance; amend a cross-reference; delete the escrow requirement for claims-made insurance policies because the statutory provision upon which this rule is based is not applicable to closure, post closure, or corrective action; add a requirement that reimbursement requests from trusts for expenditures will require an explanation of expenses and require all applicable itemized bills in order that a determination can be made during the processing of the requests as to whether the expenditures are applicable to closure, post closure, or corrective action requirements; and

add requirements for annual adjustments to post closure policies. Some provisions of §37.241 will be more expansive to owners or operators of municipal solid waste facilities with regard to reimbursement provisions.

The title of §37.251 is proposed to be amended from *Financial Test for Closure* to *Financial Test* to more accurately reflect the subject matter of the section, for the purpose of consolidation, and to indicate that the section is applicable to items other than closure. Further proposed amendments modify a cross-reference, clarify the requirements of the use of a financial test as a means of providing financial assurance, add a new provision to require written verification of the bond rating, and add a requirement for inclusion of a schedule identifying intangible assets. Proposed amendments also require owners and operators using the financial test for multiple facilities or multiple programs to include all costs assured through a financial test when calculating its obligations. As proposed, the test has been reformatted to assist the owner or operator in identifying all of the environmental obligations assured under a financial test. Owners and operators of hazardous waste facilities may consider this amendment to be a different standard than required under federal rules. Actually, the proposed rule is equivalent to federal regulations. Federal financial tests for underground storage tanks and municipal solid waste landfills, adopted after the Subtitle C financial test, clearly require the inclusion of all environmental costs assured through a financial test to prevent the owner or operator from using the same assets to assure different obligations under different programs. Since this financial test is designed to be used as a universal mechanism to provide financial assurance for multiple facilities across multiple program lines, the proposal creates consistency across programs and validates the mechanism as a truer measure of self-insurance. Finally, in accordance with the ongoing regulatory reform initiative, a proposed amendment in §37.251 corrects a gender-specific reference.

The title of §37.261 is proposed to be amended from *Corporate Guarantee for Closure* to *Corporate Guarantee* to more accurately reflect the subject matter of the section, for the purpose of consolidation, and to indicate that the section is applicable to items other than closure. Further proposed amendments modify a cross-reference, clarify the requirements of the use of a corporate guarantee, and clarify that the corporate guarantee cannot be terminated without executive director approval of alternate financial assurance.

Existing §37.271 entitled, *Local Government Financial Test for Closure*, is proposed to be repealed. New §37.271 entitled, *Local Government Financial Test* is proposed to be added. New §37.271 is proposed to provide the requirements for the use of a local government test as a means of providing financial assurance.

Existing §37.281 entitled, *Local Government Guarantee for Closure*, is proposed to be repealed. New §37.281 entitled, *Local Government Guarantee*, is proposed to be added. New §37.281 is proposed to provide the requirements for the use of a local government guarantee as a means of providing financial assurance.

SUBCHAPTER D: WORDING OF THE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

The title of Subchapter D is proposed to be amended from *Wording of the Mechanisms for Closure* to *Wording of the Mechanisms for Closure, Post Closure, and Corrective Action* to more accurately reflect the subject matter of the subchapter; for the purpose of consolidation; to add provisions to each mechanism for identifying closure, post closure, and corrective action estimates for each facility covered under a mechanism; and to clarify that the requirements relating to the wording of the financial assurance mechanisms that are to be used for post closure and corrective action, as well as for closure, can all be located in this subchapter.

In §37.301, proposed amendments made to the text and to the figures are for the purposes of consolidation, to add a new requirement that both the physical and mailing addresses be included in the wording of the trust agreement, and to clarify the requirements and wording of a trust agreement.

In §37.311, proposed amendments made to the text and to the figure are for the purposes of consolidation, to add a necessary cross-reference, to add a new requirement that both the physical and mailing addresses be included in the wording of the payment bond, and to add a new provision requiring that a standby trust agreement accompany a payment bond.

In §37.321, proposed amendments made to the text and to the figure are for the purposes of consolidation, to add a necessary cross-reference, to add a new requirement that both the physical and mailing addresses be included in the wording of the performance bond, and to clarify the requirements and wording of a performance bond.

In §37.331, proposed amendments made to the text and to the figure are for the purposes of consolidation and clarification of the requirements and wording of an irrevocable standby letter of credit.

In §37.341, proposed amendments made to the text and to the figure are for the purposes of consolidation, correction of a cross-reference, addition of a new requirement that both the physical and mailing addresses be included in the wording of the certificate of insurance, and clarification of the requirements and wording of a certificate of insurance.

In §37.351, proposed amendments made to the text and to the figures are for the purposes of consolidation; to add a new requirement that both the physical and mailing addresses be included in the wording of the financial test; to correct cross-references; to clarify the requirements and wording of the financial test; to add a new provision requiring, for the purpose of calculating qualifying ratios, incorporation of cost estimates from financial tests used for other federal or state environmental obligations, in order to achieve consistency and compatibility with commission and federal requirements; and to add a new provision requiring a statement regarding whether an adverse opinion, disclaimer, or a going concern qualification was received from an auditor.

In §37.361, proposed amendments to the text, to the figure, and to the recitals are made for the purposes of consolidation, to add a new requirement that both the physical and mailing addresses be included in the wording of the corporate guarantee, to correct cross-references, to achieve consistency and compatibility with federal requirements, and to clarify the requirements and wording of the corporate guarantee. The proposed section also adds a provision requiring guarantors to perform or establish a trust agreement if the owner or operator fails to perform. Owners and operators using a corporate guarantee will find that application of proposed §37.361 clarifies that termination of the guarantee requires the approval of an alternate mechanism.

Existing §37.371 entitled, *Local Government Financial Test for Closure*, is proposed to be repealed. New §37.371 entitled, *Local Government Financial Test*, is proposed to be added. The new text and figure in §37.371 are proposed to provide the requirements and the wording of a local government financial test.

Existing §37.381 entitled, *Local Government Guarantee for Closure*, is proposed to be repealed. New §37.371 entitled, *Local Government Guarantee*, is proposed to be added. The new text and figure in §37.371 is proposed to provide the requirements and the wording of a local government guarantee.

SUBCHAPTER E: FINANCIAL ASSURANCE REQUIREMENTS FOR LIABILITY COVERAGE

Section 37.400 is proposed to be amended for the purpose of simplification and clarification as to whom these rules apply.

Section 37.401 entitled, *Liability Requirements for Sudden Accidental Occurrences*, is proposed to be repealed to provide consistency in sequencing of the subchapter; however, similar subject matter is proposed in new §37.404 entitled, *Liability Requirements for Sudden and Nonsudden Accidental Occurrences*.

New §37.402 is proposed to clarify the use of the terms "bodily injury" and "property damage" and to add definitions for the terms "accidental occurrence," "legal defense costs," "nonsudden accidental occurrence," and "sudden accidental occurrence."

The provisions of new §37.404 are proposed to require liability coverage for sudden accidental occurrences and for nonsudden accidental occurrences.

Section 37.411 is proposed to be amended to clarify the rules regarding adjustments that may be made to the level of liability coverage.

SUBCHAPTER F: FINANCIAL ASSURANCE MECHANISMS FOR LIABILITY

Section 37.501 is proposed to be amended for the purpose of consolidation and to clarify the rules regarding the use of a trust fund to satisfy the financial assurance requirements for either sudden or nonsudden liability coverage, or for both sudden and nonsudden liability coverage. In accordance with the ongoing regulatory reform initiative, proposed amendments in §37.501 also correct gender-specific references.

Section 37.511 is proposed to be amended to clarify the requirements when a surety bond is used to guarantee the payment for liability. Proposed amendments to §37.511 provide for deletion of duplicative language for the purpose of consolidation. In order to achieve consistency with commission and federal requirements, proposed amendments to §37.511 also add a provision requiring attorney general's statements and insurance commissioner's statements to articulate that the bond is a valid and enforceable mechanism in the respective states in which the bond provides coverage.

Section 37.521 is proposed to be amended to clarify the requirements when an irrevocable standby letter of credit is used to provide financial assurance for liability. Proposed amendments to §37.521 will delete duplicative language for the purpose of consolidation. In order to achieve consistency with federal requirements, proposed amendments to §37.521 also add provisions allowing the establishment of a standby trust fund to accompany a letter of credit to satisfy liability coverage requirements.

Section 37.531 is proposed to be amended to clarify the requirements when insurance is used to provide financial assurance for liability. Proposed amendments to §37.531 are for the purposes of consolidation, to delete duplicative provisions, to delete provisions that are related solely to closure insurance rather than to liability insurance, and to provide consistency with federal requirements.

Section 37.541 is proposed to be amended to clarify the requirements when a financial test is used to provide financial assurance for liability. Proposed amendments to §37.541 are for the purposes of consolidation, to delete obsolete provisions, and to provide consistency with federal requirements. For example, the section proposes a new requirement for the bond rating alternative of the financial test that tangible net worth must be at least six times the amount of liability coverage to be demonstrated because this is consistent with current federal regulations. Finally, in accordance with the ongoing regulatory reform initiative, a proposed amendment in §37.541 corrects a gender- specific reference.

Section 37.551 is proposed to be amended to clarify the requirements when a corporate guarantee is used to provide financial assurance for liability. Proposed amendments to §37.541 provide consistency with federal requirements and propose new requirements to address foreign corporations. The proposed requirements for foreign corporations include identifying registered agents in Texas and other applicable states, and providing written statements from attorneys general or insurance commissioners of applicable states confirming that the guarantee is legally valid and enforceable obligation in their respective states.

SUBCHAPTER G: WORDING OF THE MECHANISMS FOR LIABILITY

In §37.601, proposed amendments to the text and to the figures are made for the purposes of consolidation, to clarify the requirements and wording of both the trust agreement mechanism and the certification of acknowledgment, to require that both physical and mailing addresses be included in the wording of the trust agreement, to add a new provision that the executive director will agree to the termination of a trust when acceptable alternate financial assurance has been substituted, and to provide consistency with federal requirements.

In §37.611, proposed amendments to the text and the figure are made for the purposes of consolidation, to clarify the requirements and wording of the payment bond, to require that both physical and mailing addresses be included in the wording of the payment bond, and to provide consistency and compatibility with federal requirements.

The title of §37.621 is proposed to be amended from *Irrevocable Letter of Credit for Liability* to *Irrevocable Standby Letter of Credit for Liability* to more accurately reflect the subject matter of the section. Further proposed amendments to the text and to the figure are for the purposes of consolidation, to require that both physical and mailing addresses be included in the wording of the irrevocable standby letter of credit, and to clarify the requirements and wording of the irrevocable standby letter of credit for liability and certificate of valid claim. For consistency with federal requirements, the proposed amendments modify the text and the figure to include language to allow the owner

or operator the option of providing a standby trust agreement with the irrevocable standby letter of credit.

In §37.631, proposed amendments to the text and to the figure are made for the purposes of consolidation, to require that both the physical and mailing addresses be included in the wording of the certificate of insurance, to expand the certification, thereby allowing designation of insurer eligibility in Texas or in one or more states, to provide consistency with federal requirements, and to clarify the requirements and wording of a certificate of insurance.

In §37.641, proposed amendments to the text and to the figure are made for the purposes of consolidation, to require that both physical and mailing addresses be included in the wording of the endorsement for liability, to expand the certification, thereby allowing insurer eligibility in Texas or in one or more states, to provide consistency with federal requirements, and to clarify the requirements and wording of the endorsement for liability.

In §37.651, proposed amendments made to the text and to the figures are for the purposes of consolidation; to add a new requirement that both the physical and mailing addresses be included in the wording of the financial test; to correct cross-references; to clarify the requirements and wording of the financial test; to add a new provision requiring, for the purpose of calculating qualifying ratios, incorporation of cost estimates from financial tests used for other federal or state environmental obligations in order to achieve consistency with federal requirements; and to add a new provision requiring a statement regarding whether an adverse opinion, disclaimer, or ongoing concern qualification was received from an auditor.

The title of §37.661 is proposed to be amended from *Corporate Guarantee* to *Corporate Guarantee for Liability* to more accurately reflect the subject matter of the section. In §37.661, proposed amendments to the text, to the figure, and to the recitals, are made for the purposes of consolidation, to add cross-references, to add a new requirement that both the physical and mailing addresses be included in the wording of the corporate guarantee, to achieve consistency with federal requirements, and to clarify the requirements and wording of a corporate guarantee.

New §37.671 entitled,*Standby Trust Agreement*, proposes new text and new figures to provide the requirements and the wording for standby trust agreements for liability, to allow letters of credit to include provisions for a standby trust, and to achieve consistency with federal requirements.

Chapter 37 does not currently contain a Subchapter H or Subchapter I; nor does the commission propose to add these subchapters as part of this rulemaking.

SUBCHAPTER J: FINANCIAL ASSURANCE FOR PERMITTED COMPOST FACILITIES

Section 37.901 is proposed to be amended to clarify to whom these rules apply and states that financial assurance is needed for closure.

Section 37.911 is proposed to be amended to clarify the applicable definitions.

The title of §37.921 is proposed to be amended from *Financial Assurance Requirements for Closure of a Compost Facility* to *Financial Assurance Requirements for Closure* for the purpose of consolidation and to more accurately reflect the subject matter of the section. Further proposed amendments clarify those provisions with which the owner or operator must comply.

The title of §37.931 is proposed to be amended from *Financial Assurance Mechanisms Available for Permitted Compost Facility* to *Financial Assurance Mechanisms* for the purpose of consolidation. Further proposed amendments are for consolidation and to clarify which mechanisms are available to the owner or operator of a compost facility to demonstrate financial assurance for closure.

SUBCHAPTER K: FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS A OR CLASS B PETROLEUM-SUBSTANCE CONTAMINATED SOIL STORAGE, TREATMENT, AND REUSE FACILITIES

Section 37.1001 is proposed to be amended to clarify the scope of the applicability of the subchapter.

New §37.1005 is proposed to be added to clarify the requirements for submitting documents.

Section 37.1011 is proposed to be amended for the purposes of consolidation, to delete duplicative language, and to clarify the requirements for use of the financial assurance mechanisms.

Section 37.1021 is proposed to be amended for the purposes of consolidation, to delete duplicative language, and to clarify the requirements for using the financial assurance mechanisms to demonstrate for sudden liability.

SUBCHAPTER L: FINANCIAL ASSURANCE FOR USED OIL RECYCLING

The title of Subchapter L is proposed to be amended from *Financial Responsibility for Used Oil Recycling* to *Financial Assurance for Used Oil Recycling* for the purpose of consolidation.

Section 37.2001 is proposed to be amended to clarify to whom the rules apply and the scope of the applicability of the subchapter.

Section 37.2003 is proposed to be added to clarify where applicable definitions are located.

The title of §37.2011 is proposed to be amended from *Financial Responsibility for Used Oil Handlers* to *Financial Assurance Requirements for Used Oil Handlers* to more accurately reflect the subject matter of the section. Further proposed amendments are for the purposes of consolidation, to delete duplicative language, and to clarify the financial assurance requirements for used oil handlers. A proposed amendment to §37.2011 will more appropriately place a technical requirement into 30 TAC §324.22.

New §37.2013 is proposed to clarify the use of the mechanisms available to used oil handlers to demonstrate financial assurance.

New §37.2015 is proposed to be added to clarify the requirements for submitting documents.

The title of §37.2021 is proposed to be amended from *Financial Responsibility Requirements for Transporters of Used Oil* to *Financial Assurance Requirements for Transporters of Used Oil* to more accurately reflect the subject matter of the section; however, no additional modification is proposed to be made to the text of this section.

SUBCHAPTER M: FINANCIAL ASSURANCE REQUIREMENTS FOR SCRAP TIRE SITES

Section 37.3001 is proposed to be amended to clarify to whom the rules apply and the scope of the applicability of the subchapter.

New §37.3003 is proposed to be added to clarify where applicable definitions are located.

The title of §37.3011 is proposed to be amended from *Financial Assurance Requirements for Scrap Tire Sites* to *Financial Assurance Requirements* for the purpose of consolidation. Further proposed amendments are for the purposes of consolidation, to delete duplicative language, and to clarify the financial assurance requirements for scrap tire sites.

New §37.3021 is proposed to be added to provide which mechanisms are available to an owner or operator of a scrap tire site to demonstrate financial assurance and the exceptions to the mechanisms.

New §37.3031 is proposed to be added to provide the requirements for submitting documents.

SUBCHAPTER N: FINANCIAL ASSURANCE REQUIREMENTS FOR THE TEXAS RISK REDUCTION PROGRAM RULES

Section 37.4001 is proposed to be amended to clarify to whom the rules apply and the scope of the applicability of the subchapter.

Section 37.4011 is proposed to be amended to clarify where applicable definitions are located; to add definitions for post response action care and response action plan, and to clarify the definition of post response action care estimate.

The title of §37.4021 is proposed to be amended from *Financial Assurance Requirements for Texas Risk Reduction Program Rule* to *Financial Assurance Requirements for Post Response Action Care* to more accurately reflect the subject matter of this amended section. Further proposed amendments are to clarify the use of the mechanisms for demonstrating financial assurance for post response action care and the requirements for submitting documents.

New §37.4031 is proposed to be added to provide the requirements for demonstrating financial assurance at a facility operations area.

SUBCHAPTER O: FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS AND UTILITIES

Section 37.5011 is proposed to be amended to correct cross-references.

SUBCHAPTER P: FINANCIAL ASSURANCE FOR HAZARDOUS AND NONHAZARDOUS INDUSTRIAL SOLID WASTE FACILITIES

This new subchapter is proposed to be added to provide the financial assurance requirements specifically for hazardous and nonhazardous industrial solid waste facilities as well as municipal hazardous waste facilities. This subchapter is intended to be used in coordination with provisions of Chapter 305, Chapter 335, and with the general subchapters of Chapter 37. Many requirements of this subchapter were previously located in Chapter 335 or are proposed to be included for compatibility with federal regulations. Proposed substantive changes are included in new §37.6021. Previously, the rules provided that the executive director would either approve or provide written responses within 60 denying requests for reimbursements. Proposed new §37.6021 will provide that the executive director will respond within 60 days to written requests for reimbursement. In addition, §37.6021 clarifies that facilities which presently or previously operate(d) under interim status rules must complete payments into a pay-in trust by July 6, 2002. This is consistent with federal requirements that payments be made over the 20 years beginning with the July 6, 1982 date of the regulations.

SUBCHAPTER Q: FINANCIAL ASSURANCE FOR UNDERGROUND INJECTION CONTROL WELLS

This new subchapter is proposed to be added to provide the financial assurance requirements specifically for underground injection control wells. This subchapter is intended to be used in coordination with provisions of Chapter 305, Chapter 331, and with the general subchapters of Chapter 37. Many requirements of this subchapter were previously located in Chapter 331 or are proposed to be included for compatibility with federal regulations. Proposed substantive changes are included in new §37.7021. Previously, the rules provided that the executive director would either approve or provide written responses within 60 days, denying request for reimbursements. New proposed §37.7021 will provide that the executive director will respond within 60 days to written requests for reimbursement. Section 37.7021 also clarifies that financial assurance must be provided for all Class I and Class III wells.

SUBCHAPTER R: FINANCIAL ASSURANCE FOR MUNICIPAL SOLID WASTE FACILITIES

This new subchapter is proposed to be added to provide the financial assurance requirements for municipal solid waste facilities. This subchapter is intended to be used in coordination with provisions of Chapter 330 and with the general subchapters of Chapter 37. Many requirements of this subchapter were previously located in Chapter 330 or are proposed to be included for compatibility with federal regulations. Proposed substantive changes are included in new §37.8031. New proposed §37.8031(a) requires a pay-in period of ten years. If the owner or operator desires a pay-in period of greater than ten years, he or she must submit such a request to the executive director and, if that request is approved by the executive director, the owner or operator must submit, on an annual basis, a certification from a registered professional engineer. New proposed §37.8031(b) excludes the use of a payment bond when demonstrating financial assurance for corrective action at a municipal solid waste facility. Proposed new §37.8031(c) excludes the use of insurance when demonstrating financial assurance for corrective action at a municipal solid waste facility. Proposed new §§37.8041, 37.8061, and 37.8071 will be more expansive to owners and operators; however, the criteria is consistent with federal regulations.

SUBCHAPTER S: FINANCIAL ASSURANCE FOR ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

This new subchapter is proposed to be added to provide the financial assurance requirements for alternative methods of disposal of radioactive material. This subchapter is intended to be used in coordination with provisions of Subchapter F of Chapter 336 and with the general subchapters of Chapter 37. Many requirements of this subchapter were previously located in Chapter 336 or are proposed to be included for compatibility with federal regulations. New Subchapter S, as proposed, contains substantive modifications to the requirements for alternative methods of disposal of radioactive material.

For example, new §37.9005 is proposed to change the timing of an annual review from the anniversary date of the license to the anniversary date of the establishment of the financial assurance mechanism in order to provide clarification and consistency with the financial assurance program. To provide clarification, proposed new §37.9005 also modifies the definition of closure which changes restoration to groundwater restoration and adds new definitions for facility, post closure, and site. Proposed new §37.9010 will clarify that the owner or operator has 30 days after receiving a notice of cancellation to provide alternate financial assurance that is acceptable to the executive director. The relevant financial assurance mechanisms in Chapter 336 included this specific time frame. This proposed clarification is consistent with the time frame already established in the mechanism. Proposed new §37.9020 is added to achieve consistency with federal regulations and guidance. Proposed new §37.9020 allows those owners and operators who do not have rated issued bonds to provide financial assurance by passing the financial test. Proposed new §37.9020 also ensures that the written guarantee includes the statement that the owner or operator will fund and carry out the required activities, or fund the trust upon the executive director's order. The proposed new section ensures that the written guarantee includes the requirement that if, at any time, the owner or operator's most recent bond is not an acceptable rating, the owner or operator will notify the agency within 20 days; includes a description of a parent company which may provide financial assurance for its subsidiary; requires the guarantor to provide documentation showing that the signer has authority to bind the parent company; and allows nonprofit colleges, universities, and hospitals to provide financial assurance through a financial test. For compatibility with federal requirements, proposed new §37.9025 specifies the wording for use of a financial test. Proposed new §37.9020 incorporates the statement of intent option that was previously located in §336.514. The provision now requires inclusion of both the physical and mailing addresses of a facility. Finally, to provide clarification, new §37.9020 is proposed to change the timing of the availability of the funds and adds language to describe the type of external sinking fund that may be used.

SUBCHAPTER T: FINANCIAL ASSURANCE FOR NEAR-SURFACE LAND DISPOSAL OF RADIOACTIVE WASTE

This new subchapter is proposed to be added to provide the financial assurance requirements for near-surface land disposal of radioactive waste. This subchapter is intended to be used in coordination with provisions of Subchapter H of Chapter 336 and with the general subchapters of Chapter 37. Many requirements of this subchapter were previously located in Chapter 336 or are proposed to be included for compatibility with federal regulations. New Subchapter T, as proposed, contains substantive modifications to the requirements for near-surface land disposal of radioactive waste.

For example, new §37.9035 is proposed to change the timing of an annual review from the anniversary date of the license to the anniversary date of the establishment of the financial assurance mechanism in order to provide clarification and consistency with the commission's financial assurance program rules. To provide clarification, proposed new §37.9035 also modifies the definition of restoration to groundwater restoration and adds new definitions for facility, institutional control, and post closure. Proposed new §37.9050 incorporates the statement of intent option that was previously located in §336.514. The proposed provision will require inclusion of both the physical and mailing addresses of a facility. Finally, to provide clarification, new §37.9050 is proposed to change the timing of the availability of the funds and to add language to describe the type of external sinking fund that may be used.

SUBCHAPTER U: FINANCIAL ASSURANCE FOR MEDICAL WASTE TRANSPORTERS

This new subchapter is proposed to be added to provide the financial assurance requirements for medical waste transporters. This subchapter is intended to be used in coordination with provisions of Subchapter Y of Chapter 330 and with the general subchapters of Chapter 37. Many requirements of this subchapter were previously located in Chapter 330 or are proposed to be included for compatibility with commission rules. New Subchapter U, as proposed, contains no substantive modifications in the requirements for financial assurance for medical waste transporters.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 37, Financial Assurance, would consolidate financial assurance requirements which are currently located in various chapters throughout the programs' technical rules including: Chapter 305-Consolidated Permits; Chapter 324-Used Oil; Chapter 330-Municipal Solid Waste; Chapter 331-Underground Injection Control; Chapter 334- Underground and Aboveground Storage Tanks; Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed amendments would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes

are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and 371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health ad safety of the state or a sector of the state. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments, repeals, and new sections revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for many of the delegated programs, and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law (including Texas Water Code (TWC), §27.019 and §27.073; and HSC, §§361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, and 371.028) that allows the commission to provide these programs. The proposed rules are also being made 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 financial assurance. Finally, these rules are not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments, repeals, and new sections is to delete obsolete language; implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; make the rules consistent with commission and federal rules; and to 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 rule amendments and repeals will not create a burden on private real property. There are no significant, new requirements being added. In the few instances where substantive changes are being proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created. The proposed rules do not affect a landowner's rights in 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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

Subchapter A. GENERAL FINANCIAL ASSURANCE REQUIREMENTS

30 TAC §§37.1, 37.11, 37.21, 37.31, 37.41, 37.51, 37.52, 37.61, 37.71

STATUTORY AUTHORITY

The amendments are proposed 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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC,§27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; HSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.1. Applicability.

This chapter applies to an owner or operator required [~~by this chapter~~] to provide [~~evidence of~~] financial assurance [~~responsibility~~]. [~~However, this chapter does not apply to owners and operators which are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.~~] The terms "owner or operator" and "owner and operator" are used throughout this chapter to indicate any or all of the following: owner, operator, licensee, permittee, registrant, or person. Refer to the applicable subchapter(s) of this chapter for guidance specific to a program area.

§37.11. Definitions.

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

(1) Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) Closure plan - The plan for closure prepared in accordance with commission requirements.

(3) Corporate guarantor - Must be the direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator.

(4) [~~(2)~~] Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(5) [~~(3)~~] Current closure cost estimate - The most recent of the estimates prepared for closure [~~and approved by the executive director~~].

(6) Current cost estimate - The most recent estimates prepared in accordance with commission requirements for the purpose of demonstrating financial assurance for closure, post closure, or corrective action.

(7) [~~(4)~~] Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(8) Current post closure cost estimate - The most recent of the estimates prepared in accordance with commission requirements.

(9) [~~(5)~~] Current plugging and abandonment cost estimate - The most recent of the estimates prepared in accordance with Chapter 331 of this title (relating to Underground Injection Control).

(10) [~~(6)~~] Entity - For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or limited partnership or similar business organization.

(11) [~~(7)~~] Face amount - The total amount the insurer is obligated to pay under an insurance policy , excluding legal defense costs.

(12) [~~(8)~~] Financial responsibility - This term shall be used interchangeably with [~~mean the same as~~] financial assurance.

(13) [~~(9)~~] Independent audit - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(14) [~~(10)~~] Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(15) [~~(11)~~] Net working capital - Current assets minus current liabilities.

(16) [~~(12)~~] Net worth - Total assets minus total liabilities and equivalent to owner's equity.

(17) Parent corporation - A corporation which directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a subsidiary of the parent corporation.

(18) Permit - Written permission from the commission, including a permit, license, registration, or other authorization, to engage in a business or occupation, to perform an act (such as to build, install, modify, or operate a facility), or to engage in a transaction, which would be unlawful absent such permission.

(19) Post closure - This term shall be used interchangeably with the term "Post closure care."

(20) Post closure plan - The plan for post closure care prepared in accordance with commission requirements.

(21) [~~(13)~~] Program area - Texas Natural Resource Conservation Commission areas under which the facility is permitted, licensed, or registered to operate, including, but not limited to, Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

(22) [~~(14)~~] Standby trust - An unfunded trust established to meet the requirements of this chapter.

(23) [~~(15)~~] Substantial business relationship - A relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed.

(24) [~~(16)~~] Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

§37.21. Wording and Approval of Mechanisms.

The mechanisms submitted for compliance with this chapter must be worded as they appear in Subchapter D or G of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action or Wording of the Mechanisms for Liability). The executive director shall determine the acceptability of the mechanisms submitted.

§37.31. Submission of Documents.

(a) An [~~To receive approval as a permitted facility, an~~] owner or operator required by this chapter to provide [~~evidence of~~] financial assurance for closure, post closure, or liability coverage [~~responsibility~~] must submit an originally signed financial assurance

mechanism to the executive director 60 days prior to acceptance of waste [or 60 days prior to beginning operations, whichever occurs first] The mechanism must be in effect before the initial receipt of waste.

(b) An [To receive approval as a registered facility, an] owner or operator required by this chapter to provide [evidence of] financial assurance [responsibility]for corrective action must submit an originally signed financial assurance mechanism [mechanisms] 60 days after the permit or order requiring the corrective action financial assurance is signed by the executive director or commission [prior to issuance of registration]. The mechanism must be in effect when submitted.

§37.41. Use of Multiple Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of this chapter by establishing more than one financial assurance mechanism per facility. [The executive director may use any or all of the mechanisms to satisfy the requirements for which financial assurance was provided.] These mechanisms are limited to those specified in this chapter. [Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) or Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability), except that] For closure, post closure, or corrective action, the financial test or corporate guarantee may not be combined with another mechanism [other mechanisms, provided the mechanisms are for the same facility]. For liability coverage, the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor.

(b) [(1)] It shall be the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount that must be at least equal to the minimum financial assurance requirements of this chapter.

(c) [(2)] If an owner or operator uses a trust fund in combination with a surety bond or irrevocable standby letter of credit, the owner or operator may use that trust fund as the standby trust fund for the other mechanisms.

(d) [(3)] A single standby trust may be established for two or more mechanisms.

(e) The executive director may call on any or all of the mechanisms to satisfy the requirements for which financial assurance was provided.

(f) [(4)] If an owner or operator demonstrates the required liability coverage through the use of a combination of financial assurance mechanisms, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess."

§37.51. Use of a Financial Assurance Mechanism for Multiple Facilities.

An owner or operator may use a financial assurance mechanism as specified in this chapter to meet the requirements of this chapter for more than one facility, provided that the facilities are in [of] the same program area [type]. Financial [Evidence of financial] assurance submitted to the executive director shall include a list showing for each facility covered by the mechanism: the name, physical and mailing addresses of the facility, each program area and permit number, the rules regulating the program under which the facility is permitted, and the amount of funds demonstrated for each permit, for closure, post closure, corrective action, and liability [a list showing, for each facility, the commission registration or permit number, name, address, and the amount of funds assured by the mechanism]. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for [closure of] any of the facilities covered by the mechanism, the executive director may call on [direct] only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

§37.52. Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas.

(a) An owner or operator may use a universal mechanism to meet the requirements of this chapter for multiple facilities permitted [, licensed or registered] in multiple program areas, provided the mechanism is allowed to be used in the program areas represented. The amount of funds demonstrated by the universal mechanism must be no less than the sum of funds that would be available if separate mechanisms were established and maintained. The wording of the mechanisms must be in a form satisfactory to the executive director. The available mechanisms are those specified in this chapter [Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) and Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability)], except that the financial test or corporate guarantee may not be combined with other specified mechanisms and a standby trust fund shall be required in certain circumstances. For liability coverage, the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor.

(b) A universal mechanism submitted to the executive director shall include a list showing, for each facility covered by the mechanism: the name, physical and mailing addresses [address] of the facility, each program area and [commission registration, license or] permit number, the rules regulating the program under which the facility is permitted, [licensed or registered,] and the amount of funds demonstrated for each permit [, license or registration] for closure, post closure, corrective action, and liability [, and decommissioning]. The anniversary date of the universal mechanism is the date on which owners or operators shall make an annual inflation adjustment for all facilities demonstrating through the universal mechanism. In directing funds available through the universal mechanism for any of the facilities covered by the mechanism, the executive director may call on [direct] only the amount of funds designated for each permit [, license, or registration] for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(c) An owner or operator who intends to use the financial test or corporate guarantee as a universal mechanism, must certify the ability to meet the financial test or corporate guarantee requirements for each of the corresponding program areas for which the universal mechanism is intended to cover.

§37.61. Termination of Mechanisms.

Upon written request by the owner or operator, the [The] executive director shall provide written consent to termination of a financial assurance mechanism when:

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

§37.71. Incapacity of Owners or Operators, Guarantors, or Issuing [Financial] Institutions.

(a) An owner or operator must notify the executive director by certified mail of the commencement of a voluntary or involuntary

proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within ten business days after the commencement of the proceeding. As required under the terms of the guarantee, a guarantor of a corporate guarantee as specified in §37.261 of this title (relating to Corporate Guarantee [~~for Closure~~]) and a corporate guarantee as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) shall make such a notification if [~~he is~~] named as a debtor.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906671
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter B. FINANCIAL ASSURANCE REQUIREMENTS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

30 TAC §§37.100, 37.101, 37.111, 37.121, 37.131, 37.141, 37.151, 37.161

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing Senate Bill 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.100. Applicability.

This subchapter applies to an owner or operator required to provide financial assurance for closure, post closure, or corrective action. [~~An owner or operator required by this chapter to establish financial assurance for the closure of a facility must, at a minimum, meet the requirements of this subchapter.~~]

§37.101. Drawing on the Financial Assurance Mechanisms.

The executive director may call [~~draw~~] on the financial assurance mechanism(s) when an owner or operator who is required to comply with this chapter has:

(1) failed to perform closure, post closure, or corrective action when required [~~to do so~~]; [~~or~~]

(2) failed to provide an alternate financial assurance mechanism, when required; or

(3) (No change.)

§37.111. Continuous Financial Assurance [~~Coverage~~] Required.

The owner or operator of a facility required by this chapter to provide [~~evidence of~~] financial assurance [~~responsibility~~] for closure, post closure, or corrective action, shall provide continuous financial assurance [~~coverage~~] until the executive director provides written consent to termination in accordance with §37.61 of this title (relating to Termination of Mechanisms).

§37.121. Current [~~Closure~~] Cost Estimate.

The owner or operator of each facility required by this chapter to provide [~~evidence of~~] financial assurance [~~responsibility~~] for closure, post closure, or corrective action must establish financial assurance in an amount no less than the current [~~approved closure~~] cost estimate.

§37.131. Annual Inflation Adjustments to Current [~~Closure~~] Cost Estimates.

During the active life of the facility, the [~~The~~] owner or operator must adjust the current [~~closure~~] cost estimate for inflation within 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism. For owners or operators using the financial test or corporate guarantee, the current [~~closure~~] cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information

to the executive director as specified in this chapter. The adjustment may be made by recalculating the maximum costs of closure, post closure, or corrective action, in current dollars, or by [~~The adjustment must be made as specified in paragraphs (1) and (2) of this section,~~] using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business, as specified in paragraphs (1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the current [~~closure~~] cost estimate by the inflation factor. The result is the adjusted current [~~closure~~] cost estimate.

(2) (No change.)

§37.141. Increase in Current [~~Closure~~] Cost Estimate.

Whenever the current [~~closure~~] cost estimate increases to an amount greater than the amount being provided in the financial assurance mechanism(s) as a result of changes in the closure, post closure, or corrective action, plan or [~~closure~~] activities, the owner or operator [~~, within 30 days after the increase,~~] must either cause the amount of the financial assurance [~~mechanism~~] to be increased and submit evidence of such increase to the executive director, or obtain additional financial assurance in accordance with this chapter [~~Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure)~~] to cover the increase [~~and receive approval by the executive director~~]. This adjustment must be made within 60 days after the owner or operator becomes aware, or is notified by the executive director, of the increase. The revised current cost estimate must be adjusted for inflation as specified by this subchapter.

§37.151. Decrease in Current [~~Closure~~] Cost Estimate.

Whenever the current [~~closure~~] cost estimate decreases to an amount less than the amount being provided in the financial assurance mechanism(s) as a result of changes in the closure, post closure, or corrective action, plan or [~~in closure~~] activities, the owner or operator may submit a written request for a reduction in the amount of the financial assurance [~~mechanism in writing~~] to the executive director. Following written approval by the executive director, the amount of the financial assurance [~~mechanism~~] may be reduced to the amount of the current [~~closure~~] cost estimate. The revised current cost estimate must be adjusted for inflation as specified by this subchapter.

§37.161. Establishment of a Standby Trust.

An owner or operator who uses a surety bond or an irrevocable standby letter of credit to satisfy the requirements of this chapter must establish a standby trust fund. Under the terms of the bond or letter of credit, all payments made under the bond or all amounts paid pursuant to a draft by the executive director shall be deposited by the surety or issuing institution directly into the standby trust fund or in accordance with instructions from the executive director. This standby trust fund must meet the requirements of the trust fund specified in §37.201 of this title (relating to Trust Fund [~~for Closure~~]), except that:

(1) (No change.)

(2) unless [~~until~~] the standby trust fund is funded pursuant to the requirements of this chapter, the following are not required by this section:

(A) (No change.)

(B) updating of Schedule A of the trust agreement to show current [~~closure~~] cost estimates for closure, post closure, or corrective action;

(C)-(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 October 7, 1999.

TRD-9906672
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter C. FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

30 TAC §§37.200, 37.201, 37.211, 37.221, 37.231, 37.241, 37.251, 37.261, 37.271, 37.281

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers, and finally, HSC, §401.051

and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new sections implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.200. Applicability.

This subchapter applies to an owner or operator required to provide financial assurance for closure, post closure, or corrective action. For additional requirements relating to specific mechanisms and exceptions allowed under a program area, refer to the applicable subchapter(s) of this chapter.

§37.201. Trust Fund [for ~~Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance [~~for closure~~] by establishing either a fully funded trust or a pay-in trust which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and submitting an originally signed duplicate of the executed trust agreement to the executive director.

(b) (No change.)

(c) The wording of the trust agreement must be identical to the wording specified in §37.301(a) of this title (relating to Trust Agreement [~~for Closure~~]) including a formal certification of acknowledgment as specified in §37.301(b) of this title.

(d) Schedule A of the trust agreement as specified in §37.301(a) of this title must be updated within 60 [~~30~~] days after an approved change in the amount of the current [~~closure~~] cost estimate [~~covered by the agreement,~~] or annual inflation adjustments.

(e) A fully funded trust requires that the initial payment into the trust fund be at least equal to the current [~~closure~~] cost estimate, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the initial payment plus the amount of the combined mechanism(s) must be at least equal to the current [~~closure~~] cost estimate. A receipt from the trustee for the initial payment must be submitted by the owner or operator to the executive director with the originally signed duplicate of the trust agreement.

(f) In the case of a pay-in trust for closure or post closure, payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining life of the facility, whichever is shorter. In the case of a pay-in trust for corrective action for known releases, the payments into the trust fund must be made annually by the owner or operator over one-half of the estimated length of the corrective action program. The periods referred to in this subsection are the pay-in periods. The payments into the trust fund must be made in accordance with this subsection. During the period of post closure, a pay-in trust for post closure may not be used [~~A pay-in trust requires annual payments by the owner or operator over the term of the initial registration or permit, the remaining term of the initial registration or permit, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made in accordance with this subsection~~].

(1) For a pay-in trust used to demonstrate financial assurance for closure and post closure, the first payment into the fund must be at least equal to the current cost estimate for closure or post closure, less the amount of the combined mechanisms, divided by the number of years in the pay-in period. [~~For a new facility, a receipt from the trustee for the first payment must be submitted by the owner or operator to the executive director in accordance with §37.31 of this title (relating to Submission of Documents). The first payment must be at least equal to the current closure cost estimate divided by the number of years in the pay-in period; or when a combination of mechanisms are used in accordance with §37.41 of this title, the first payment must be at least equal to the current closure cost estimate less the amount of the combined mechanism(s) divided by the number of years in the pay-in period.~~] Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of [~~each~~] subsequent payments [~~payment~~] must be determined by the following formula: [~~this formula.~~]
Figure: 30 TAC §37.201(f)(1)

(2) For a pay-in trust used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, less the amount of the combined mechanisms, divided by the number of years in the corrective action pay-in period. The amount of subsequent payments must be determined by the following formula:
Figure: 30 TAC §37.201(f)(2)

(3) [~~(2)~~] The owner or operator may accelerate payments into the trust fund or [~~he~~] may deposit the full amount of the current [~~closure~~] cost estimate at the time the fund is established. However, the owner or operator [~~he~~] must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraphs (1) or (2) [~~paragraph (1)~~] of this subsection.

(4) [~~(3)~~] If the owner or operator establishes a trust fund after having used another financial assurance mechanism, the first payment must be at least equal to the amount that the fund would contain if the trust fund was established when the [~~registration or~~] permit was initially issued, and subsequent payments must be made as specified in paragraphs (1) or (2) [~~paragraph~~ (1)] of this subsection.

(g) After the initial payment for a fully funded [~~fully-funded~~] trust or after the pay-in period is completed for a pay-in trust, whenever the current [~~closure~~] cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 30 [~~60~~] days after the change in the current cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current [~~closure~~] cost estimate, or obtain an additional financial assurance mechanism as specified in this subchapter to cover the difference.

(h) If the value of the trust fund is greater than the total amount of the current [~~closure~~] cost estimate, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current [~~closure~~] cost estimate.

(i) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (h) of this section, the executive director [~~, if he approves the request,~~] shall instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

(j) An [~~After beginning closure, an~~] owner or operator or any other person authorized by the executive director to perform closure, post closure, or corrective action may request reimbursement for closure, post closure, or corrective action expenditures by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. After receiving bills for closure, post closure, or corrective action activities, the executive director shall instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing, if the executive director determines that the partial or final closure, post closure, or corrective action expenditures are in accordance with the approved closure plan, post closure plan, or corrective action activities [~~plan~~], or are otherwise justified. If the executive director has reason to believe that the cost of closure, post closure, or corrective action over the remaining life of the facility will be [~~significantly~~] greater than the value of the trust fund, the executive director may withhold reimbursement of such amounts as deemed prudent until it is determined, in accordance with Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action) that the owner or operator is no longer required to maintain financial assurance for final closure, post closure, or corrective action at [~~of~~] the facility.

(k) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator [~~he~~] may submit a written request to the executive director for release of the amount in excess of the current [~~closure~~] cost estimate covered by the trust fund.

§37.211. Surety Bond Guaranteeing Payment [~~for Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance [~~for closure~~] by obtaining a surety bond which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and submitting an originally signed surety bond to the executive director.

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

(d) The bond must guarantee that the owner or operator shall:

(1) fund the standby trust fund as required [~~specified~~] in §37.161 of this title (relating to Establishment of a Standby Trust) in an amount equal to the penal sum of the bond before the beginning of final closure of, or corrective action at, [~~of~~] the facility; [~~or~~]

(2) fund the standby trust fund as required [~~specified~~] in §37.161 of this title in an amount equal to the penal sum within 15 days after an administrative order to begin final closure or corrective action issued by the executive director becomes final, or within 15 days after an order to begin final closure or corrective action is issued by the United States district court or other court of competent jurisdiction; or

(3) (No change.)

(e) (No change.)

(f) The penal sum of the bond must be in an amount at least equal to the current cost estimate [~~sufficient to satisfy the requirements for which financial assurance for closure is required~~], except as provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), §37.51 of this title (relating to Use of a Financial Assurance Mechanism for Multiple Facilities), or §37.52 of this title (relating to Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas) [~~or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the penal sum of the bond plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate~~].

(g) (No change.)

§37.221. Surety Bond Guaranteeing Performance [~~for Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance [~~for closure~~] by obtaining a surety bond which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and submitting an originally signed surety bond to the executive director.

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

(d) A surety bond guaranteeing performance of closure, post closure, or corrective action must guarantee that the owner or operator shall:

(1) perform closure or post closure in accordance with the closure plan, post closure plan, and other applicable requirements of the permit, or perform corrective action in accordance with the permit or other applicable requirements [~~or the closure requirements of the registration or permit for the facility whenever required to do so~~]; and

(2) provide alternate financial assurance as specified in this subchapter [~~section~~], and obtain the executive director's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the executive director that the owner or operator has failed to perform closure or post closure in accordance with the closure plan, post closure plan, or other applicable requirements of the permit, or has failed to perform corrective action in accordance with the permit or other applicable requirements [~~registration or permit requirements when required to do so~~], under terms of the bond, the surety shall either perform closure, post closure, or corrective action as guaranteed by the bond or [~~shall~~] deposit the amount of the penal sum of the bond into a standby trust, in accordance with [~~as specified in~~] §37.161 of this title (relating to Establishment of a Standby Trust) [~~, as directed by the executive director to satisfy the financial assurance requirements~~].

(f) (No change.)

(g) The penal sum of the bond must be in an amount at least equal to the current cost estimate [~~sufficient to satisfy the requirements for which financial assurance was required~~], except as provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms) or §37.52 of this title (relating to Use of

a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas) [~~or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the penal sum of the bond plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate~~].

(h) The surety shall not be liable for deficiencies in the performance of closure, post closure, or corrective action by the owner or operator after the executive director releases the owner or operator from the requirements of this section, in accordance with Subchapter A of this chapter.

§37.231. Irrevocable Standby Letter of Credit [~~for Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance [~~for closure~~] by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and submit an originally signed irrevocable standby letter of credit to the executive director.

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

(d) The originally signed irrevocable standby letter of credit must be accompanied by a letter from the owner or operator referring to the irrevocable standby letter of credit by number, issuing institution, and date, and providing the following information for each facility: the [~~commission registration or~~] permit number, name and physical and mailing addresses [~~address~~] of the facility, and the amount of funds assured for closure, post closure, or corrective action by the irrevocable standby letter of credit [~~by facility~~].

(e) (No change.)

(f) The irrevocable standby letter of credit must be issued in an amount at least equal to the current cost estimate [~~sufficient to satisfy the requirements for which financial assurance is required~~], except as provided in [~~or when a combination of mechanisms are used in accordance with~~] §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms) , §37.51 of this title (relating to Use of a Financial Assurance Mechanism for Multiple Facilities), or §37.52 of this title (relating to Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas) [~~, the amount of the letter of credit plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate~~].

(g) Following a determination that the owner or operator has failed to perform closure or post closure in accordance with the closure plan, post closure plan, and other applicable requirements of the permit, or has failed to perform corrective action in accordance with the permit or other applicable requirements, [~~satisfy the requirements for which financial assurance is required or with the registration or permit requirements when required to do so,~~] the executive director may draw on the irrevocable standby letter of credit [~~and deposit such funds into a standby trust for the closure of the facility~~].

(h) If the owner or operator does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the irrevocable standby letter of credit beyond the current expiration date, the executive director shall draw on the irrevocable standby letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the letter of credit. During the last 30 days of any such extension, the executive director shall draw on the irrevocable standby letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subchapter [~~chapter~~] and obtain written approval of such assurance from the executive director.

(i) Upon termination, in accordance with §37.61 of this title (relating to Termination of Mechanisms), the executive director shall return the irrevocable standby letter of credit to the issuing institution.

§37.241. Insurance [~~for Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance [~~for closure~~] by obtaining insurance which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and submitting an originally signed certificate to the executive director.

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

(d) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure, post closure, or corrective action, except [~~sufficient to satisfy the requirements for which financial assurance for closure is required, or~~] when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms) or §37.52 of this title (relating to Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas) [~~, the face amount plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate~~]. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

[~~(e) For a claims-made insurance policy, the owner or operator shall place in escrow, as instructed by the executive director, an amount sufficient to pay an additional year of premiums for renewal of the policy. When the owner or operator fails to provide an alternate financial assurance mechanism, the executive director may use these funds to renew the policy.~~]

(e) [~~(f)~~] The insurance policy must guarantee that funds shall be available to provide for closure, post closure, or corrective action of the facility [~~whenever needed to fulfill obligations of the insured under this chapter~~]. The policy shall also guarantee that once closure, post closure, or corrective action [~~of a facility for which closure insurance was provided~~] begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(f) [~~(g)~~] An [~~After beginning closure of a facility, an~~] owner or operator or any other person authorized to perform closure, post closure, or corrective action may request reimbursement for closure, post closure, or corrective action expenditures by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure [~~plan~~] , post closure, or corrective action activities or are otherwise justified [~~or the closure requirements~~], and if so, [~~he~~] shall instruct the insurer to make

reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the maximum cost of closure , post closure, or corrective action over the remaining life of the facility will be [~~significantly~~] greater than the face amount of the policy, the executive director [~~he~~] may withhold reimbursement of such amounts as deemed [~~he deems~~] prudent until the executive director [~~he~~] determines, in accordance with Subchapters A and B of this chapter, that the owner or operator is no longer required to maintain [~~general~~] financial assurance requirements for closure, post closure, or corrective action of the facility. If the executive director does not instruct the insurer to make such reimbursements, the executive director [~~he~~] shall provide the owner or operator with a detailed written statement of reasons.

(g) [~~(h)~~] The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy [~~by the owner or operator as specified in Subchapter A of this chapter~~]. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(h) [~~(i)~~] The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option [~~mechanism~~] of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts.

(i) [~~(j)~~] Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(1) the executive director deems the facility abandoned; or

(2) the [~~registration or~~] permit expires, is terminated, is [~~or~~] revoked, or a new or renewal [~~registration or~~] permit is denied; or

(3) closure is ordered by the executive director of the commission or by a United States district court or other court of competent jurisdiction; or

(4) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(5) the premium due is paid.

(j) [~~(k)~~] Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(k) For insurance policies providing coverage for post closure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon issue yield announced by the United States Treasury for 26-week Treasury securities.

§37.251. Financial Test [~~for Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance [~~for closure~~] by establishing [~~obtaining~~] a financial test [~~or a financial test and corporate guarantee~~] which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action).

(b) To pass this test, the owner or operator must meet the criteria of either paragraph (1) or (2) of this subsection:

(1) the owner or operator must have:

(A) (No change.)

(B) net working capital and tangible net worth each at least six times the sum of the current [~~closure~~] cost estimates [~~estimate~~], liability coverage requirements, and any other financial assurance obligations under the Texas Natural Resource Conservation Commission (TNRCC) or other federal or state environmental regulations assured by a financial test; and

(C) (No change.)

(D) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current [~~closure~~] cost estimates [~~estimate~~], liability coverage requirements, and any other financial assurance obligations under the TNRCC or other federal or state environmental regulations assured by a financial test;

(2) the owner or operator must have:

(A) (No change.)

(B) tangible net worth at least six times the sum of the current [~~closure~~] cost estimates, [~~estimate and~~] liability coverage requirements , and any other financial assurance obligations under TNRCC or other federal or state environmental regulations assured by a financial test; and

(C) (No change.)

(D) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current [~~closure~~] cost estimates, liability coverage requirements, and any other financial assurance obligations under TNRCC or other federal or state environmental regulations assured by a financial test.

(c) To demonstrate that the requirements of the test are being met, the owner or operator shall submit the following items to the executive director:

(1) a letter signed by the owner's or operator's chief financial officer worded identically [~~identical~~] to the wording specified in §37.351 of this title (relating to Financial Test). If an owner or operator is using the financial test to demonstrate [~~both~~] assurance for closure, post closure, or corrective action as specified in Subchapter B of this chapter [~~(relating to Financial Assurance Requirements for Closure)~~] and liability coverage as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage), the owner or operator [~~, he~~] must submit the letter specified in the Financial Test for Liability, Part B in §37.651 of this title (relating to Financial Test for Liability) to cover both forms

of financial responsibility. A separate letter as specified in §37.351 of this title is not required; and

(2) (No change.)

(3) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) the accountant [~~he~~] has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure:

(i) such amounts were found to be in agreement; or

(ii) no matters came to the attention of the accountant which caused them to believe that the specified data should be adjusted; and

[~~(B) in connection with that procedure, he found such amounts to be in agreement.~~]

(4) a written verification of the current bond rating from the applicable bond rating agency, if the owner or operator is using Alternative II of the letter signed by the owner's or operator's chief financial officer specified in §37.351 of this title; and

(5) a schedule identifying intangible assets used to calculate tangible net worth.

(d) After the initial submission of items specified in subsection (c) of this section, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all [~~three~~] items specified in subsection (c) of this section.

(e) If the owner or operator no longer meets the requirements of subsection (b) of this section, a [~~he shall send~~] notice shall be sent to the executive director of intent to establish alternate financial assurance as specified in this subchapter. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(f) (No change.)

(g) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed in [~~by~~] the independent certified public accountant's [~~accountant in his~~] report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The executive director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.

§37.261. Corporate Guarantee [~~for Closure~~].

(a) An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by obtaining a written guarantee, hereafter referred to as "corporate guarantee," which conforms to the requirements of this section, in addition to the requirements as specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action).

(b) The guarantor shall be the direct or higher-tier parent corporation of the owner or operator or a corporation with a substantial business relationship with the owner or operator. The guarantor must meet the requirements for owners or operators as specified in §37.251 of this title (relating to Financial Test [~~for Closure~~]). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.361 of this title (relating to Corporate Guarantee [~~for Closure~~]). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.251(c) of this title.

(d) (No change.)

(e) The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to perform closure, post closure, or corrective action at the facility(ies) covered by the corporate guarantee in accordance with the permits and other applicable requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in §37.201 of this title (relating to Trust Fund) in the name of the owner or operator in the amount of the current cost estimate [~~closure of the facility covered by the corporate guarantee in accordance with the closure plan or the closure requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in §37.201 of this title (relating to Trust Fund for Closure) in the name of the owner or operator~~];

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of termination [~~cancellation~~] by certified mail to the owner or operator and the executive director and the owner or operator has obtained, and the executive director has approved, alternative financial assurance [~~Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts~~]; and

(3) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of termination [~~cancellation~~] of the corporate guarantee from the guarantor, the guarantor shall provide such alternate [~~alternative~~] financial assurance in the name of the owner or operator.

§37.271. Local Government Financial Test.

An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by establishing a local government financial test or a local government financial test and local government guarantee which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action). An owner or operator who satisfies the requirements of paragraphs (1), (2), and (3) of this section may demonstrate financial assurance up to the amount specified in paragraph (4) of this section.

(1) In order to satisfy the financial component of the test, the owner or operator must meet the criteria of either subparagraph (A) or (B) of this paragraph and in addition must meet certain general conditions outlined in subparagraph (C) of this paragraph.

(A) The owner or operator must satisfy each of the following financial ratios based on it's most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(B) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds.

(C) In addition to meeting the criteria listed under subparagraph (A) or (B) of this paragraph, the following general conditions must be met.

(i) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency).

(ii) The owner or operator must not have operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years.

(iii) The owner or operator must not currently be in default on any outstanding general obligation bonds.

(iv) The owner or operator must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(v) The owner or operator must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statements as required under clause (i) of this subparagraph. However, the executive director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the executive director deems the qualification insufficient to warrant disallowance of use of the test.

(D) The following terms used in this section are defined as follows.

(i) Deficit equals total annual revenues minus total annual expenditures.

(ii) Total revenues is the sum of the following seven items:

(I) "Total Revenues" of the General Fund;

(II) "Total Revenues" of Special Revenue Funds;

(III) "Total Revenues" of the Debt Service Fund;

(IV) "Total Revenues" of Capital Project Funds;

(V) "Total Operating Revenues" of Enterprise Funds;

(VI) if positive, "Total Non-Operating Revenues (Net)" of Enterprise Funds; and

(VII) if positive, "Total Non-Operating Revenues (Net)" of Internal Service Funds.

(iii) Total expenditures is the sum of the following six items:

(I) "Total Expenditures" of the General Fund;

(II) "Total Expenditures" of Special Revenue Funds;

(III) "Total Expenditures" of the Debt Service Fund;

(IV) "Total Operating Expenses Before Depreciation" of Enterprise Funds;

(V) if negative, "Total Non-Operating Revenues (Net)" of Enterprise Funds; and

(VI) if negative, "Total Non-Operating Revenues (Net)" of Internal Service Funds; except if the local government is not using accrual accounting and is not including depreciation in its expenditures, include routine capital outlays and debt repayment as a substitute for depreciation.

(iv) Cash and current investments is the sum of "Cash," "Cash Equivalents" (e.g., bank deposits, very short-term debt securities, money market funds), and "Current Investments" (e.g., interest or dividend bearing securities that are expected to be held for less than one year), in the General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds, and Internal Service Funds, as reported on the Comprehensive Annual Financial Report's (CAFR) Combined Balance Sheet. Note that cash, cash equivalents, and current investments are included in this term even if they are: pooled; with a fiscal agent; or restricted, provided that the assets belong to the General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds, and Internal Service Funds. Specifically excluded from this definition are accounts receivable, retirement assets, real property, fixed assets, and other non-current assets, as well as any assets (including cash) in Capital Project Funds; and

(v) Debt service is the sum of all amounts in any Debt Service category (including bond principal, other debt principal, interest on bonds, interest on other debt) in the General Fund, Special Revenue Funds, Debt Service Fund, and Capital Projects Funds as reported on the CAFR's Combined Statement of Revenues, Expenditures and Changes in Fund Balances/Equity; plus all interest expense in Enterprise Funds and Internal Service Funds, as reported on the CAFR's Combined Statement of Revenues, Expenses and Changes in Retained Earnings/Fund Balances.

(2) In order to satisfy the public notice component of the test, the local government owner or operator must place a reference to the closure, post closure, or corrective action costs assured through the financial test into its next CAFR after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure, post closure, or corrective action requirements; the reported liability at the balance sheet date; the estimated total closure or post closure cost remaining to be recognized; the percentage of landfill capacity used to date; and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §330.238 of this title (relating to Implementation of the Corrective Action Program). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with the public notice component.

(3) In order to satisfy the recordkeeping and reporting component of the test, the local government owner or operator must submit the following four items to the executive director:

(A) a letter signed by the local government's chief financial officer worded as specified in §37.371 of this title (relating to Local Government Financial Test) that:

(i) lists all the current cost estimates covered by a financial test as described in paragraph (4) of this section;

(ii) provides evidence and certifies that the local government meets the conditions of either paragraph (1)(A) or (B), and (1)(C) of this section; and

(iii) certifies that the local government meets the conditions of paragraphs (2) and (4) of this section;

(B) the local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor. The auditor must be an independent certified public accountant (CPA) or an appropriate state agency that conducts equivalent comprehensive audits;

(C) a report to the local government from the local government's independent CPA or the appropriate state agency which:

(i) is based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (1)(A) of this section, if applicable, and the requirements of paragraph (1)(C)(i), (ii), and (v) of this section; and

(ii) the CPA or state agency's report states the procedures performed and the CPA or state agency's findings; and

(D) a copy of the CAFR used to comply with paragraph (2) of this section and certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(4) The portion of the closure, post closure, or corrective action costs for which an owner or operator can assure under this paragraph is determined as follows.

(A) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post closure, or corrective action costs that equal up to 43% of the local government's total annual revenue.

(B) If the local government owner or operator assures other environmental obligations through a financial test, including, but not limited to, those associated with hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 Code of Federal Regulations (CFR) Parts 264 and 265, petroleum underground storage tank facilities under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280, underground injection control facilities under Chapter 331 of this title (relating to Underground Injection Control) and 40 CFR 144.62, polychlorinated biphenyl storage facilities under 40 CFR Part 761, it must add those costs to the closure, post closure, or corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(5) Annual updates of the financial test documentation must be submitted to the executive director within 180 days after the close of each succeeding fiscal year. This information must consist of all the items required under paragraph (3) of this section.

(6) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of paragraphs (1), (2), (3), and (4) of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data shows that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(7) The local government is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this title (relating to Termination of Mechanisms) are met.

(8) The executive director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the executive director finds on the basis of such reports or other information, that the local government owner or operator no longer meets the requirements of the financial test, the local government must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

§37.281. Local Government Guarantee.

An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by obtaining a local government guarantee provided by a local government. The local government guarantee must meet the requirements of this section, in addition to the requirements in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action). The local government guarantor must meet the requirements of the local government financial test in §37.271 of this title (relating to Local Government Financial Test) and must comply with the following terms of the local government guarantee.

(1) If the owner or operator fails to perform closure, post closure, or corrective action of a facility covered by the guarantee, the guarantor will:

(A) perform, or pay a third party to perform, closure, post closure, or corrective action as required; or

(B) establish a fully funded trust fund as specified in §37.201 of this title (relating to Trust Fund) in the name of the owner or operator.

(2) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of the receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(3) If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the executive director, obtain alternate financial assurance and submit evidence of that alternate financial assurance to the executive director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation.

(4) The owner or operator must submit to the executive director an originally signed local government guarantee worded as specified in §37.381 of this title (relating to Local Government Guarantee) along with the items required in §37.271(3) of this

title. The items must be updated annually in accordance with the requirements of the local government financial test.

(5) The owner or operator is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this title (relating to Termination of Mechanisms) are met.

(6) If a local government guarantor no longer meets the requirements of §37.271 of this title, the owner or operator must, within 90 days, obtain alternate financial assurance, and submit such evidence of the alternate financial assurance to the executive director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate financial assurance within the next 30 days.

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

Filed with the Office of the Secretary of State, on October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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30 TAC §37.271, §37.281

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (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 laws of this state. The repeals are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers, and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. The proposed repeals are in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed repeals implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.271. Local Government Financial Test for Closure.

§37.281. Local Government Guarantee for Closure.

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 October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter D. WORDING OF THE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

30 TAC §§37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.361, 37.371, 37.381

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission

with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024, and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers, and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new sections implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.301. Trust Agreement [~~for Closure~~].

(a) A trust agreement for [~~a~~] closure, post closure, or corrective action [~~trust fund~~], as specified in §37.201 of this title (relating to Trust Fund [~~for Closure~~]), must be worded as specified in [~~Figure 1:~~] the Trust Agreement in this subsection, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.301(a)

(b) The Certification of Acknowledgment in this subsection is the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §37.201 of this title.
Figure: 30 TAC §37.301(b)

§37.311. Payment Bond.

A surety bond guaranteeing payment for closure, post closure, or corrective action, as specified in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), must be worded as specified in the Payment Bond in this section [~~for Closure~~], except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.311

§37.321. Performance Bond.

A surety bond guaranteeing performance for closure, post closure, or corrective action, as specified in §37.221 of this title (relating to Surety Bond Guaranteeing Performance [~~for Closure~~]), must be worded as specified in the Performance Bond in this section [~~for Closure~~], except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.321

§37.331. Irrevocable Standby Letter of Credit.

An irrevocable standby letter of credit for closure, post closure, or corrective action, as specified in §37.231 of this title (relating to Irrevocable Standby Letter of Credit [~~for Closure~~]), must be worded as specified in the Irrevocable Standby Letter of Credit in this section[~~for Closure~~], except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.331

§37.341. Certificate of Insurance.

A certificate of insurance for closure, post closure, or corrective action, as specified in §37.241 of this title (relating to Insurance [~~for Closure~~]), must be worded as specified in the Certificate of Insurance in this section[~~for Closure~~], except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.341

§37.351. Financial Test.

A letter from the chief financial officer for closure, post closure, or corrective action, as specified in §37.251 of this title (relating to Financial Test [~~for Closure~~]), must be worded as specified in the Financial Test in this section[~~for Closure~~], except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.351

§37.361. Corporate Guarantee [~~for Closure~~].

A corporate guarantee for closure, post closure, or corrective action, as specified in §37.261 of this title (relating to Corporate Guarantee [~~for Closure~~]), must be worded as specified in the Corporate Guarantee in this section[~~for Closure~~], except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis [~~material~~] deleted.
Figure: 30 TAC §37.361

§37.371. Local Government Financial Test.

A letter signed by the local government's chief financial officer, as specified in §37.271 of this title (relating to Local Government Financial Test) must be worded as specified in the Local Government Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.371

§37.381. Local Government Guarantee.

The local government guarantee, as specified in §37.281 of this title (relating to Local Government Guarantee), must be worded as specified in the Local Government Guarantee in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.381

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906675
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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30 TAC §37.371, §37.381

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (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 laws of this state. The repeals are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024, and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; §371.026, which provides the authority for the commission to require financial assurance from used oil handlers, and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed repeals implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.371. Local Government Financial Test for Closure.

§37.381. Local Government Guarantee for Closure.

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 October 7, 1999.

TRD-9906676
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter E. FINANCIAL ASSURANCE REQUIREMENTS FOR LIABILITY COVERAGE

30 TAC §§37.400, 37.402, 37.404, 37.411

STATUTORY AUTHORITY

The amendments and new sections are proposed under the Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which

provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new sections implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.400. Applicability.

This subchapter applies to an owner or operator required to provide financial assurance for sudden or nonsudden liability coverage [~~An owner or operator required by this chapter to establish financial assurance for sudden liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility must, at a minimum, meet the requirements of this subchapter~~].

§37.402. Definitions.

In the liability insurance requirements, the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The following definitions given of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(1) Accidental occurrence - An accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) Legal defense costs - Any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(3) Nonsudden accidental occurrence - An occurrence which takes place over time and involves continuous or repeated exposure.

(4) Sudden accidental occurrence - An occurrence which is not continuous or repeated in nature.

§37.404. Liability Requirements for Sudden and Nonsudden Accidental Occurrences.

(a) An owner or operator shall establish liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden or nonsudden accidental occurrences, exclusive of legal defense costs. The owner or operator shall choose from one or more mechanisms as specified in Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability) to meet the liability requirements for sudden or nonsudden accidental occurrences.

(b) An owner or operator shall notify the executive director in writing within 30 days whenever:

(1) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial assurance mechanism authorized in Subchapter F of this chapter; or

(2) a Certification of Valid Claim for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a facility is entered between the owner or operator and third-party claimant for liability coverage under Subchapter F of this chapter; or

(3) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a facility is issued against the owner or operator, or a financial assurance mechanism that is providing financial assurance for liability coverage under Subchapter F of this chapter.

§37.411. Adjustments to the Level of Liability Coverage.

If the executive director determines that the levels [~~level~~] of financial responsibility required [~~by §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences)~~] are not consistent with the degree and duration of risk associated with the facility or group of facilities, the executive director may adjust the levels [~~level~~] of financial responsibility required for liability coverage [~~under §37.401 of this title~~] as may be necessary to protect human health and the environment. An owner or operator must furnish to the executive director, within 30 days, any information which the executive director requests to determine whether cause exists for such adjustments of level of coverage. Any adjustment to the amount of financial assurance due to a change in the degree and duration of risk associated with the permitted facility [~~financial assurance of the level for a facility that has a permit or registration~~] will be treated as a permit [~~or registration~~] modification [~~, unless the rule changes the amount required~~].

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 October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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30 TAC §37.401

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

STATUTORY AUTHORITY

The repeal is proposed under the Texas Water Code (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 laws of this state. The repeal is also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed repeal implements TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.401. Liability Requirements for Sudden Accidental Occurrences.

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 October 7, 1999.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Subchapter F. FINANCIAL ASSURANCE MECHANISMS FOR LIABILITY

30 TAC §§37.501, 37.511, 37.521, 37.531, 37.541, 37.551

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017,

361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.501. Trust Fund for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by establishing a fully funded [~~fully-funded~~] trust fund that [~~which~~] conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting an originally signed duplicate of the executed trust agreement to the executive director.

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

(d) The trust fund for liability shall be funded for the full amount of the liability coverage to be provided by the trust before it may be relied upon to satisfy the requirements of financial assurance for liability. If at any time after the trust is created the amount of funds in the trust is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the trust, shall either add sufficient funds to the trust to cause its value to equal the full amount of liability coverage to be provided, or obtain another [~~other~~] financial assurance mechanism as specified in this subchapter to cover the difference. For purposes of this section, "the full amount of liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden accidental occurrences required to be provided less the amount of financial assurance for liability coverage being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(e) (No change.)

(f) If an owner or operator substitutes other financial assurance as specified in this subchapter for all or part of the trust fund, the owner or operator [~~he~~] may submit a written request to the executive director for release of the amount in excess of the required liability coverage as covered by the trust fund.

(g) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (e) or (f) of this section, the executive director, if [~~he approves~~] the request is approved, shall instruct the trustee in writing to release to the owner or operator such funds.

§37.511. Surety Bond Guaranteeing Payment for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by obtaining [~~establishing~~] a surety bond which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting a signed duplicate original of the bond to the executive director.

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

(d) A surety bond may be used to satisfy the requirements of Subchapter E of this chapter only if the Attorneys General or Insurance Commissioners of the state in which the surety is incorporated, and the State of Texas have submitted a written statement to the executive director that a surety bond executed as described in this subchapter and §37.611 of this title is a legally valid and enforceable obligation in that state. [~~Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to satisfy a third party liability claim as guaranteed by the bond.~~]

[~~(e) The penal sum of the bond must be in an amount, sufficient to satisfy the requirements for which financial assurance for liability is required, or when a combination of mechanisms are used in accordance with §37.41of this title (relating to Use of Multiple Financial Assurance Mechanisms), the penal sum of the bond plus the amount of the combined mechanism(s) must be at least equal to the required liability coverage.~~]

[~~(f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidence by the return receipts.~~]

§37.521. Irrevocable Standby Letter of Credit for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by obtaining [~~establishing~~] an irrevocable standby letter of credit which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting an originally signed irrevocable standby letter of credit to the executive director.

(b) (No change.)

(c) The wording of the irrevocable standby letter of credit must be identical to the wording specified in §37.621 of this title (relating to Irrevocable Standby Letter of Credit for Liability).

(d) An owner or operator who uses an irrevocable standby letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. [~~The letter of credit must be irrevocable and issued for a period of at least one year. The irrevocable standby letter of credit must provide that the expiration date shall be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the irrevocable standby letter of credit, the 120 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.~~]

(e) The wording of the standby trust fund must be identical to the wording specified in §37.671 of this title (relating to Standby Trust Agreement). [~~The irrevocable standby letter of credit must be issued in an amount sufficient to satisfy the requirements for which financial assurance is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the amount of the letter of credit plus the amount of the combined mechanism(s) must be at least equal to the required liability coverage.~~]

[~~(f) If the owner or operator does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate assurance from the executive director~~

within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the irrevocable standby letter of credit beyond the current expiration date, the executive director shall draw on the irrevocable standby letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director shall draw on the irrevocable standby letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subchapter and obtain written approval of such assurance from the executive director.]

§37.531. Insurance for Liability.

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

(c) The wording of the certificate of insurance must be identical to the wording specified in §37.631 of this title (relating to Certificate of Insurance for Liability). [; or] The [the] wording of the endorsement must be identical to the wording specified in §37.641 of this title (relating to Endorsement for Liability).

(d) The insurance policy shall be amended by attachment of the [Liability] Endorsement for Liability or evidenced by a Certificate of [Liability] Insurance for Liability. If requested by the executive director, the owner or operator shall provide a signed duplicate original of the insurance policy.

[(e) The insurance policy must be issued for a face amount at least sufficient to satisfy the requirements for which financial assurance for liability is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the face amount plus the amount of the combined mechanism(s) must be at least equal to the required liability coverage.]

[(f) The insurance policy must guarantee that funds shall be available whenever needed to fulfill obligations of the insured under this chapter. Under the terms of the policy, the insurer shall become liable on the insurance obligation when the owner or operator fails to satisfy a third party liability claim as guaranteed by the policy. The policy shall also guarantee that when the third party claimant provides a valid certificate of claim for payment, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.]

[(g) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in Subchapter A of this chapter. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.]

[(h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the mechanism of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts.]

[(i) Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:]

[(1) the executive director deems the facility abandoned; or]

[(2) the registration or permit expires, is terminated, or revoked or a new or renewal registration or permit is denied; or]

[(3) closure is ordered by the executive director of the commission or by a United States district court or other court of competent jurisdiction; or]

[(4) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or]

[(5) the premium due is paid.]

§37.541. Financial Test for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by demonstrating that it [he] passes a financial test which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements).

(b) To pass this test, the owner or operator must meet the criteria of either paragraph (1) or (2) of this subsection:

(1) (No change.)

(2) the owner or operator must have:

(A)-(B) (No change.)

(C) tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) [(C)] assets in the United States amounting to either:

(i) at least 90% of his total assets; or

(ii) at least six times the amount of liability coverage to be demonstrated by this test.

(c) The phrase "amount of liability coverage" refers to the annual aggregate amounts for which coverage is required for sudden or nonsudden liability.

(d) [(c)] To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the executive director:

(1) a letter signed by the owner's or operator's chief financial officer and worded as specified in the Financial Test for Liability, Part A, §37.651 of this title (relating to Financial Test for Liability). An [If an] owner or operator [is] using the financial test to demonstrate [both] assurance for closure, post closure, or corrective action as specified in Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and liability coverage[, he] must submit the letter specified in the Financial Test for Liability, Part B, §37.651 of this title to cover both forms of financial responsibility. A separate letter as specified in §37.351 of this title (relating to Financial Test) is not required; and

(2) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(3) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) the accountant [~~he~~] has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure: [~~,~~]

(i) [~~he found~~] such amounts were found to be in agreement; or [~~,~~]

(ii) no matters came to the attention of the independent certified public accountant which indicated that the specified data should be adjusted.

(e) [~~(d)~~] After the initial submission of items specified in subsection (d) [~~(c)~~] of this section, the owner or operator shall send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (d) [~~(c)~~] of this section.

(f) If the owner or operator no longer meets the requirements of subsection (b) of this section, the owner or operator must obtain alternate financial assurance as specified in this subchapter for the entire amount of required liability coverage. Evidence of liability coverage must be submitted to the executive director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

[~~(e) If the owner or operator no longer meets the requirements of subsection (b) of this section, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this subchapter. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.~~]

(g) [~~(f)~~] The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (b) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (d) [~~(c)~~] of this section. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (b) of this section, the owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(h) [~~(g)~~] The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant's [~~accountant in his~~] report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The executive director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this subchapter [~~section~~] within 30 days after notification of the disallowance.

§37.551. Corporate Guarantee for Liability.

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

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.661 of this title (relating to Corporate Guarantee for Liability). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.541(d) [~~(c)~~] of this title.

(d) If the guarantor has a substantial business relationship with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit the following:

(1) a description of the substantial business relationship and the value received in consideration of the guarantee;

(2) an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity;

(3) an original or certified original copy of the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity;

(4) an organizational chart which shows the relationship between the two entities; and

(5) the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) The terms of the corporate guarantee shall provide that [~~:~~]

[~~(1)~~] if the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both, as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage. [~~;~~]

[~~(2) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.~~]

(f) In the case of corporations [~~corporation~~] incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:

(1) (No change.)

(2) each state in which a facility covered by the guarantee is located have submitted a written statement to the commission [~~United States Environmental Protection Agency~~] that a guarantee executed as described in this section and §37.661 of this title (relating to Corporate Guarantee) is a legally valid and enforceable obligation in that state.

(g) In the case of corporations incorporated outside the United States (U.S.), a guarantee may be used to satisfy the requirements of this section only if:

(1) the non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principal place of business; and

(2) the Attorneys General or Insurance Commissioners of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the commission that a guarantee executed as described in this section and §37.661 of this title is a legally valid and enforceable obligation in that state.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter G. WORDING OF THE MECHANISMS FOR LIABILITY

30 TAC §§37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661, 37.671

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new section implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.601. Trust Agreement for Liability.

(a) A trust agreement for a liability trust fund, as specified in §37.501 of this title (relating to Trust Fund for Liability), must be worded as specified in the [~~Figure 1:~~] Trust Agreement in this subsection, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted [~~and wherever closure information appears within braces that information shall be deleted~~].
Figure: 30 TAC §37.601(a)

(b) A Certification of Acknowledgement must be worded as specified in the Certification of Acknowledgement in this subsection and must accompany the trust agreement for a trust fund as specified in §37.501 of this title (relating to Trust Fund for Liability) [~~Certification of Acknowledgement is the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in this section~~].
Figure: 30 TAC §37.601(b)

§37.611. Payment Bond for Liability.

A surety bond guaranteeing payment for liability, as specified in §37.511 of this title (relating to Surety Bond Guaranteeing Payment for Liability), must be worded as specified in the Payment Bond for Liability in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.611

§37.621. Irrevocable Standby Letter of Credit for Liability.

An irrevocable standby letter of credit for liability, as specified in §37.521 of this title (relating to Irrevocable Standby Letter of Credit for Liability), must be worded as specified in the Irrevocable Standby Letter of Credit for Liability in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.621

§37.631. Certificate of Insurance for Liability.

A certificate of liability insurance, as specified in §37.531 of this title (relating to Insurance for Liability), must be worded as specified in the Certificate of Insurance for Liability in this section, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.631

§37.641. Endorsement for Liability.

A liability endorsement as specified in §37.531 of this title (relating to Insurance for Liability), must be worded as specified in the

Endorsement for Liability in this section, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.641

§37.651. Financial Test for Liability.

A letter from the chief financial officer for liability, as specified in §37.541 of this title (relating to Financial Test for Liability) must be worded as specified in the Financial Test for Liability in this section, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.651

§37.661. Corporate Guarantee for Liability.

A corporate guarantee for liability as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) must be worded as specified in the Corporate Guarantee for Liability in this section, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.661

§37.671. Standby Trust Agreement.

(a) A standby trust agreement for liability, as specified in §37.521 of this title (relating to Irrevocable Standby Letter of Credit for Liability), must be worded as specified in the Standby Trust Agreement in this subsection, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.671(a)

(b) A certification of acknowledgment must be worded as specified in the Certification of Acknowledgment in this subsection and must accompany the trust agreement for a standby trust fund as specified in this chapter.
Figure: 30 TAC §37.671(b)

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

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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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Subchapter J. FINANCIAL ASSURANCE FOR PERMITTED COMPOST FACILITIES

30 TAC §§37.901, 37.911, 37.921, 37.931

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; and HSC, §361.428, which provides the commission with the authority to regulate compost facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.024, 361.085, and 361.428.

§37.901. Applicability.

This subchapter applies to an owner or operator of a compost facility required [~~permitted compost facilities required~~] to provide evidence of financial assurance under Chapter 332 [~~§332.47~~] of this title (relating to Composting) [~~(relating to Permit Application Preparation)~~]. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure.

§37.911. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 332 of this title (relating to Composting) [~~For definitions of compost facilities and other definitions not found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), see Chapter 332, Subchapters A and D of this title (relating to General Information and Operations Requiring a Permit), §332.2 of this title (relating to Definitions), and §332.41 of this title (relating to Definition, Requirements, and Application Processing for a Permit Facility)~~].

§37.921. Financial Assurance Requirements for Closure [~~of a Compost Facility~~].

In addition to the requirements of this subchapter, owners or operators of a compost facility required to demonstrate financial assurance for closure must comply with Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) [~~An owner or operator of a permitted compost facility subject to this subchapter shall establish financial assurance for the closure of the facility that meets the requirements of this section, in addition to Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure; Financial Assurance Mechanisms for Closure; and Wording of the Mechanisms for Closure)~~].

§37.931. Financial Assurance Mechanisms [~~Available for Permitted Compost Facility~~].

An owner or operator subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action) to demonstrate financial assurance for closure. [~~An owner or operator subject to this subchapter may utilize a(n):~~]

[~~(1) trust fund (fully-funded or pay-in trust);~~]

[~~(2) surety bond guaranteeing payment;~~]

[~~(3) surety bond guaranteeing performance;~~]

[(4) irrevocable letter of credit;]

[(5) insurance;]

[(6) financial test; or]

[(7) corporate guarantee, as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to demonstrate financial assurance for closure.]

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

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Subchapter K. FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS A OR B PETROLEUM-SUBSTANCE CONTAMINATED SOIL STORAGE, TREATMENT, AND REUSE FACILITIES

30 TAC §§37.1001, 37.1005, 37.1011, 37.1021

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; and Texas Health and Safety Code, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities;

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new section implement TWC, §§5.103, 5.105, 26.346, and 26.352; and HSC, §361.428.

§37.1001. Applicability.

This subchapter applies to an owner or operator of Class A or B petroleum-substance contaminated soil storage, treatment, or reuse facilities required to provide evidence of financial assurance under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and liability.

§37.1005. Submission of Documents.

An owner or operator required by this subchapter to provide financial assurance must submit originally signed financial assurance mechanisms for closure and liability coverage prior to issuance of registration. The signed financial assurance mechanisms must be in effect at the time they are submitted.

§37.1011. Financial Assurance Requirements for Closure of Class A and B Facilities.

(a) An owner or operator of a Class A or B petroleum-substance contaminated soil storage, treatment, or reuse facility subject to this subchapter shall establish financial assurance for the closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

[(1) The financial assurance shall be in the amount specified in the cost estimate for closure pursuant to §334.508 of this title (relating to Closure Requirements Applicable to Class A and Class B Facilities).]

(b) [(2)] An owner or operator subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter C of this chapter to demonstrate financial assurance for closure, except a pay-in trust mechanism may not be used. [utilize a(n):]

[(A) fully-funded trust;]

[(B) surety bond guaranteeing payment;]

[(C) surety bond guaranteeing performance;]

[(D) irrevocable standby letter of credit;]

[(E) insurance;]

[(F) financial test; or]

[(G) corporate guarantee, as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to demonstrate financial assurance for closure.]

[(3) Within 60 days after receiving certifications from the owner or operator and an independent qualified hydro geologist, geologist, or independent registered professional engineer that closure has been completed in accordance with the approved closure plan, the executive director shall notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for closure, as specified in Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure) for that facility, unless the executive director has reason to believe that closure has not been in accordance with the approved closure plan.]

§37.1021. Liability Requirements for Class A and B Facilities.

An owner or operator of a Class A or B petroleum-substance contaminated soil storage, treatment, or reuse facility subject to this subchapter shall establish financial assurance for sudden liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, E, F, and G of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and Wording of the Mechanisms for Liability).

(1) (No change.)

(2) An owner or operator subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter F of this chapter to demonstrate financial assurance for sudden liability. [~~utilize a(n):~~]

[~~(A) fully-funded trust;~~]

[~~(B) surety bond guaranteeing payment;~~]

[~~(C) irrevocable standby letter of credit;~~]

[~~(D) insurance;~~]

[~~(E) financial test; or~~]

[~~(F) corporate guarantee, as specified in Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability) to demonstrate financial assurance for sudden liability.~~]

[~~(3) Within 60 days after receiving certifications from the owner or operator and an independent qualified hydro geologist, geologist, or independent registered professional engineer, that closure has been accomplished in accordance with the approved closure plan, the executive director shall notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for sudden liability coverage, as specified in §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences), and by this section for that facility, unless the executive director has reason to believe that closure has not been in accordance with the approved closure plan.~~]

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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Subchapter L. FINANCIAL ASSURANCE FOR USED OIL RECYCLING

30 TAC §§37.2001, 37.2003, 37.2011, 37.2013, 37.2015, 37.2021

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, Used Oil Collection, Management, and Recycling Act, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; and under HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new sections implement TWC, §5.103 and §5.105; and HSC, §§361.085, 371.024, 371.026 and 371.028.

§37.2001. Applicability.

This subchapter applies to used oil transporters required to provide evidence of financial assurance [~~responsibility~~] under §324.22[~~(a)~~] of this title (relating to Soil Remediation for Used Oil Handlers) [~~(relating to Financial Responsibility Technical Requirements)~~]. This subchapter also applies to an owner or operator of a [~~owners and operators of~~] used oil transfer, processing, rerefining, and off-specification used oil burning facilities, hereinafter referred to as "used oil handlers," which are required to provide evidence of financial assurance [~~responsibility~~] under §324.22[~~(c) or (d)~~]) of this title. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for soil remediation and automobile insurance.

§37.2003. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 324 of this title (relating to Used Oil).

§37.2011. Financial Assurance [~~Responsibility~~] Requirements for Used Oil Handlers.

[~~(a) Processors or rerefiners who store or process used oil in aboveground tanks must, at closure of a tank system, demonstrate financial responsibility if necessary to comply with the closure requirements of 40 CFR §279.54(h)(1)(i). If the used oil handler cannot demonstrate that all contaminated soils are removed or decontaminated as required in 40 CFR §279.54(h)(1)(ii), then the used oil handler must further demonstrate financial responsibility by covering the soil and performing post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills under 40 CFR §§265.310, 265.117-265.120, and 265.145.~~]

[~~(b)~~] In addition to the requirements of this subchapter, used [~~Used~~] oil handlers who must demonstrate financial assurance for soil remediation must comply with [~~do so in an amount as specified in §324.22(c) or (d) of this title (relating to Financial Responsibility Technical Requirements). These used oil handlers shall meet the financial responsibility requirements of this section, in addition to the requirements specified under~~] Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) [~~(relating to Financial Assurance)~~], except that wherever the terms "Closure," "Post Closure," and "Corrective Action" are cited, they will need to be replaced with the term "Soil Remediation." [~~term "Closure" is cited it will need to be replaced with the term "Soil Remediation".~~]

[~~(c) An owner or operator subject to this subchapter may utilize any of the mechanisms specified paragraphs (1)-(7) of this~~

subsection. The original mechanism is required to be submitted to the Financial Assurance Section of the commission; and the amount specified for financial assurance will need to be adjusted annually for inflation as specified under §37.131 of the title (related to Annual Inflation Adjustments to Closure Cost Estimates).]

[(1) fully-funded trust;]

[(2) surety bond guaranteeing payment;]

[(3) surety bond guaranteeing performance;]

[(4) irrevocable standby letter of credit;]

[(5) insurance;]

[(6) financial test; or]

[(7) corporate guarantee.]

§37.2013. Financial Assurance Mechanisms for Used Oil Handlers.
A used oil handler subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action) to demonstrate financial assurance for soil remediation except a pay-in trust fund may not be used.

§37.2015. Submission of Documents.
An owner or operator required to provide financial assurance must submit an originally signed financial assurance mechanism prior to issuance of registration. The signed financial assurance mechanism must be in effect at the time it is submitted.

§37.2021. Financial Assurance [Responsibility] Requirements for Transporters of Used Oil.
(No change.)

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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Subchapter M. FINANCIAL ASSURANCE REQUIREMENTS FOR SCRAP TIRE SITES

30 TAC §§37.3001, 37.3003, 37.3011, 37.3021, 37.3031

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act, in Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; and HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new sections implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§37.3001. Applicability.

This subchapter applies to an owner or operator [owners and operators of scrap tire sites] required to provide [evidence of] financial assurance under Chapter 330, Subchapter R of this title (relating to Management of Used or Scrap Tires). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure.

§37.3003. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 330, Subchapter R of this title (relating to Management of Used or Scrap Tires).

§37.3011. Financial Assurance Requirements [for Scrap Tire Sites].

In addition to the requirements of this subchapter, owners or operators [An owner or operator] of a scrap tire site required to demonstrate [subject to this subchapter shall establish] financial assurance for [the] closure must comply with [of the facility that meets the requirements of this section, in addition to the requirements specified under] Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

[(1) The financial assurance for a scrap tire site shall be in the amount required under §330.821 of this title (relating to Closure Cost Estimate for Financial Assurance).]

[(2) An owner or operator subject to this subchapter may utilize any of the mechanisms specified in subparagraphs (A)-(I) of this paragraph. The original mechanism is required to be submitted to the executive director.]

[(A) Fully-funded trust;]

[(B) Surety bond guaranteeing payment;]

[(C) Surety bond guaranteeing performance;]

[(D) Irrevocable letter of credit;]

[(E) Insurance;]

[(F) Financial test;]

[(G) Corporate guarantee;]

[(H) Local government financial test; or]

[(I) Local government guarantee.]

[(3) Quarterly valuation statements are required for a fully-funded trust. The wording to Section 10 of the Trust Agreement specified in 37.301(a) of this title (relating to Trust Agreement for

~~Closure) will need to be revised as follows: Section 10. Quarterly Valuation. The trustee shall quarterly, within 15 days of quarter-end, furnish to the Grantor and the commission executive director a statement confirming the value of the Trust. Quarter-ends are designated as March 31, June 30, September 30, and December 31. Any securities in the Fund shall be valued at market value as of quarter-end. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the commission executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.~~]

[~~(4) Section 37.161 of this title (relating to Establishment of a Standby Trust) does not apply to an owner or operator who utilizes either a surety bond or irrevocable standby letter of credit under this subchapter.~~]

[~~(5) An owner or operator who utilizes the insurance mechanism as specified in §37.241 of this title (relating to Insurance for Closure) shall replace the wording specified in §37.241(b) of this title to read as follows: At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas.~~]

§37.3021. Financial Assurance Mechanisms.

An owner or operator subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action) for demonstrating financial assurance for closure, except:

(1) a pay-in trust fund may not be used;

(2) in §37.301(a), Section 10 shall be revised as follows: Section 10. Quarterly Valuation. The trustee shall quarterly, within 15 days of quarter-end, furnish to the Grantor and to the executive director a statement confirming the value of the Trust. Quarter-ends are designated as March 31, June 30, September 30, and December 31. Any securities in the Fund shall be valued at market value as of quarter-end. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement;

(3) §37.161 of this title (relating to Establishment of a Standby Trust) does not apply to an owner or operator who utilizes either a surety bond or irrevocable standby letter of credit under this subchapter;

(4) an owner or operator who utilizes the insurance mechanism as specified in §37.241 of this title (relating to Insurance) shall replace the wording specified in §37.241(b) of this title to read as follows: At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas.

§37.3031. Submission of Documents.

An owner or operator required to provide financial assurance must submit an originally signed financial assurance mechanism prior to issuance of registration. The signed financial assurance mechanism must be in effect at the time it is submitted.

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

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Subchapter N. FINANCIAL ASSURANCE REQUIREMENTS FOR THE TEXAS RISK REDUCTION PROGRAM RULES

30 TAC §§37.4001, 37.4011, 37.4021, 37.4031

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, imple-

menting SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendments and new section implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and §27.073; and HSC, §§341.031, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§37.4001. Applicability.

(a) This subchapter applies to persons required to provide financial assurance under §350.33 of this title (relating to Remedy Standard B) and §350.135 of this title (relating to Application Requirements).

(b) This subchapter establishes requirements and mechanisms for demonstrating financial assurance for post response action care under Remedy Standard B as specified in §37.4021 of this title (relating to Financial Assurance Requirements for Post Response Action Care) and for corrective action at Facility Operations Areas as specified in §37.4031 of this title (relating to Financial Assurance Requirements for Facility Operations Areas). In addition to the requirements of this subchapter, persons are also required to comply with Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) [~~This subchapter applies to a person subject to Chapter 350 of this title (relating to Texas Risk Reduction Program) who uses a physical control in accordance with §350.33 of this title (relating to Remedy Standard B) as part of the response action for an affected property during the post- response action care period~~].

§37.4011. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and Chapter 350 of this title (relating to Risk Reduction Program Rule), except where the following terms are used in this subchapter, the following definitions shall apply [~~The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise~~].

(1) Post-response action care - This term shall be used interchangeably with closure.

(2) Post-response action care estimate - The most recent written cost estimate for post- response action care for an affected property as required by §350.33(l) and (m) of this title (relating to Remedy Standard B) and approved by the executive director. For purposes of this subchapter, it shall be mean the same as "current cost estimate."

(3) Response action plan - The same as "closure plan."

§37.4021. Financial Assurance Requirements for Post-Response Action Care [~~Texas Risk Reduction Program Rule~~].

[~~(a) A person subject to this subchapter shall establish financial assurance for post-response action care for an affected property which meets the requirements of this section, in addition to the requirements specified under:~~]

[~~(1) Subchapter A of this chapter (relating to General Financial Assurance Requirements);~~]

[~~(2) Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure) except for §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates) and §37.161 of this title (relating to Establishment of a Standby Trust);~~]

[~~(3) Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure); and~~]

[~~(4) Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure), except as specified in this subchapter.~~]

(a) [~~(b)~~] The financial assurance provided shall be in the amount specified in the most recent post response [~~post-response~~] action care cost estimate required by §350.33(l), (m), or (n), as applicable, of this title (relating to Remedy Standard B).

(b) [~~(c)~~] A person subject to this subchapter may use [~~utilize~~] any of the [~~following~~] financial assurance mechanisms [~~instruments~~] specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action) to demonstrate financial assurance for post response [~~post-response~~] action care, except that a pay-in trust fund may not be used and a standby trust as specified in §37.161 of this title (relating to Establishment of a Standby Trust) is not required. [~~:~~]

[~~(1) fully-funded trust;~~]

[~~(2) surety bond guaranteeing payment;~~]

[~~(3) surety bond guaranteeing performance;~~]

[~~(4) irrevocable standby letter of credit;~~]

[~~(5) insurance;~~]

[~~(6) financial test; or~~]

[~~(7) corporate guarantee.~~]

(c) [~~(d)~~] A person who is required to provide financial assurance shall do so in accordance with §37.31 of this title (relating to Submission of Documents), but must submit the financial assurance [~~subject to this subchapter is not subject to §37.31 of this title (relating to Submission of Documents), but a person required by Chapter 350 of this title (relating to Texas Risk Reduction Program) to provide evidence of financial responsibility must submit originally signed financial assurance mechanism~~] within 90 days of the executive director's approval of the Response Action Plan.

[~~(e) For purposes of this subchapter, the following terms shall have the following meanings:~~]

[~~(1) The term "owner or operator" as used in other subchapters of this chapter shall be construed to include "person undertaking a response action subject to Chapter 350 of this title."~~]

[~~(2) The term "closure" as used in other subchapters of this chapter shall be construed to include "post- response action care."~~]

[~~(3) The term "closure plan" as used in other subchapters of this chapter shall be construed to include "response action plan."~~]

[~~(4) The term "closure cost estimate" as used in other subchapters of this chapter shall be construed to include "post-response action care estimate."~~]

[~~(5) References in §§37.221, 37.311, and 37.321 of this title (relating to Surety Bond Guaranteeing Performance for Closure, Wording for Payment Bond, and Wording for Performance Bond) to "registration or permit requirements" or "the registration or permit to (for) operate (operating) under authorization" shall be construed to include "the requirements of 30 TAC Chapter 350 of this title."~~]

(d) A person required to provide financial assurance is not subject to §37.131 of this title (relating to Annual Inflation Adjustments to Closure Estimates).

(e) [(f)] If an affected property undergoing post response [post-response] action care does not have an agency registration or permit number, any references to the agency registration or permit number in the wording of mechanisms specified in Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) may be replaced with any other applicable name or number assigned by the agency to the subject property.

§37.4031. Financial Assurance Requirements for Facility Operations Areas.

(a) A person who is subject to this subchapter may use any of the financial assurance mechanisms specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to demonstrate financial assurance for corrective action at a facility operations area, except that a pay-in trust fund may not be used.

(b) A person required to provide financial assurance shall submit it in accordance with §37.31 of this title (relating to Submission of Documents), but must do so within 60 days after the effective date of the permit or commission corrective action order authorizing the facility operations area.

(c) If a facility operations area does not have an agency registration or permit number, any references to the registration or permit number in the wording of mechanisms specified in Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure) may be replaced with any other applicable name or number assigned by the agency to the subject property.

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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Texas Natural Resource Conservation Commission
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Subchapter O. FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS AND UTILITIES

30 TAC §37.5011

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; and, Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; and HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed amendment implements TWC, §§5.103, 5.105, 26.011; and HSC, §§341.031, 341.035, and 341.0355.

§37.5011. Financial Assurance for a Public Water System or Retail Public Utility.

(a) Financial assurance demonstrations shall comply with the wordings of the mechanisms as described in Subchapter A of this chapter (relating to General Financial Assurance Requirements), Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure , Post Closure, and Corrective Action), Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), and Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), except operation should be substituted for closure and the appropriate statutory reference to Public Drinking Water or Utility Regulation should be cited in the mechanism.

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

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

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Subchapter P. FINANCIAL ASSURANCE FOR HAZARDOUS AND NONHAZARDOUS INDUSTRIAL SOLID WASTE FACILITIES

30 TAC §§37.6001, 37.6011, 37.6021, 37.6031, 37.6041

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act, in the Texas Health and Safety Code (HSC), §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and finally, HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed new sections implement TWC, §5.103 and §5.105; and HSC, §§361.017, 361.024, and 361.085.

§37.6001. Applicability.

(a) This subchapter applies to an owner or operator of interim status hazardous waste facilities required to provide financial assurance under §335.128 of this title (relating to Financial Assurance); owners or operators of hazardous waste facilities required to provide financial assurance under §335.179 of this title (relating to Financial Assurance); owners or operators of industrial solid waste or municipal hazardous waste facilities required to provide financial assurance under §335.7 of this title (relating to Financial Assurance Required); and owners or operators required to provide financial assurance for corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(b) This subchapter does not apply to owners or operators which are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(c) This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure, post closure, or corrective action.

§37.6011. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

§37.6021. Financial Assurance Requirements for Closure, Post Closure, and Corrective Action.

(a) In addition to the requirements of this subchapter, owners or operators required to demonstrate for closure, post closure, or corrective action must comply with Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), §335.112 of this title (relating to Standards), and §335.152 of this title (relating to Standards).

(b) Owners or operators subject to this subchapter may use any of the following mechanisms as specified in Subchapter C of this chapter to demonstrate financial assurance for closure, post closure, or corrective action:

(1) trust fund (fully funded or pay-in trust), except that:

(A) owners or operators of interim status hazardous waste facilities required to provide evidence of financial assurance under §335.128 of this title (relating to Financial Assurance) must make annual payments to fully fund the trust fund by July 6, 2002 or must make annual payments into the trust fund over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter;

(B) owners or operators of permitted hazardous waste facilities required to provide evidence of financial assurance under §335.179 of this title (relating to Financial Assurance), who previously operated under interim status rules and choose to establish a trust fund after having used one or more alternate mechanisms specified in this chapter, must make an initial payment in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subparagraph (A) of this paragraph; and

(C) the executive director will respond in writing within 60 days to requests for reimbursements made in accordance with §37.201(j) of this title (relating to Trust Fund);

(2) surety bond guaranteeing payment;

(3) surety bond guaranteeing performance, except that this mechanism may not be used by interim status hazardous waste facilities required to provide evidence of financial assurance under §335.128 of this title (relating to Financial Assurance);

(4) irrevocable standby letter of credit;

(5) insurance;

(6) financial test; or

(7) corporate guarantee.

(c) References in Subchapter D of this chapter to permit numbers should be changed to solid waste registration numbers.

(d) Owners or operators using a financial test or corporate guarantee must comply with §37.141 of this title (relating to Increase in Current Cost Estimate) except that mechanism increases must be made within 90 days after the close of each succeeding fiscal year.

§37.6031. Financial Assurance Requirements for Liability.

(a) Owners or operators required to demonstrate for liability must comply with Subchapters A, E, F, and G of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and Wording of the Mechanisms for Liability).

(b) An owner or operator of a hazardous waste treatment, storage, or disposal facility, subject to this section must demonstrate financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs.

(c) An owner or operator of a hazardous waste surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste subject to this section must demonstrate financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. An owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs.

(d) Owners or operators who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per- occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences

must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate.

(e) Owners or operators subject to this subchapter may use any of the mechanisms specified in Subchapter F of this chapter to demonstrate financial assurance for sudden and for nonsudden liability.

(f) Owners or operators required to provide liability coverage may not use a claims-made insurance policy as security unless the applicant places in escrow, as provided by the executive director, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

§37.6041. State Assumption of Responsibility.

(a) If the State of Texas either assumes legal responsibility for an owner's or operator's compliance with the closure, post closure, corrective action, or liability requirements of this chapter, or assures that funds will be available from state sources to cover those requirements, the owner or operator will be in compliance with the requirements of this chapter if the executive director determines that the state's assumption of responsibility is at least equivalent to the financial mechanisms specified in this chapter. The executive director will evaluate the equivalency of state guarantees principally in terms of certainty of the availability of funds for the required closure, post closure, or corrective action activities, or liability coverage; and the amount of funds that will be made available. The executive director may also consider other factors as the executive director deems appropriate. The owner or operator must submit to the executive director a letter from the State of Texas describing the nature of the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this chapter. The letter from the state must include, or have attached to it, the following information: the facility's permit number, name, physical and mailing addresses, and the amount of funds for closure, post closure, or corrective action or liability coverage that are guaranteed by the state. The executive director will notify the owner or operator of the determination regarding the acceptability of the state's guarantee in lieu of financial mechanisms specified in this chapter. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Upon approval by the executive director, the owner or operator will be deemed to be in compliance with the requirements of this chapter.

(b) If the State of Texas' assumption of responsibility is found acceptable as specified in subsection (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this chapter by use of both the state's assurance and additional financial mechanisms as specified in this chapter. The amount of funds available through the state and the owner or operator's mechanisms must at least equal the required amount.

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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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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Subchapter Q. FINANCIAL ASSURANCE FOR UNDERGROUND INJECTION CONTROL WELLS

30 TAC §§37.7001, 37.7011, 37.7021, 37.7031, 37.7041, 37.7051

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; and Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed new sections implement TWC, §§5.103, 5.105, 27.019, and 27.073; and HSC, §361.085.

§37.7001. Applicability.
This subchapter applies to an owner or operator required to provide financial assurance under Chapter 331 of this title (relating to Underground Injection Control). This subchapter establishes requirements for demonstrating financial assurance for plugging and abandonment, post closure, and liability.

§37.7011. Definitions.
Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and Chapter 331 of this title (relating to Underground Injection Control), except the term "plugging and abandonment" shall mean the same as "closure."

§37.7021. Financial Assurance Requirements for Plugging and Abandonment.

(a) An owner or operator subject to this subchapter shall establish financial assurance for the plugging and abandonment of each existing and new Class I well, Class III well, Class I salt cavern disposal well and associated salt cavern, or as otherwise directed by the executive director, in a manner that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) and §331.143 of this title (relating to Cost Estimate for Plugging and Abandonment).

(b) An owner or operator subject to this subchapter may use any of the following mechanisms as specified in Subchapter C

of this chapter to demonstrate financial assurance for plugging and abandonment:

(1) trust fund (fully funded or pay-in trust), except that the executive director will respond in writing within 60 days to requests for reimbursement made in accordance with §37.201(j) of this title (relating to Trust Fund);

(2) surety bond guaranteeing payment;

(3) surety bond guaranteeing performance;

(4) irrevocable standby letter of credit;

(5) insurance;

(6) financial test; or

(7) corporate guarantee.

(c) Owners or operators shall comply with §37.31 (relating to Submission of Documents), except that evidence of financial assurance shall be submitted at least 60 days prior to commencement of drilling operations for new wells and for salt cavern disposal wells. All financial assurance mechanisms shall be in effect before commencement of drilling operations. For converted wells and other previously constructed wells, financial assurance shall be provided at least 30 days prior to permit issuance and be in effect upon permit issuance.

(d) Owners or operators shall comply with §37.131 of this title (relating to Annual Inflation Adjustments to Current Cost Estimates), except that adjustments must be made by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its *Survey of Current Business*.

(e) Owners or operators using a financial test or corporate guarantee must comply with §37.141 of this title (relating to Increase in Current Cost Estimate) except that mechanism increases must be made within 90 days after the close of each succeeding fiscal year.

§37.7031. Financial Assurance Requirements for Post Closure.

(a) An owner or operator subject to this subchapter may be required to establish financial assurance for post closure of each existing and new Class I hazardous well and each existing and new Class I salt cavern disposal well and associated salt cavern, in a manner that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), §331.68 of this title (relating to Post-Closure Care), and §331.171 of this title (relating to Post- Closure Care).

(b) An owner or operator required to provide financial assurance for post closure may use any of the mechanisms specified in Subchapter C of this chapter to demonstrate financial assurance for post closure, except the Local Government Financial Test and Local Government Guarantee.

(c) Owners or operators shall comply with §37.31 of this title (relating to Submission of Documents), except that evidence of financial assurance for post closure shall be submitted at least 60 days prior to commencement of drilling operations for new wells and for salt cavern disposal wells. All financial assurance mechanisms shall be in effect before commencement of drilling operations. For converted wells and other previously constructed wells, financial assurance for post closure shall be provided at least 30 days prior to permit issuance and shall be in effect upon permit issuance.

(d) Owners or operators shall comply with §37.131 (relating to Annual Inflation Adjustments to Current Cost Estimates), except that adjustments must be made by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its *Survey of Current Business*.

(e) Owners or operators using a financial test or corporate guarantee must comply with §37.141 of this title (relating to Increase in Current Cost Estimate) except that mechanism increases must be made within 90 days after the close of each succeeding fiscal year.

§37.7041. Financial Assurance Requirements for Liability.

(a) An owner or operator of hazardous waste injection wells subject to this subchapter may be required to establish and maintain liability coverage for sudden and nonsudden bodily injury and property damage to third parties caused by accidental occurrences arising from operations of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, E, F, and G of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and Wording of the Mechanisms for Liability), §305.154(a)(11) of this title (relating to Standards), and §331.142 (relating to Financial Responsibility).

(1) An owner or operator required to establish and maintain liability coverage for sudden accidental occurrences must do so in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs.

(2) An owner or operator required to establish and maintain liability coverage for nonsudden accidental occurrences must do so in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs.

(3) Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate.

(b) An owner or operator subject to this subchapter may use any of the mechanisms specified in Subchapter F of this chapter to demonstrate financial assurance for sudden and nonsudden liability.

(c) Owners or operators required to provide liability coverage may not use a claims made insurance policy as security unless the applicant places in escrow, as provided by the executive director, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

§37.7051. State Assumption of Responsibility.

(a) If the State of Texas either assumes legal responsibility for an owner's or operator's compliance with plugging and abandonment, post closure, or liability requirements of this chapter or assures that funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this chapter if the executive director determines that the state's assumption of responsibility is at least equivalent to the mechanisms specified in this chapter. The executive director will evaluate the equivalency of state guarantees principally in terms of certainty of the availability of funds for the required plugging and abandonment, post closure, or liability coverage; and the amount of funds that will be made available. The executive director may also consider other factors. The owner or operator must submit to the executive director a letter from the State of Texas describing the nature of

the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this chapter. The letter from the state must include, or have attached to it, the following information: the facility's permit number, name, physical and mailing addresses, and the amount of funds for plugging and abandonment, post closure, or liability coverage that are guaranteed by the state. The executive director will notify the owner or operator of the determination regarding the acceptability of the state's guarantee in lieu of the mechanisms specified in this chapter. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Upon approval by the executive director, the owner or operator will be deemed to be in compliance with the requirements of this chapter.

(b) If the State of Texas' assumption of responsibility is found acceptable as specified in subsection (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this chapter by use of both the state's assurance and additional financial mechanisms as specified in this chapter. The amount of funds available through the state and owner or operator's mechanisms must at least equal the required amount.

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

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Subchapter R. FINANCIAL ASSURANCE FOR MUNICIPAL SOLID WASTE FACILITIES

30 TAC §§37.8001, 37.8011, 37.8021, 37.8031, 37.8041, 37.8051, 37.8061, 37.8071

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act, in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed new sections implement TWC, §5.103 and §5.105; and HSC, §§361.011,361.024, and 361.085.

§37.8001. Applicability.

This subchapter applies to an owner or operator required to provide financial assurance under Chapter 330 of this title (relating to Municipal Solid Waste). This subchapter does not apply to state or federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure, post closure, and corrective action.

§37.8011. Definitions.

Definitions for terms that appear throughout this subchapter may be found in this section, in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 330 of this title (relating to Municipal Solid Waste). Local government - A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over solid waste management. This definition includes a special district created under state law.

§37.8021. Financial Assurance Requirements.

In addition to the requirements of this subchapter, owners or operators required to demonstrate for closure, post closure, or corrective action must comply with Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

§37.8031. Financial Assurance Mechanisms.

(a) An owner or operator subject to this subchapter may use any of the financial assurance mechanisms in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), to provide financial assurance, except as specified in this section. The mechanisms must ensure that the funds necessary to meet the costs of closure, post closure, or corrective action shall be available when requested by the executive director.

(b) An owner or operator may use a fully funded trust, pay-in trust, or standby trust as provided in §37.201 of this title (relating to Trust Fund), except the pay-in period is ten years unless otherwise approved by the executive director. If the executive director approves a pay-in period in excess of ten years, the owner or operator shall submit, on an annual basis, certification from an independent registered professional engineer that there is adequate financial assurance for closure, post closure, or corrective action.

(c) An owner or operator may use a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), or a surety bond guaranteeing performance as provided in §37.221 of this title (relating to Surety Bond Guaranteeing Performance), except a payment bond may not be used to provide financial assurance for corrective action.

(d) An owner or operator may use insurance as provided in §37.241 of this title (relating to Insurance), except:

(1) insurance may not be used to provide financial assurance for corrective action;

(2) the insurer must be licensed in Texas; and

(3) the following provision found in §37.241(g) of this title does not apply: within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure, post closure, or corrective action activities or otherwise justified, and if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing.

(e) An owner or operator may use a corporate financial test as provided in §37.8061 of this title (relating to Corporate Financial Test for Municipal Solid Waste Facilities), except the owner or operator may not use the financial test under §37.251 of this title (relating to Financial Test).

§37.8041. State Assumption of Responsibility.

If the executive director either assumes legal responsibility for an owner's or operator's compliance with the closure, post closure, or corrective action requirements of this chapter, or assures that the funds shall be available from state sources to cover the requirements, the owner or operator shall be in compliance with the requirements of this section. The language of the mechanisms for any state assumption of responsibility shall ensure:

(1) the amount of funds assured is sufficient to cover the costs of closure, post closure, and corrective action for known releases when needed;

(2) the funds shall be available immediately;

(3) the financial assurance mechanisms shall be obtained by the owner or operator at least 60 days prior to the initial receipt of solid waste in the case of closure and post closure, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan, until the owner or operator is released from the financial assurance requirements under §§330.281, 330.282, 330.283, or 330.284 of this title (relating to Closure for Landfills; Closure for Process Facilities; Post Closure Care for Landfills; or Corrective Action for Landfills); and

(4) the financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

§37.8051. Submission of Documents.

An owner or operator may satisfy the requirements as provided in §37.31 of this title (relating to Submission of Documents), except the owner or operator required by this chapter to provide financial assurance for corrective action must submit an originally signed financial assurance mechanism no later than 120 days after the corrective action remedy has been selected. The signed financial assurance mechanism must be in effect when submitted.

§37.8061. Corporate Financial Test for Municipal Solid Waste Facilities.

An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by obtaining a corporate financial test or a corporate financial test and corporate guarantee, which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action).

(1) To pass this test, the owner or operator must satisfy one of the following three conditions:

(A) the owner or operator must have a current bond rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(B) a ratio of total liabilities to net worth less than 1.5; or

(C) a ratio of the sum of net income plus depreciation, depletion, and amortization, minus $10 million, to total liabilities greater than 0.10.

(2) The tangible net worth of the owner or operator must be greater than:

(A) the sum of the current cost estimates, and any other environmental obligations under the Texas Natural Resource Conservation Commission (TNRCC) or other federal or state environmental regulations, including guarantees, covered by a financial test, plus $10 million, except as provided in subparagraph (B) of this paragraph; or

(B) $10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current cost estimates and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements and subject to the approval of the executive director.

(3) The owner or operator must have assets located in the United States amounting to at least the sum of the current cost estimates, and any other environmental obligations covered by a financial test as described in paragraph (8) of this section.

(4) To demonstrate that the requirements of the test are being met, the owner or operator shall submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer worded identically to the wording specified in §37.8071 of this title (relating to Wording of Financial Assurance Mechanisms) that:

(i) lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under Chapter 330 of this title (relating to Municipal Solid Waste) and 40 Code of Federal Regulations (CFR) Part 258; cost estimates required for underground injection control (UIC) facilities under Chapter 331of this title (relating to Underground Injection Control) and 40 CFR Part 144; cost estimates required for petroleum underground storage tank facilities under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280; cost estimates required for polychlorinated biphenyl (PCB) storage facilities under 40 CFR Part 761; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 CFR Parts 264 and 265; and

(ii) provides evidence demonstrating that the firm meets the conditions of either paragraph (1)(A) or (B) or (C) of this section and paragraphs (2) and (3) of this section;

(B) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance by the executive director. The executive director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where

the executive director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the executive director does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section; and

(C) a special report which is based upon an agreed procedures engagement in accordance with professional auditing standards which:

(i) describes the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited year-end financial statements for the latest fiscal year with the amounts in such financial statements;

(ii) states the findings of that comparison and the reasons for any differences; and

(iii) includes a report from the independent certified public accountant verifying that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, verifying how these obligations have been measured and reported, and verifying that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided. This report is required if the chief financial officer's letter has assured for environmental obligations as provided in paragraph (2)(B) of this section.

(5) After the initial submission of items specified in paragraph (4) of this section, the owner or operator must annually send updated information to the executive director within 90 days following the close of the owner's or operator's fiscal year. This information shall consist of all items specified in paragraph (4) of this section. An additional 45 days may be provided to an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements.

(6) If the owner or operator no longer meets the requirements of paragraphs (1)-(3) of this section, the owner or operator shall send notice to the executive director of intent to establish alternate financial assurance as specified in this subchapter and provide the alternate financial assurance mechanism within 120 days following the close of the owner's or operator's fiscal year.

(7) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraphs (1)-(3) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (4) of this section. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraphs (1)-(3) of this section, the owner or operator must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(8) When calculating the current cost estimates for closure, post closure, or corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this section, the owner or operator must include cost estimates required for municipal solid waste management facilities under Chapter 330 of this title and 40 CFR Part 258. The owner or operator must also include current cost estimates required for the following environmental obligations, if the owner or operator assures them through a financial test: obligations including but not limited to UIC facilities under Chapter 331 of this title and 40 CFR Part 144; petroleum underground storage tank facilities under Chapter 334 of this title and 40 CFR Part 280; PCB storage facilities under 40 CFR Part 761; and hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title and 40 CFR Parts 264 and 265.

§37.8071. Wording of Financial Assurance Mechanisms.
A letter from the chief financial officer for closure, post closure, or corrective action, as specified in §37.8061 of this title (relating to Corporate Financial Test for Municipal Solid Waste Facilities) must be worded as specified in the Corporate Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.8071

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

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Subchapter S. FINANCIAL ASSURANCE FOR ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

30 TAC §§37.9001, 37.9005, 37.9010, 37.9015, 37.9020, 37.9025

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed new sections implement TWC, §5.103 and §5.105; and HSC, §§361.015, 361.018, 361.085, 401.051, and 401.412.

§37.9001. Applicability.
This subchapter applies to an owner or operator, including a state or federal government owner or operator, required to provide evidence of financial assurance under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of

Radioactive Material). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

§37.9005. Definitions.

Definitions for terms that appear throughout this subchapter may be found in this section, Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.502 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) Annual review - Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) Closure - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, groundwater restoration, stabilization, or monitoring.

(3) Control and maintenance - Shall be referenced as post closure.

(4) Facility - All contiguous land, water, buildings, structures, and equipment which are or were used for the disposal of radioactive material, including soils and groundwater contaminated by radioactive material.

(5) Post Closure - Shall be the same as control and maintenance as used in Chapter 336, Subchapter G of this title (relating to Decommissioning Standards).

(6) Site - Shall be used interchangeably with facility.

§37.9010. Submission of Documents.

An owner or operator required by this subchapter to provide financial assurance for closure or post closure must submit originally signed and effective financial assurance mechanisms to the executive director 60 days prior to commencement of operations.

§37.9015. Financial Assurance Requirements for Closure and Post Closure.

(a) An owner or operator subject to this subchapter shall establish financial assurance for closure or post closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action.)

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9020 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure or post closure. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms specified in §37.9020 of this title.

(4) Insurance, a surety bond for guaranteeing payment, or a surety bond guaranteeing performance for closure or post closure, must provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the owner or operator fails to provide a replacement acceptable to the executive director within 30 days after receipt of notification of cancellation.

(b) The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Issuing Institutions), except financial assurance must be established within 30 days after such an event.

§37.9020. Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except that 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), or a surety bond guaranteeing performance as provided in §37.221 of this title (relating to Surety Bond Guaranteeing Performance), except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit, within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) An owner or operator may satisfy the requirements of insurance as provided in §37.241 of this title (relating to Insurance), except:

(1) the insurer must be licensed in Texas; and

(2) cancellation, termination, or failure to renew may not occur during the 90 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts.

(e) An owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as provided in §37.251 of this title (relating to Financial Test), except the owner or operator which has issued rated bonds must also meet the criteria of paragraphs (1) and (3) of this subsection, or the owner or operator which has not issued rated bonds must also meet the criteria of paragraphs (2) and (3) of this subsection.

(1) The owner or operator must have:

(A) tangible net worth of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's; and

(D) at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The owner or operator must have:

(A) tangible net worth greater than $10 million, or of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities, whichever is greater;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a ratio of cash flow divided by total liabilities greater than 0.15; and

(D) a ratio of total liabilities divided by net worth less than 1.5.

(3) To demonstrate that the owner or operator meets the test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(a) of this title (relating to Wording of Financial Assurance Mechanisms); and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements specified in §37.261 of this title (relating to Corporate Guarantee). The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title (relating to Trust Fund) in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service. If the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the owner or operator no longer meets the requirements of paragraph (1) of this subsection.

(f) A parent company controlling a majority of the voting stock of the owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, and by meeting the requirements of a corporate guarantee as specified in §37.261 of this title, except a guarantor that is a corporation who has a substantial business relationship with the owner or operator may not use the corporate guarantee. The guarantor shall also comply with the requirements identified in this subsection.

(1) The wording of the corporate guarantee as specified in §37.361 of this title (relating to Corporate Guarantee) shall also include:

(A) the signatures of two officers of the owner or operator and two officers of the guarantor who are authorized to bind the respective entities; and

(B) the corporate seals.

(2) The guarantor shall also certify and submit to the executive director that the guarantor has:

(A) majority control of the owner or operator;

(B) full authority under the laws of the state under which it is incorporated and its articles of incorporation and bylaws to enter into this corporate guarantee;

(C) full approval from its board of directors to enter into this corporate guarantee; and

(D) authorization for each signatory.

(g) An owner or operator that is a nonprofit college, university, or hospital may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, except colleges and universities must also meet either the criteria of paragraphs (1) and (5) or (2) and (5) of this subsection, and hospitals must also meet either the criteria in paragraphs (3) and (5) or (4) and (5) of this subsection.

(1) Colleges or universities that issue bonds must have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's.

(2) For colleges or universities that do not issue bonds, unrestricted endowment must consist of assets located in the United States of at least $50 million or at least 30 times the total current cost estimate (or the current amount required if a certification is used), whichever is greater, for all closure and post closure activities for which the college or university is responsible as a self-guaranteeing owner or operator.

(3) Hospitals that issue bonds must have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's.

(4) Hospitals that do not issue bonds must meet the following criteria:

(A) total revenues less total expenditures divided by total revenues must be equal to or greater than 0.04;

(B) long-term debt divided by net fixed assets must be less than or equal to 0.67;

(C) current assets plus depreciation fund divided by current liabilities must be greater than or equal to 2.55; and

(D) operating revenues must be at least 100 times the total current cost estimate (or the current amount required if a certification is used) for all closure and post closure activities for which the hospital is responsible as a self-guaranteeing owner or operator.

(5) To demonstrate that the owner or operator meets the financial test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(b) of this title; and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements as specified in §37.261 of this title. The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title, in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service.

(h) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

(3) name of facility(ies), license number, and physical and mailing addresses; and

(4) corresponding current cost estimates.

(i) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

§37.9025. Wording of Financial Assurance Mechanisms.

(a) Except as provided in subsection (b) of this section, an owner or operator providing a self- guarantee, as specified in §37.9020(e) of this title (relating to Financial Assurance Mechanisms), must provide a letter from the chief financial officer as specified in §37.351 of this title (relating to Financial Test), except Alternative I and Alternative II as specified in §37.351 of this title shall be replaced with Alternative I and Alternative II of this subsection. Figure: 30 TAC §37.9025(a)

(b) An owner or operator that is a nonprofit college, university, or hospital providing a self-guarantee as specified in §37.9020(g) of this title, must provide a letter from the chief financial officer of the owner or operator as specified in §37.351 of this title, except Alternative I and Alternative II as specified in §37.351 of this title shall be replaced with Alternative I and Alternative II of this subsection. Figure: 30 TAC §37.9025(b)

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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Subchapter T. FINANCIAL ASSURANCE FOR NEAR-SURFACE LAND DISPOSAL OF RADIOACTIVE WASTE

30 TAC §§37.9030, 37.9035, 37.9040, 37.9045, 37.9050, 37.9055

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed new sections implement TWC, §5.103 and §5.105; and HSC, §§361.015, 361.018, 361.085, 401.051, and 401.412.

§37.9030. Applicability.

This subchapter applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter H of this title (relating to Licensing Requirements For Near-Surface Land Disposal of Radioactive Waste). This subchapter establishes requirements and

mechanisms for demonstrating financial assurance for closure and post closure.

§37.9035. Definitions.

Definitions for terms that appear throughout this subchapter are defined in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) Annual review - Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) Closure - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, groundwater restoration, stabilization, monitoring, or post closure observation and maintenance.

(3) Facility - All contiguous land, water, buildings, structures, and equipment which are or were used for the disposal of radioactive waste, including the radioactive waste, and soils and groundwater contaminated by radioactive material.

(4) Institutional control - Shall be referenced as post closure.

(5) Post closure - The same as institutional control as specified in §336.734 of this title (relating to Institutional Requirements).

§37.9040. Submission of Documents.

An owner or operator required by this subchapter to provide financial assurance for closure or post closure must submit originally signed and effective financial assurance mechanisms to the executive director 60 days prior to commencement of operations.

§37.9045. Financial Assurance Requirements for Closure and Post Closure.

(a) An owner or operator subject to this subchapter shall establish financial assurance for the closure or post closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9050 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure or post closure. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms as specified in §37.9050 of this title.

(4) The executive director may accept financial assurance established to meet requirements of other federal, state agencies, or local governing bodies for closure or post closure, provided such mechanism complies with the requirements of this chapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste).

(5) Proof of forfeiture must not be necessary to collect the financial assurance, so that in the event that the owner or operator does not provide an acceptable replacement financial assurance within the required time, the financial assurance mechanism shall be automatically collected prior to its expiration.

(b) The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Issuing Institutions), except financial assurance must be established within 30 days after such an event.

§37.9050. Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except within 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), or a surety bond guaranteeing performance as provided in §37.221 of this title (relating to Surety Bond Guaranteeing Performance), except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

(3) name of facility(ies), license number, and physical and mailing addresses; and

(4) corresponding current cost estimates.

(e) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

§37.9055. Institutional Control Requirements.

The institutional control requirements of this chapter shall apply to owners or operators specified under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) whose ownership of the site is subject to being transferred to the state or federal government.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter U. FINANCIAL ASSURANCE FOR MEDICAL WASTE TRANSPORTERS

30 TAC §§37.9060, 37.9065, 37.9070, 37.9075, 37.9080, 37.9085

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission. These rules are also proposed in accordance with Texas Government Code, §2001.39, implementing SB 178, 76th Legislature, 1999, which requires a quadrennial review of commission rules.

The proposed new sections implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§37.9060. Applicability.

This subchapter applies to all owners or operators required to provide financial assurance under Chapter 330, Subchapter Y of this title (relating to Medical Waste Management). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for automobile liability and pollution liability.

§37.9065. Definitions.

Definitions for terms that appear throughout this subchapter are defined in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and in Chapter 330, Subchapter Y of this title (relating to Medical Waste Management).

§37.9070. Financial Assurance Requirements.

(a) Owners or operators registered to transport medical waste are required to demonstrate for automobile liability and pollution liability and must comply with Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), except the following sections do not apply:

(1) §37.11 of this title (relating to Definitions); §37.31 of this title (relating to Submission of Documents); §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms); §37.51 of this title (relating to Use of a Financial Assurance Mechanism for Multiple Facilities); and §37.52 of this title (relating to Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas);

(2) §37.131 of this title (relating to Annual Inflation Adjustments to Current Cost Estimates) and §37.161 of this title (relating to Establishment of a Standby Trust).

(b) Owners or operators required to provide financial assurance under this subchapter may only use those financial assurance mechanisms as specified in §37.9075 of this title (relating to Financial Assurance Mechanisms).

(c) Owners or operators who transport medical waste are required to demonstrate financial assurance for automobile liability and pollution liability in the dollar limits specified in this subsection and are responsible for any liability costs that exceed these dollar limits. Such owners or operators must provide:

(1) a combined, single-limit automobile liability insurance policy with limits of at least $1 million per accident, exclusive of legal defense costs, that meets the requirements of subsection (d) of this section; and

(2) a pollution liability policy with a limit of $500,000, exclusive of legal defense costs, if the transporter registers one to seven vehicles or a pollution liability policy with a limit of $1 million, exclusive of legal defense costs, if the transporter registers more than seven vehicles; or

(3) an irrevocable letter of credit that meets the requirements specified in this subchapter, made payable to the Texas Natural Resource Conservation Commission in the following amount:

(A) $10,000, if three or less self-contained trucks or transport vehicles are registered;

(B) $35,000, if more than three self-contained trucks or transporter vehicles (not tractor-trailer units) are registered;

(C) $25,000, if three or less tractor-trailer vehicles are registered; or

(D) $50,000, if more than three tractor-trailer vehicles are registered.

(d) Owners or operators who transport medical waste shall comply with the following insurance requirements.

(1) The owner or operator who transports medical waste must be the named insured on the certificate of insurance and the certificate holder must be listed as the Texas Natural Resource Conservation Commission.

(2) The cancellation statement on the certificate shall read exactly as follows: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail a 60-day written cancellation notice to the certificate holder."

(3) Upon the executive director's receipt of a cancellation notice, the owner or operator who transports medical waste shall obtain alternate insurance coverage and submit evidence of such coverage to the commission before the effective date of the cancellation. Failure to do so will result in revocation of the registration.

(4) Evidence of pollution liability coverage is demonstrated by submitting a MCS 90 form along with the original certificate for the automobile coverage. The schedule of insured vehicles must accompany the certificate of insurance.

(5) Insurance coverage must be issued for at least one year by a carrier that is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Texas. The insurer must be acceptable to the executive director.

(6) An original or certified copy of the insurance policy shall be provided within 30 days from the date requested by the executive director.

§37.9075. Financial Assurance Mechanisms.

Owners or operators subject to this subchapter may use the following financial assurance mechanisms:

(1) a certificate of insurance to demonstrate automobile liability coverage; and

(2) an MCS90 form or letter of credit to demonstrate pollution liability coverage. The letter of credit is subject to the requirements specified in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(A) whenever the terms "closure," "post closure," "corrective action," or "current cost estimate" are cited, replace with "pollution liability"; and

(B) in §37.231(h) of this title, the following statement will be added: "Failure to obtain alternate insurance coverage and submit evidence of such coverage to the executive director before the effective date of the cancellation will result in revocation of the registration."

§37.9080. Submission of Documents.

An owner or operator required to provide financial assurance must submit an originally signed financial assurance mechanism prior to issuance of registration. The signed financial assurance mechanism must be in effect at the time it is submitted.

§37.9085. Incapacity of Owners or Operators Registered to Transport Medical Waste or of the Issuing Institution.

The requirements specified in §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Issuing Institutions) shall be satisfied, except 60 days should be changed to 30 days as specified in §37.71(b) of this title.

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

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Chapter 305. CONSOLIDATED PERMITS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§305.49, 305.50, 305.64, 305.69, and 305.154, concerning Consolidated Permits.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 305 as the result of ongoing efforts by the commission for regulatory reform. This chapter focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 324, 330, 331, 334, 335, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the

commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with commission rules and federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments to Chapter 305.

SUBCHAPTER C: APPLICATION FOR PERMIT

Sections 305.49 and 305.50 are proposed to be amended to correct cross-references.

SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

Sections 305.64 and 305.69 are proposed to be amended for consistency with commission rules and to correct cross-references.

SUBCHAPTER H: ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

Section 305.154 is proposed to be amended to clarify the applicability of the liability coverage and to correct cross-references. Proposed amendments to §305.154(11) implement Texas Water Code (TWC), §27.051 and clarify the requirements and format to be followed for liability coverage for hazardous waste injection wells.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 305, Consolidated Permits, would consolidate financial assurance requirements which are currently located in various chapters throughout the programs' rules including: Chapter 37-Financial Assurance; Chapter 324-Used Oil Standards; Chapter 330-Municipal Solid Waste; Chapter 331-Underground Injection Control; Chapter 334- Underground and Aboveground Storage Tanks; Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed amendments would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small busi-

nesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set be federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed, because they implement critical portions of the state law concerning financial assurance. Finally, these rules are not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rules consistent with commission and federal rules. Promulgation and enforcement of the rule amendments will not create a burden on private real property. There are few significant, new requirements being added. In the few instances where substantive changes are being proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these

proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

Subchapter C. APPLICATION FOR PERMIT

30 TAC §305.49, §305.50

STATUTORY AUTHORITY

The amendments are proposed 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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides authority for the commission to require financial assurance from used oil handlers, and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following shall be included in an application for an injection well permit:

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

(3) the manner in which compliance with the financial assurance [~~responsibility~~] requirements of Chapter 37 of this title

(relating to Financial Assurance) [§305.153 of this title (relating to Financial Responsibility)] will be attained;

(4)-(10) (No change.)

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

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

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

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Current Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), [(b), and (c)] and §335.178 of this title (relating to Cost Estimate for Closure).

(B) (No change.)

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure [post-closure care], corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities) [Title 40 Code of Federal Regulations, Part 264, Subpart H as adopted by reference under §335.152(a)(6) of this title (relating to Standards)];

(ii)-(iii) (No change.)

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i)-(vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure [post-closure care], corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title [Title 40 Code of Federal Regulations, Part 264, Subpart H as adopted by reference under §335.152(a)(6) of this title (relating to Standards)].

(ii)-(vii) (No change.)

(E)-(G) (No change.)

(5)-(14) (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 October 7, 1999.

TRD-9906693
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.64, §305.69

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the

commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides authority for the commission to require financial assurance from used oil handlers; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §§5.103, 5.105, 26.011, 26.346, 26.352, 27.019, and 27.073; and HSC, §§341.031, 341.035, 341.0355, 361.011, 361.015, 361.017, 361.018, 361.024, 361.085, 361.428, 371.024, 371.026, 371.028, 401.051, and 401.412.

§305.64. Transfer of Permits.

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

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), [~~40 Code of Federal Regulations (CFR) Part 264, Subpart H, as adopted by reference in §335.152(a)(6) of this title (relating to Standards)~~] until the new owner or operator has demonstrated compliance with [~~to the executive director that he is complying with~~] the requirements of Chapter 37, Subchapter P of this title [~~40 CFR Part 264, Subpart H~~]. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title [~~40 CFR Part 264, Subpart H requirements~~] within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with Chapter 37, Subchapter P of this title [~~40 CFR Part 264, Subpart H~~], the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title [~~40 CFR Part 264, Subpart H~~] as of the date of demonstration.

(h)-(j) (No change.)

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a)-(g) (No change.)

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

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

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring and Chapter 37 of this title (relating to Financial Assurance) [~~financial responsibility requirements of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and 40 CFR Part 265~~]] on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) (No change.)

(i) - (j) (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 October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

30 TAC §305.154

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; Texas Health and Safety Code (HSC), §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and finally, HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §§5.103, 5.105, 26.011, 27.019, and 27.073; and HSC, §§341.031, 361.017, 361.024, and 361.085.

§305.154. Standards.

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate.

(1)-(8) (No change.)

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon [~~the underground injection operation~~] in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells) [~~a manner prescribed by the executive director~~]. The permittee shall show evidence of such financial responsibility to the executive director [~~by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the executive director~~].

(10) (No change.)

(11) Liability coverage [~~insurance~~] requirements. The permittee of hazardous waste injection wells shall maintain sufficient [~~public~~] liability coverage [~~insurance~~] for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents in accordance with Chapter 37, Subchapter Q of this title [~~or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this paragraph if the policy covers the injection well and is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state~~].

(b) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Chapter 324. USED OIL STANDARDS

Subchapter A. USED OIL RECYCLING

30 TAC §324.22

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §324.22, concerning Used Oil Standards.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 324 as the result of ongoing efforts by the commission for regulatory reform. This rule focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 305, 330, 331, 334, 335, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this rule are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rule are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with commission rules and federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage

tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraph describes the proposed amendment to Chapter 324.

SUBCHAPTER A: USED OIL RECYCLING

Section 324.22 is proposed to be amended for compatibility with commission rules and to clarify to whom the rules apply. Proposed cross-references send the reader to the associated rules with which a used oil handler must also comply. Section 324.22 is proposed to be amended to accommodate a technical requirement which was previously found in 30 TAC §37.2011.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed section is in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed section. The proposed amendments to Chapter 324, Used Oil Standards, would consolidate financial assurance requirements which are currently located in various chapters throughout the programs' rules including: Chapter 37-Financial Assurance; Chapter 305-Consolidated Permits; Chapter 330-Municipal Solid Waste; Chapter 331-Underground Injection Control; Chapter 334- Underground and Aboveground Storage Tanks, Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rule also includes acceptable mechanisms for demonstrating financial responsibility. The proposed section would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the section is in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although this rule is adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rule will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rule is a "major environmental rule." The proposed rule provides better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes.

In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, the rule does not meet any of the four applicability requirements listed in §2001.0225(a). The rule does not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in this rule are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and the rule is consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed because they implement critical portions of the state law concerning financial assurance. Finally, the rule is not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rule consistent with commission and federal rules. Promulgation and enforcement of the rule amendment will not create a burden on private real property. There are few significant, new requirements added. In the few instances where substantive changes are proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no sub-

stantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; HSC, Used Oil Collection, Management, and Recycling Act, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; and under HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.085, 371.024, 371.026, 371.028.

§324.22. Soil Remediation Requirements for Used Oil Handlers.

(a) (No change.)

(b) Used oil handlers, subject to this section as they pertain to soil remediation and transporters of used oil, must meet the requirements of Chapter 37, Subchapter L of this title (relating to Financial Assurance for Used Oil Recycling). [~~Transporters of used oil must meet the requirements as they pertain to insurance in Chapter 37, §37.2021 of this title (relating to Financial Responsibility Requirements for Transporters of Used Oil). Also, used oil handlers subject to the requirements as they pertain to soil remediation of either subsection (c) or (d) of this section must meet the requirements in §37.2011 of this title (relating to Financial Responsibility Requirements for Used Oil Handlers.~~]

(c) Used oil handlers meeting the requirements of this subsection must provide financial assurance for soil remediation in the amounts specified. A used oil handler must, within 30 days after an increase in the active area of the facility which results in a higher financial assurance requirement, provide for increased financial assurance. Additionally, a used oil handler must, at a minimum, update its financial assurance annually to cover any increased cost due to inflation and to account for any other appropriate adjustments, including a lower financial assurance amount. The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs. Records demonstrating the size of the active area of the facility and related financial assurance are to be maintained in the facility's operating record; however, the original financial assurance mechanism must be submitted to the commission per §37.2015 of this title (relating to Submission of Documents) [~~§37.2011(c) of this title~~]. The amount required for financial assurance is:

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

(d) Used oil handlers may meet the following alternate requirements:

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

(3) Used oil handler facilities must be provided with [~~have~~] secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but [~~. These areas include but are~~] not limited to , loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours; and [~~. Also,~~] the facility's used oil tanks, containers, and secondary containment must be constructed, operated, and maintained to conform to [~~meet~~] the requirements of Title 40 Code of Federal Regulations §§264.174, 264.193(c)-(f), and 264.195(b), as if the used oil were hazardous waste, or to conform to the following [~~or to meet the following requirements~~]:

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

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

(e) As required, processors or re-refiners who store or process used oil in aboveground tanks must, at closure of a tank system, demonstrate financial assurance in the amount of the cost to comply with the closure requirements of 40 CFR §279.54(h). If the used oil handler cannot demonstrate that all contaminated soils are removed or decontaminated as required in 40 CFR §279.54(h), the used oil handler must further demonstrate financial assurance in the amount required to cover the soil and perform post closure in accordance with the closure and post closure care requirements that apply to hazardous waste landfills under 40 CFR §§265.310, 265.117-265.120, and 265.145.

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 October 7, 1999.

TRD-9906696
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Chapter 330. MUNICIPAL SOLID WASTE

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§330.3, 330.41, 330.52, 330.56, 330.60, 330.65, 330.66, 330.70-330.73, 330.238,

330.253, 330.254, 330.280-330.284, 330.416, 330.1005, and 330.1010 and the repeal of §§330.9, 330.285, and 330.286, concerning Municipal Solid Waste.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 330 as the result of ongoing efforts by the commission for regulatory reform. This chapter focuses on financial assurance and is based upon a two step- process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 305, 324, 331, 334, 335, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with commission and federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments and repeals to Chapter 330.

SUBCHAPTER A: GENERAL INFORMATION

Section 330.3 is proposed to be amended for the purposes of consolidation and clarification as to whom these rules apply. The proposed amendments to §330.3 also delete an obsolete date and include cross-references to indicate the financial assurance rules with which owners and operators of municipal solid waste facilities must comply. The April 9, 1994 effective date is proposed to no longer be used because the deadline is obsolete. The date April 9, 1994, came from the United States Environmental Protection Agency's (EPA) federal deadline to implement the financial assurance requirements of 40 Code of Federal Regulations (CFR) Part 258, Subpart G. EPA extended this deadline to April 9, 1995 and then to April 9, 1997, which became the final deadline. The commission concurred with EPA's extensions and the final deadline.

Section 330.9 is proposed to be repealed because it is proposed to be replaced with commission regulations which implement EPA's Subtitle D requirements for municipal solid waste facilities. These regulations were previously located in Chapter 330, Subchapter K, but are being simultaneously proposed in Chapter 37, Subchapter R, entitled *Financial Assurance for Municipal Solid Waste Facilities*.

SUBCHAPTER D: CLASSIFICATION OF MUNICIPAL SOLID WASTE FACILITIES

Section 330.41 is proposed to be amended for the purposes of consolidation and to correct cross- references.

SUBCHAPTER E: PERMIT PROCEDURES

Sections 330.52, 330.56, 330.60, 330.65, 330.66, and 330.70-330.73 are proposed to be amended for the purposes of consolidation and to correct cross-references.

SUBCHAPTER I: GROUNDWATER MONITORING AND CORRECTIVE ACTION

Section 330.238 is proposed to be amended for the purposes of consolidation and to correct a cross-reference.

SUBCHAPTER J: CLOSURE AND POST-CLOSURE

Section 330.253 is proposed to be amended to correct cross-references and to clarify that the written estimate must comply with the requirements of Chapter 330, Subchapter K.

Section 330.254 is proposed to be amended to correct cross-references and to clarify that the written estimate must comply with the requirements of Chapter 330, Subchapter K.

SUBCHAPTER K: FINANCIAL ASSURANCE

The title of Subchapter K is proposed to be amended from *Financial Assurance* to *Closure, Post- Closure, and Corrective Action* to more accurately reflect the subject matter of the subchapter and for the purpose of consolidation. Previously, Subchapter K contained the requirements for closure, post- closure, corrective action, and financial assurance. As proposed, the rules pertaining to financial assurance will be removed and Chapter 330, Subchapter K will contain only the requirements for closure, post-closure, and corrective action. The financial assurance requirements relating to municipal solid waste are proposed to be located in Chapter 37, Subchapter R. These proposed rule amendments include cross-references to direct the reader between Chapter 330 and Chapter 37.

Section 330.280 is proposed to be amended to clarify that Subchapter K contains provisions relating to closure, to post-closure, and to corrective action. The term "permitted" is proposed to become "authorized" to include permitted facilities, registered facilities, and those facilities operating without a permit or registration. As proposed, the statement pertaining to state or federal government entities is to be deleted for the purpose of consolidation; however, the concept is being concurrently proposed in Chapter 37, Subchapter R, because the statement is specific to financial assurance. Finally, the rule is proposed to be modified to delete an obsolete date. The April 9, 1994 effective date is proposed to no longer be used because the deadline is obsolete. The date April 9, 1994, came from EPA's federal deadline to implement the financial assurance requirements of 40 CFR Part 258 Subpart G. EPA extended this deadline to April 9, 1995 and then to April 9, 1997, which became the final deadline. The commission concurred with EPA's extensions and the final deadline.

The title of §330.281 is proposed to be amended from *Financial Assurance for Closure of Landfills* to *Closure for Landfills* to more accurately reflect the subject matter of the section and for the purposes of consolidation. Further proposed amendments are made to correct cross-references, to accommodate consolidation, and to clarify that a request to reduce the cost estimate and the financial assurance amount must be made 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism.

The title of §330.282 is proposed to be amended from *Financial Assurance for Closure of Process Facilities* to *Closure for Process Facilities* for the purpose of consolidation and to more accurately reflect the subject matter of the section. Further proposed amendments are made to correct cross-references, to accommodate consolidation, and to clarify that a request to reduce the cost estimate and the financial assurance amount is to be submitted 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism.

The title of §330.283 is proposed to be amended from *Financial Assurance for Post- Closure Care of Landfills* to *Post-Closure Care for Landfills* to more accurately reflect the subject matter of the section. Further proposed amendments are made to correct cross- references, to accommodate consolidation, and to clarify that a request to reduce the cost estimate and the financial assurance amount is to be submitted 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism.

The title of §330.284 is proposed to be amended from *Financial Assurance for Corrective Action* to *Corrective Action for Landfills* for the purpose of consolidation and to more accurately reflect the subject matter of the section. Further proposed amendments are made to correct cross-references, to accommodate consolidation, and to clarify that a request to reduce the cost estimate and the financial assurance amount is to be submitted 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism.

Sections 330.285 and 330.286 are proposed to be repealed for the purpose of consolidation because the requirements for financial assurance mechanisms and the wording of the financial assurance instruments are being simultaneously proposed for inclusion in Chapter 37, Subchapter R, entitled *Financial Assurance for Municipal Solid Waste Facilities*. The April 9, 1994 effective date previously in Chapter 37, Subchapter R, will no longer be used because the deadline is obsolete. The date April 9, 1994, came from EPA's federal deadline to implement the financial assurance requirements of 40 CFR Part 258, Subpart G. EPA extended this deadline to April 9, 1995 and then to April 9, 1997, which became the final deadline. The commission concurred with EPA's extensions and the final deadline.

SUBCHAPTER N: LANDFILL MINING

Section 330.416 is proposed to be amended for the purposes of consolidation and to correct a cross-reference.

SUBCHAPTER Y: MEDICAL WASTE MANAGEMENT

Section 330.1005 is proposed to be amended to accommodate consolidation, to provide a cross- reference, and to delete provisions that are being simultaneously proposed in Chapter 37, Subchapter U, concerning the financial assurance requirements for medical waste transporters.

Section 330.1010 is proposed to be amended to delete obsolete provisions which were previously included, in error, as financial assurance provisions. These entities were not meant to be subject to the requirements of financial assurance.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 330, Municipal Solid Waste, would consolidate financial assurance require-

ments which are currently located in various chapters throughout the programs' rules including: Chapter 37-Financial Assurance; Chapter 305-Consolidated Permits; Chapter 324-Used Oil Standards; Chapter 331-Underground Injection Control; Chapter 334- Underground and Aboveground Storage Tanks, Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed sections would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments and repeals revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set be federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed because they implement critical portions of the state law concerning financial assurance. Finally, these rules are not being proposed under an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments and repeals is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rules consistent with commission and federal rules. Promulgation and enforcement of the rule amendments and repeals will not create a burden on private real property. There are few significant, new requirements be-

ing added. In the few instances where substantive changes are being proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

Subchapter A. GENERAL INFORMATION

30 TAC §330.3

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC

and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.3. Applicability.

(a)-(g) (No change.)

(h) [~~Financial assurance requirements contained in §§330.280-330.286 of this title (relating to Financial Assurance) shall become effective April 9, 1994. Until that date,~~] Owners[~~owners~~] or operators of municipal solid waste facilities are required to comply with the financial assurance requirements specified in Chapter 37, Subchapter R [~~of §330.9~~] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities [~~Financial Assurance Required~~]) and Chapter 330, Subchapter K of this title (relating to Closure, Post-Closure, and Corrective Action).

(i) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906697
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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30 TAC §330.9

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (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 laws of this state. The repeal is also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.9. Financial Assurance Required.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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♦ ♦ ♦

Subchapter D. CLASSIFICATION OF MUNICIPAL SOLID WASTE FACILITIES

30 TAC §330.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.41. Types of Municipal Solid Waste Sites.

(a) (No change.)

(b) Municipal solid waste facility-Type I. A Type I facility shall be considered to be the standard landfill for the disposal of municipal solid waste. All solid waste deposited in a Type I facility shall be compacted and covered at least daily. The commission may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste. The operational and design standards prescribed in §§330.50-330.65 of this title (relating to Permit Procedures), §§330.111-330.139 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites), §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites), §§330.200-330.206 of this title (relating to Groundwater Protection Design and Operation), §§330.230-330.242 of this title (relating to Groundwater Monitoring and Corrective Action), §§330.250-330.256 of this title (relating to Closure and Post-Closure), Chapter 330, Subchapter K of this title (relating to Closure, Post- Closure, and Corrective Action), Chapter 37, Subchapter R [~~§§330.280-330.286~~] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities), and §§330.300-330.305 of this title (relating to Location Restrictions), unless otherwise specified in §330.3(e) of this title (relating to Applicability), shall be followed.

Those facilities meeting the requirements of §330.3(e) of this title shall be referred to as Type I-AE facilities and are exempt from all requirements pertaining to, but not limited to, §§330.200-330.206 and §§330.230-330.242 of this title (relating to Groundwater Protection Design and Operation and Groundwater Monitoring and Corrective Action, respectively). Type I Facilities that are authorized to operate a Type IV cell or trench shall operate the cell or trench in accordance with subsection (e) of this section.

(c)-(j) (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 October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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Subchapter E. PERMIT PROCEDURES

30 TAC §§330.52, 330.56, 330.60, 330.65, 330.66, 330.70-330.73

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.52. Technical Requirements of Part I of the Application.

(a) (No change.)

(b) Additional requirements of Part I.

(1)-(10) (No change.)

(11) Evidence of financial assurance. The applicant shall submit a copy of the documentation required to demonstrate financial assurance as specified in Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and [~~under §330.9 of this title (relating to Financial Assurance Required) or~~] Chapter 37, Subchapter R [~~§§330.280-330.286~~] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities), as applicable. For a new facility, a copy of the required documentation shall be submitted 60 days prior to the initial receipt of waste.

§330.56. Attachments to the Site Development Plan.

(a)-(g) (No change.)

(h) Attachment 8-cost estimate for closure and post-closure care. The applicant shall submit a cost estimate for closure and post-closure care costs in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) [~~§§330.280-330.286 of this title (relating to Financial Assurance)~~].

(i)-(o) (No change.)

§330.60. Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI).

(a) (No change.)

(b) Unless an exception is granted by the executive director, the registration application shall be supported by the following:

(1) estimate of the cost of closure of the facility as specified in Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and evidence of financial assurance in that amount and in a form specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~§§330.280-330.286 of this title (relating to Financial Assurance)~~].

(2) (No change.)

§330.65. Registration for Solid Waste Management Facilities.

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

(d) Application. The complete registration application shall include Part I of a permit application as required by §330.52 of this title (relating to Technical Requirements of Part I of the Application), including, but not limited to, documentation of population or incoming waste rate, site plan, land use narrative, site operating plan, legal description, evidence of competency, evidence of financial assurance, and an applicant's statement, and shall be submitted as follows.

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

(7) Evidence of financial assurance. Evidence of financial assurance shall be provided in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~for all facilities registered under this section and those facilities shall comply with provisions of Subchapter K, §§330.280-330.286 of this chapter (relating to Financial Assurance)~~].

(8) (No change.)

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

§330.66. Liquid Waste Transfer Facility Design and Operation.

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

(c) Notification. The owner or operator shall notify the executive director in writing of the intent to operate a liquid waste transfer facility 30 days prior to the operation of the facility by completing a TNRCC Form entitled "Notice of Intent to Operate a Liquid Waste Transfer Facility," available from the TNRCC. The facility will be issued a registration number by the TNRCC upon receipt of the Form. Documentation of the facility design and operation shall be maintained as follows.

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

(6) Evidence of financial assurance. For fixed facilities only, evidence of financial assurance shall be submitted to the TNRCC

in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~§§330.9, 330.282, 330.285, and 330.286 of this title (relating to Financial Assurance)~~]. A cost estimate of the cost to close the facility shall be submitted with the notice. The financial assurance document shall be submitted prior to facility operation. The financial assurance instrument will be released upon approval of the executive director.

(7) (No change.)

(d)-(e) (No change.)

§330.70. Registration of Facilities that Recover Gas for Beneficial Use.

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

(e) Registration application. The applicant shall submit an application as follows.

(1)-(7) (No change.)

(8) Evidence of financial assurance. Municipal solid waste landfill facilities are subject to Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~the Subchapter K requirements of §330.9 of this title (relating to Financial Assurance)~~].

(9) (No change.)

(f) (No change.)

§330.71. Registration for Municipal Solid Waste Facilities that Process Grease Trap Waste, Grit Trap Waste, or Septage.

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

(e) Registration application. The registration application shall be a completed Part A Application Form and an engineering report prepared and sealed by a professional engineer as required by the Texas Engineering Practice Act. The engineering report shall consist of all applicable information required in §330.52 of this title (relating to Technical Requirements of Part I of the application). Information required by §330.52 of this title includes but is not limited to maps, legal description, property owner affidavit, legal authority, evidence of competency, and evidence of financial assurance. Additional requirements of the contents of the engineering report are outlined as follows.

(1)-(8) (No change.)

(9) Evidence of financial assurance. Evidence of financial assurance shall be provided in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~§§330.9, 330.282, 330.285, and 330.286 of this title (relating to Financial Assurance Required, Financial Assurance for Closure of Process Facilities, Financial Assurance Mechanisms, and Wording of the Instruments)~~]. A cost estimate of the cost to close the facility shall be submitted as part of the application.

(10) (No change.)

(f)-(j) (No change.)

§330.72. Registration for Mobile Liquid Waste Processing Units.

(a)-(e) (No change.)

(f) Registration application. The registration application shall be a completed Part A Application Form and an engineering report prepared and sealed by a professional engineer as required by the Texas Engineering Practice Act. Requirements of the contents of the engineering report are outlined as follows.

(1)-(8) (No change.)

(9) Evidence of financial assurance. Evidence of financial assurance shall be provided in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~§§330.9, 330.282, 330.285, and 330.286 of this title (relating to Financial Assurance Required, Financial Assurance for Closure of Process Facilities, Financial Assurance Mechanisms, and Wording of the Instruments)~~]. A cost estimate of the cost to dispose of the contents of the unit, if abandoned or rendered unusable, shall be submitted prior to operation.

(10)-(11) (No change.)

(g)-(j) (No change.)

§330.73. Registration of Demonstration Projects for Liquid Waste Processing Facilities.

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

(d) Registration application. The registration application shall be a completed Part A Application Form and an engineering report prepared and sealed by a professional engineer as required by the Texas Engineering Practice Act. The engineering report shall consist of all applicable information required in §330.52 of this title (relating to Technical Requirements of Part I of the Application). Information required by §330.52 of this title includes, but is not limited to: maps, legal description, property owner affidavit, legal authority, evidence of competency, and evidence of financial assurance. Additional requirements of the contents of the engineering report are outlined as follows.

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

(7) Evidence of financial assurance. Evidence of financial assurance shall be provided in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~§§330.9, 330.282, 330.285, and 330.286 of this title (relating to Financial Assurance Required, Financial Assurance for Closure of Process Facilities, Financial Assurance Mechanisms, and Wording of the Instruments)~~]. A cost estimate of the cost to close the facility shall be submitted as part of the application.

(8) (No change.)

(e)-(i) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter I. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §330.238

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.238. Implementation of the Corrective Action Program.

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

(g) Upon submittal of satisfactory certification of the completion of the corrective action remedy, the executive director may release the owner or operator from the requirements for financial assurance for corrective action under §330.284 of this title (relating to Corrective Action for Landfills [~~Financial Assurance for Corrective Action~~]).

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 October 7, 1999.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Subchapter J. CLOSURE AND POST-CLOSURE

30 TAC §330.253, §330.254

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.253. Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993 and MSW Sites.

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

(d) The owner or operator of all MSWLF units or lateral expansions at a facility shall prepare a written final closure plan for submittal to the executive director for review and approval that describes the steps necessary to close all MSWLF units or MSW sites at any point during the active life of the unit or MSW site in accordance with §330.254(a) or (b) of this title (relating to Post-Closure Care Maintenance Requirements), as applicable. The final closure plan, at a minimum, shall include the following information:

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

(6) a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure most expensive, as indicated by the closure plan and which satisfies the requirements specified in Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action). During the active life of the MSWLF unit, the owner or operator shall annually adjust the closure cost estimate and the amount of financial assurance for inflation in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~§§330.280-330.286 of this title (relating to Financial Assurance)~~]. The revised closure cost estimate shall be submitted to the executive director. Evidence of any additional financial assurance shall be provided to the executive director within 30 days after the annual anniversary date.

(e)-(f) (No change.)

§330.254. Post-Closure Care Maintenance Requirements.

(a) (No change.)

(b) Post-closure care maintenance requirements for MSWLF units closing on or after October 9, 1993.

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

(3) The owner or operator of all existing MSWLF units or lateral expansions at a facility shall submit a post-closure plan to the executive director for review and approval and place a copy of the approved post-closure plan in the operating record no later than the effective date of this title or by the initial receipt of waste, whichever is later. For all new MSWLF units, the post-closure plan shall be submitted to the executive director for review and approval in conjunction with the site development plan. The post-closure plan shall include, at a minimum, the following information:

(A)-(C) (No change.)

(D) a detailed written estimate, in current dollars, of the cost of post-closure care maintenance and any corrective action as described in the post-closure care plan or required by the commission and which satisfies the requirements specified in Subchapter K of this

chapter (relating to Closure, Post- Closure, and Corrective Action). The owner or operator shall annually adjust this estimate and the amount of financial assurance for inflation in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [§§330.280- 330.286 of this title (relating to Financial Assurance)]. The revised estimate shall be submitted to the executive director. Evidence of any additional financial assurance shall be provided to the executive director within 30 days after the annual anniversary date.

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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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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Subchapter K. CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION

30 TAC §§330.280-330.284

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.280. Applicability.

The closure, post-closure, or corrective action requirements of this section apply to owners and operators of any municipal solid waste facility authorized [permitted] under this chapter[, except for owners and operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. The requirements of this section become effective April 9, 1994].

§330.281. Closure for Landfills [Financial Assurance for Closure of Landfills].

(a) A detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest area of the landfill ever requiring a final closure at any time during the active life of the unit in accordance with the final cost closure plan shall be provided. For any landfill this means the completion of the final closure requirements. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the largest area of all landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

[(2) During the active life of the unit, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.]

(2) [(3)] An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the final closure plan or the landfill conditions increase the maximum cost of closure at any time during the remaining active life of the unit.

(3) [(4)] A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the unit and the owner or operator has provided written notice to the executive director of the situation that includes a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification an shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted within 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism [for the annual review] and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste unit shall establish financial assurance for closure of the unit in accordance with Chapter 37, Subchapter R [§330.285] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities [Mechanisms]). Continuous financial assurance coverage for closure shall be provided until the site is officially placed under the post-closure maintenance period and all requirements of the final closure plan have been approved as evidenced in writing by the executive director.

§330.282. Closure for Process Facilities [Financial Assurance for Closure of Process Facilities].

(a) A detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the process facility by cleaning up the litter and debris from the site and the equipment, hauling the litter and debris to an approved landfill, and to render the facility closed by dismantling vital operational parts and locking up the facility shall be provided. The cost estimate for financial assurance shall be submitted with any new permit application, with

any application for a permit transfer, and as a modification for all existing municipal solid waste process facilities that remain in operation after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the facility at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

[~~(2) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.~~]

(2) [~~(3)~~] An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the closure plan or the facility conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(3) [~~(4)~~] A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism [~~for the annual review required under paragraph (2) of this subsection~~] and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste process facility shall establish financial assurance for closure of the facility in accordance with Chapter 37, Subchapter R [~~§330.285~~] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities [~~Mechanisms~~]). Continuous financial assurance coverage for closure shall be provided until all requirements of the final closure plan have been completed and the site is determined to be officially closed in writing by the executive director.

§330.283. Post-Closure Care for Landfills [~~Financial Assurance for Post-Closure Care of Landfills~~].

(a) A detailed written cost estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care activities for the municipal solid waste unit, in accordance with the post-closure care plan, shall be provided. The post-closure care cost estimate used to demonstrate financial assurance in subsection (b) of this section shall account for the total costs of conducting post-closure care including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

[~~(2) During the active life of the unit, the owner or operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of post-closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.~~]

(2) [~~(3)~~] An increase in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes in the post-closure care plan or the unit conditions increase the maximum costs of post-closure care.

(3) [~~(4)~~] A reduction in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section may be allowed if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the post-closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism [~~for the annual review required under paragraph (2) of this subsection~~] and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste landfill unit shall establish financial assurance for the costs of post-closure care of the unit in accordance with Chapter 37, Subchapter R [~~§330.285~~] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities [~~Mechanisms~~]). Continuous financial assurance coverage for post-closure care shall be provided until the site is officially released in writing by the executive director from the post-closure care period in accordance with all requirements of the post-closure care plan.

§330.284. Corrective Action for Landfills [~~Financial Assurance for Corrective Action~~].

(a) A municipal solid waste landfill unit required to undertake a corrective action program under §330.238 of this title (relating to Implementation of the Corrective Action Program) shall prepare a detailed written cost estimate, in current dollars, of the cost of hiring a third party to perform the corrective action program. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The cost estimate for financial assurance shall be submitted with the corrective action plan. [~~The financial assurance instrument shall be submitted no later than 120 days after the corrective action remedy has been selected.~~]

Financial assurance shall be required for each separate corrective action program established for a municipal solid waste unit.

[~~(1) During a corrective action program, the owner or operator shall annually adjust the cost estimate for the corrective action plan for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of corrective action in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the corrective action cost estimate by the inflation factor. The result is the adjusted corrective action cost estimate. Subsequent adjustments are made by multiplying the latest adjusted corrective action cost estimate by the latest inflation factor.~~]

(1) [~~(2)~~] The corrective action cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be increased if changes in the corrective action program or unit conditions increase the maximum costs of corrective action.

(2) [~~(3)~~] A reduction in the cost estimate and the amount of financial assurance for corrective action provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum remaining costs of corrective action at any time during the remaining corrective action period and the owner or operator has provided written notice to the executive director that includes a detailed justification for the reduction of the corrective action cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a modification to the corrective action plan. After this agency's approval of the modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism [~~for the annual review required under paragraph (1) of this subsection~~] and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste landfill unit required to undertake a corrective action program established under §330.238 of this title (relating to Implementation of the Corrective Action Program) shall establish financial assurance for the costs of the most recent corrective action program in accordance with Chapter 37, Subchapter R [~~§330.285~~] of this title (relating to Financial Assurance for Municipal Solid Waste Facilities [~~Mechanisms~~]). Continuous financial assurance coverage for each corrective action program shall be provided until the site is officially released in writing by the executive director from all requirements of the corrective action program after completion of all work specified in the corrective action plan.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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30 TAC §330.285, §330.286

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (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 laws of this state. The repeals are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeals implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.285. Financial Assurance Mechanisms.

§330.286. Wording of the Instruments.

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

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Subchapter N. LANDFILL MINING

30 TAC §330.416

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.416. Registration Application Preparation.

(a)-(l) (No change.)

(m) Site plans. To assist the executive director in evaluating the impact of the facility on the environment, public safety, and public health, the applicant shall provide the following.

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

(4) Financial assurance. Municipal solid waste landfill facilities are subject to the requirements specified in Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) [~~Subchapter K requirements and §330.9 of this title (relating to Financial Assurance~~].

(5) (No change.)

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

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Subchapter Y. MEDICAL WASTE MANAGEMENT

30 TAC §330.1005, §30.1010

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.024, which provides the commission with the authority to adopt rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.011, 361.024, and 361.085.

§330.1005. Transporters of Medical Waste.

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

(j) Financial assurance required under this section shall be provided in accordance with Chapter 37, Subchapter U of this title (relating to Financial Assurance for Medical Waste Transporters) [~~Transporters seeking registration under this subchapter shall submit evidence of financial responsibility in conformance with the requirements contained in this subsection. Registrants who are state or federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States are exempt from the requirements contained in this subsection~~].

[~~(1) Transporters shall provide evidence of financial responsibility as follows:~~]

[~~(A) a combined, single-limit automobile liability insurance policy with limits of at least $1 million per accident, exclusive of legal defense costs; and~~]

[~~(B) either a pollution liability policy with a limit of $500,000 if the transporter registers one to seven vehicles or a limit of $1 million if the transporter registers more than seven vehicles, exclusive of legal defense costs; or~~]

[~~(C) an irrevocable letter of credit made payable to the Texas Natural Resource Conservation Commission in the following amount:~~]

[~~(i)~~] ~~if the transporter registers three or less self-contained trucks or transport vehicles (not tractor-trailer units), a letter for $10,000;~~]

[~~(ii)~~] ~~if the transporter registers more than three self-contained trucks or transporter vehicles (not tractor-trailer units), a letter for $35,000;~~]

[~~(iii)~~] ~~if the transporter registers three or less tractor-trailer vehicles, a letter for $25,000; or~~]

[~~(iv)~~] ~~if the transporter registers more than three tractor-trailer vehicles, a letter for $50,000.~~]

[~~(D) Transporters are responsible for any liability costs that exceed the dollar limits set in this subsection.~~]

[~~(2) Insurance requirements.~~]

[~~(A) Evidence of insurance coverage is demonstrated by submitting original certificate(s) of insurance to the following address: Texas Natural Resource Conservation Commission, Financial Assurance Section, P.O. Box 13087, Austin, Texas 78711-3087. These certificates shall be submitted prior to the registrant receiving approval as a registered transporter.~~]

[~~(B) The registered transporter must be the named insured on the certificate of insurance and the certificate holder must be listed as the Texas Natural Resource Conservation Commission, Attn: Financial Assurance Section.~~]

[~~(C) The cancellation statement on the certificate shall read as follows: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail a 60- day written cancellation notice to the certificate holder named to the left."~~]

[~~(D) Upon the executive director's receipt of a cancellation notice, the transporter shall seek to obtain alternate insurance coverage and submit evidence of such coverage to the commission before the effective date of the cancellation. Failure to do so will result in revocation of the registration.~~]

[(E) Evidence of pollution liability coverage is demonstrated by submitting a MCS 90 form along with the original certificate for the automobile coverage. The schedule of Insured Vehicles must accompany the certificate of insurance.]

[(F) Insurance coverage must be issued for at least one year by a carrier that is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The issuing institution must be acceptable to the executive director.]

[(G) An original or certified copy of the insurance policy shall be provided within 30 days from the date requested by executive director of the Texas Natural Resource Conservation Commission.]

[(3) Letter of credit requirements.]

[(A) Letters of credit must conform to the requirements of subsection (j)(3) of this section. An original letter of credit shall be submitted prior to the registrant receiving approval as a registered transporter. The letter of credit should be mailed to the following address: Texas Natural Resource Conservation Commission, Financial Assurance Section, P.O. Box 13087, Austin, Texas 78711-3087.]

[(B) The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency. The issuing institution must be acceptable to the executive director.]

[(C) The wording of the letter of credit must be identical to the wording specified in subsection (j)(4) of this section except that instructions in brackets are to be replaced with the relevant information and the brackets are to be deleted.]

[(D) Letters of credit must be irrevocable and issued for a period of at least one year. Letters of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the registered transporter and the executive director by certified mail, return receipt requested, of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days begins on the date when both the registered transporter and the executive director have received the notice, as evidenced by the return receipts.]

[(E) Upon the executive director's receipt of a cancellation notice, the transporter shall seek to obtain alternate insurance coverage and submit evidence of such coverage to the commission before the effective date of the cancellation. Failure to do so will result in revocation of the registration.]

[(F) The executive director may return the letter of credit to the issuing institution for termination when:]

[(i) the registered transporter substitutes and receives approval from the executive director for alternate financial assurance; or]

[(ii) the executive director releases the registered transporter from the requirements of this section.]

[(4) Letter of credit wording.]
[Figure : 30 TAC §330.1005(j)(4)]

[(5) Incapacity of registered transporters or the issuing institutions.]

[(A) Registered transporters shall notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the registered transporter as debtor, within ten business days after the commencement of the proceeding.]

[(B) Registered transporters who fulfill the financial assurance requirements by obtaining insurance or a letter of credit, will be deemed to be without the required financial assurance coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. Registered transporters shall establish other acceptable financial assurance coverage within 30 days after such an event.]

(k)-(r) (No change.)

§330.1010. On-Site Treatment Services on Mobile Vehicles.

(a)-(e) (No change.)

(f) Revocation or denial of registration procedures are as follows:

(1) The commission may revoke a registration issued under this section or refuse to issue a registration for:

(A) failure to maintain complete and accurate records of waste treated on-site;

(B) failure to maintain vehicles in safe working order as evidenced by citations from the Texas Department of Public Safety or local traffic law enforcement agencies;

(C) falsification of waste treatment records;

(D) treatment of special waste from health care related facilities which is not in accordance with the provisions of 25 TAC §1.136(a) (relating to [concerning] Approved Methods of Treatment and Disposition);

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit required annual reports or pay registration fees;

[(G) failure to maintain insurance or provide proof of insurance as required in subsection (j) of this section;]

(G) [(H)] illegal disposal of untreated or treated medical waste; or

(H) [(I)] treatment or disposal of special waste from health care related facilities without registration as required in this section; or

(I) [(J)] such other cause sufficient to warrant termination or suspension of the registration.

(2) (No change.)

(g)-(i) (No change.)

[(j) Each provider of on-site treatment of special waste from health care related facilities on mobile vehicles shall, unless otherwise exempted, excluded or prohibited by law, provide evidence of financial responsibility in the form of a general automobile liability policy consistent with that required by the Texas Department of Public Safety.]

(j) [(k)] Providers of on-site treatment of special waste from health care related facilities on mobile vehicles shall furnish the generator the documentation required in §330.1004(c)(4) of this title (relating to Generators of Medical Waste) for the generator's records.

(k) [~~(l)~~] Providers of on-site treatment of special waste from health care related facilities on mobile vehicles shall maintain records of all waste treatment which includes the following information:

(1) the name, address, and phone number of each generator;

(2) the date of treatment;

(3) the amount of waste treated;

(4) the method/conditions of treatment;

(5) the name (printed) and initials of the person(s) performing the treatment; and

(6) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using biological indicators and/or monitoring of parametric controls shall be conducted in accordance with §330.1004(c)(4)(E) of this title.

(l) [~~(m)~~] Providers of on-site treatment of special waste from health care related facilities on mobile vehicles shall not transport waste unless they are registered in accordance with §330.1005 of this title. Treated waste shall be left on-site for disposal with that facility's routine municipal solid waste and in a form that is suitable for landfill disposal.

(m) [~~(n)~~] Providers of on-site treatment of special waste from health care related facilities on mobile vehicles shall ensure adequate training of all operators in the use of any equipment used in treatment.

(n) [~~(o)~~] Providers of on-site treatment of special waste from health care related facilities on mobile vehicles shall have a contingency plan available in the event of any malfunction of equipment. If there is any question as to the adequacy of treatment of any load, that load shall be run again utilizing biological indicators to test for microbial reduction before the material is released for landfill disposal. If the waste must be removed from the site before treatment is accomplished, a registered transporter shall remove the waste and all other applicable sections of this chapter shall be in effect.

(o) [~~(p)~~] Fees to be assessed of providers of on-site treatment of special waste from health care related facilities on mobile vehicles are as follows.

(1) Treatment providers are required to pay an annual registration fee to the commission based upon the total weight of special waste from health care related facilities treated on-site under each provider registration.

(2) The amount of the annual registration fee shall be based upon the total weight of special waste from health care related facilities treated on-site.

(3) The fees shall be determined as follows.

(A) For a total annual weight of waste treated on-site of 1,000 pounds or less, the fee is $100.

(B) For a total annual weight of waste treated on-site greater than 1,000 but equal to or less than 10,000 pounds, the fee is $250.

(C) For a total annual weight of waste treated on-site greater than 10,000 but equal to or less than 50,000 pounds, the fee is $400.

(D) For a total annual weight of waste treated on-site greater than 50,000 pounds, the fee is $500.

(4) The annual registration fee for each provider of on-site treatment of special waste from health care related facilities on mobile vehicles shall accompany the applicant's original or renewal registration application and shall be submitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered or mailed to: Permits and Registrations Section of the Municipal Solid Waste Division, Texas Natural Resource Conservation Commission, P.O. Box 13088, Austin, Texas 78711-3088.

(p) [~~(q)~~] Providers of on-site treatment of special waste from health care related facilities on mobile vehicles shall submit to the commission's Permits Section of the Municipal Solid Waste Division an annual summary report of their activities for the calendar year from January 1 through December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period and shall contain all the information required in subsection (k) [~~(l)~~] of this section.

(q) [~~(r)~~] When a vehicle used to provide on-site treatment of special waste from health care related facilities has been jointly purchased by two or more health care related facilities and is used only to treat the waste generated by the facilities included in that purchase, those facilities shall be exempt from subsection (o)[~~(p)~~] of this section. Such facilities shall be subject to all other subsections of this section. The vehicle/treatment unit shall be operated on the premises whereon the waste was generated, and only by a staff member of that facility, a member of the joint operating group, or the group's authorized operating contractor.

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 331. UNDERGROUND INJECTION CONTROL

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§331.68, 331.121, 331.122, 331.142-331.144, and 331.171 and the repeal of §§331.141 and 331.145-331.147, concerning Underground Injection Control.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 331 as the result of ongoing efforts by the commission for regulatory reform. This chapter focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 305, 324, 330, 334, 335, and

336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with commission and federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments and repeals to Chapter 331.

SUBCHAPTER D: STANDARDS FOR CLASS I WELLS OTHER THAN SALT CAVERN SOLID WASTE DISPOSAL WELLS

Section 331.68 is proposed to be amended to accommodate consolidation, to correct cross- references, and to clarify that the financial assurance demonstration for post closure must be in the amount of the post closure cost estimate.

SUBCHAPTER G: CONSIDERATION PRIOR TO PERMIT ISSUANCE

Section 331.121 is proposed to be amended to accommodate consolidation, to include post closure provisions, and to correct cross-references.

Section 331.122 is proposed to be amended to accommodate consolidation and to correct cross- references.

SUBCHAPTER I: FINANCIAL RESPONSIBILITY

Section 331.141 is proposed to be repealed for the purpose of consolidation because the definitions are being simultaneously proposed for inclusion in Chapter 37, Subchapter A and Subchapter Q.

The title of §331.142 is proposed to be amended from *Financial Responsibility* to *Financial Assurance* to more accurately reflect the resulting subject matter of the section and for the purposes of consolidation. Further proposed amendments are made to accommodate consolidation, to require maintenance of liability coverage, and to clarify that financial assurance for plugging and abandonment, as well as post closure, must be in the amount of the cost estimate.

Section 331.143 is proposed to be amended for the purpose of consolidation. Proposed changes to the section delete provisions relating to the adjustment of the plugging and abandonment cost estimate because related provisions are being simultaneously proposed in 30 TAC §37.131. Owners and operators of underground injection well facilities will find that with regard to the adjustment of current cost estimates, the application of the proposed modifications will create a timing change from 30 days after the anniversary date to 60 days prior to the anniversary date for the purpose of consolidation and for consistency between the programs.

The title of §331.144 is proposed to be amended from *Financial Assurance for Plugging and Abandonment* to *Approval of Plugging and Abandonment* to more accurately reflect the subject matter of the section and for the purposes of consolida-

tion. Virtually all of the requirements in this section are deleted because other provisions are being simultaneously proposed in Subchapters A, B, and C of Chapter 37. In addition, the section is proposed to be amended to clarify that the release of financial assurance requires written approval of the executive director.

Section 331.145 is proposed to be repealed for the purpose of consolidation because the requirements of the section are being simultaneously proposed for inclusion in §37.71.

Section 331.146 is proposed to be repealed for the purpose of consolidation because the requirements of the section are simultaneously proposed for inclusion in §37.6041.

Section 331.147 is proposed to be repealed for the purpose of consolidation because the appropriate financial assurance instrument wordings are simultaneously proposed for inclusion in Chapter 37, Subchapter D.

SUBCHAPTER J: STANDARDS FOR CLASS I SALT CAVERN SOLID WASTE DISPOSAL WELLS

Section 331.171 is proposed to be amended to accommodate consolidation, to create consistency between commission rules, and to clarify that financial assurance demonstrations for post closure must be in the amount of the post closure cost estimate.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 331, Underground Injection Control, would consolidate financial assurance requirements which are currently located in various chapters throughout the programs' rules including: Chapter 37-Financial Assurance; Chapter 305-Consolidated Permits; Chapter 324-Used Oil Standards; Chapter 330-Municipal Solid Waste; Chapter 334-Underground and Aboveground Storage Tanks, Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed amendments would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments and repeals revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set by

federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed because they implement critical portions of the state law concerning financial assurance. Finally, these rules are not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments and repeals is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rules consistent with commission and federal rules. Promulgation and enforcement of the rule amendments and repeals will not create a burden on private real property. There are few significant, new requirements being added. In the few instances where substantive changes are being proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

Subchapter D. STANDARDS FOR CLASS I WELLS OTHER THAN SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.68

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. The amendment is also proposed under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; under TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; and Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §§5.103, 5.105, 27.019, and 27.073; and HSC, §361.085.

§331.68. Post-Closure Care.

(a) The owner or operator of a Class I hazardous well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of subsection (b) of this section, and is acceptable to the executive director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

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

(3) The plan shall provide [~~assure~~] financial responsibility as required in Subchapter I of this chapter (relating to Financial Responsibility) [~~§§331.141-331.147 of this title (relating to Financial Responsibility)~~]. The owner or operator shall demonstrate and maintain financial assurance in the amount of the post closure cost estimate [~~responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance, or corporate guarantee, that meets the specifications for the mechanisms and instruments revised as appropriate~~] to cover [~~closure and~~] post- closure care in a manner that meets the requirements of Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Wells) [~~§§331.141-331.147 of this title~~]. The amount of the funds available shall be no less than the amount identified in paragraph (4)(F) of this subsection. The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection.

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

(b) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906707
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter G. CONSIDERATION PRIOR TO PERMIT ISSUANCE

30 TAC §331.121, §331.122

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; and Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §§5.103, 5.105, 27.019, and 27.073; and HSC, §361.085.

§331.121. Class I Wells.

(a) The commission shall consider the following before issuing a Class I Injection Well Permit:

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

(3) whether the applicant will assure, in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells) [~~§§331.141- 331.147 of this title (relating to Financial Responsibility), through a performance bond or other appropriate means~~], the resources necessary to close, plug, [~~or~~] abandon, and if applicable, provide post-closure care for the well and/or waste disposal cavern as required.

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

(b) In determining whether the use or installation of an injection well for the disposal of hazardous waste is in the public interest under the Texas Water Code, §27.051(a)(1) the Commission shall also consider:

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

(3) whether the applicant will maintain [~~significant public~~] liability coverage [~~insurance~~] for bodily injury and property damage to third parties that is caused by sudden and nonsudden accidents in accordance with Chapter 37 of this title (relating to Financial Assurance) [~~or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the requirements of 40 Code of Federal Regulations §264.147 shall be deemed sufficient under this paragraph if the policy also covers the injection well~~]; and

(4) (No change.)

(c)-(g) (No change.)

§331.122. Class III Wells.

The commission shall consider the following before issuing a Class III Injection Well or Area Permit:

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

(3) whether the applicant will assure, in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells) [~~§§331.141- 331.147 of this title (relating to Financial Responsibility), through a performance bond or other appropriate means~~], the resources necessary to close, plug, or abandon the well;

(4) the closure plan, in accordance with §331.46 of this title (relating to Closure Standards [~~§331.15 of this title (relating to Financial Assurance Required)~~]), submitted in the Technical Report accompanying the application; and

(5) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906708
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter I. FINANCIAL RESPONSIBILITY

30 TAC §§331.141, 331.145-331.147

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (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 laws of this state. The repeals are also proposed under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; and Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeals implement TWC, §§5.103, 5.105, 27.019, and 27.073; and HSC, §361.085.

§331.141. Definitions.

§331.145. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

§331.146. State Assumption of Responsibility.

§331.147. Wording of the Instruments.

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 October 7, 1999.

TRD-9906709
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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30 TAC §§331.142-331.144

STATUTORY AUTHORITY

The amendments are proposed Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells; and Texas Health and Safety Code (HSC), §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §§5.103, 5.105, 27.019, and 27.073; and HSC, §361.085.

§331.142. Financial Assurance [~~Responsibility~~].

(a) The permittee shall secure and maintain financial assurance for plugging and abandonment in the amount of the plugging and abandonment cost estimate for Class I, Class I salt cavern disposal

wells and associated salt caverns, and Class III wells in a manner that meets the requirements of Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells). Financial assurance for plugging and abandonment shall be provided in the amount of the plugging and abandonment cost estimate as provided in §331.143 of this title (relating to Cost Estimate for Plugging and Abandonment). Financial assurance for post closure of Class I hazardous wells shall be provided in the amount of the post closure cost estimate. [a performance bond or other equivalent form of financial assurance or guarantee approved by the commission as identified in §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) to ensure the closing, plugging, abandonment, and post-closure care of the injection operation in the manner prescribed by the commission. The assurance may cover more than one well or operation. For new Class I and Class III injection wells, and Class I salt cavern disposal wells and associated salt caverns, financial security shall be provided at least 60 days prior to the commencement of drilling operations for the well. All assurance shall be effective before commencement of drilling operations. For converted wells and other previously constructed wells, financial security shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance.]

(b) The permittee of a hazardous waste Class I waste injection well or Class I salt cavern disposal well and associated salt cavern shall establish and maintain sufficient liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility that meets the requirements of Chapter 37 of this title (relating to Financial Assurance) and §305.154(11) (relating to Standards).

(c) [(b)] The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

§331.143. Cost Estimate for Plugging and Abandonment.

(a) The owner or operator must prepare a written estimate, in current dollars, of the cost of plugging the [injection] well in accordance with the plugging and abandonment plan as specified in this chapter. The plugging and abandonment cost estimate must equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.

[(b) The owner or operator must adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment must be made as specified in paragraphs (1) and (2) of this subsection, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.]

[(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.]

[(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.]

[(c) The owner or operator must revise the plugging and abandonment cost estimate whenever a change in the plugging and abandonment plan increases the cost of plugging and abandonment. The revised plugging and abandonment cost estimate must be adjusted for inflation as specified in subsection (b) of this section.]

(b) [(d)] During the operating life of the facility, the [The] owner or operator must keep at the facility [the following at the facility during the operating life of the facility:] the latest plugging and abandonment cost estimate prepared in accordance with subsection (a) of this section [subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted plugging and abandonment cost estimate].

[(e) All financial assurance documents shall be filed with the executive director.]

§331.144. Approval of Plugging and Abandonment [Financial Assurance for Plugging and Abandonment].

[An owner or operator of each facility must establish financial assurance for the plugging and abandonment of each existing and new Class I, Class III injection well, and Class I salt cavern disposal well and associated salt cavern. For new wells and/or salt caverns, financial security shall be provided at least 60 days prior to the commencement of drilling operations for the well. All assurance shall be effective before commencement of drilling operations. For converted wells and other previously constructed wells, financial security shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The owner or operator may choose from the options as specified in paragraphs (1)-(6) of this section.]

[(1) Plugging and abandonment trust fund.]

[(A) An owner or operator may satisfy the requirements of this section by establishing a plugging and abandonment trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the executive director. An owner or operator of any of the previously referenced wells in this section must provide the originally signed duplicate of the trust agreement to the executive director at least 60 days prior to the commencement of drilling operations for the well. For converted wells and other previously constructed wells, the originally signed duplicate of the trust agreement must be provided to the executive director at least 30 days prior to permit issuance. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.]

[(B) The wording of the trust agreement must be identical to the wording specified in §331.147(a)(1) of this title (relating to Wording of the Instruments), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see §331.147(a)(2)) of this title. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current plugging and abandonment cost estimate covered by the agreement.]

[(C) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the injection well as estimated in the plugging and abandonment plan, whichever period is shorter, this period is hereafter referred to as the "pay-in period." The payments into the plugging and abandonment trust fund must be made as follows:]

[(i) For a new well, the first payment must be made before the commencement of drilling operations. A receipt from the trustee for this payment must be submitted by the owner or operator to the executive director before commencement of drilling operations.

For converted wells and other previously constructed wells, the first payment must be made and a receipt from the trustee for this payment must be submitted by the owner or operator to the executive director before permit issuance. The first payment must be at least equal to the current plugging and abandonment cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula: Next payment = (PE-CV)/Y, where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.]

[(ii) If an owner or operator establishes a trust fund as specified in this paragraph, and the value of that trust fund is less than the current plugging and abandonment cost estimate when a permit is awarded for the injection well, the amount of the current plugging and abandonment cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in this subparagraph. Payment must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to Part 331 of this chapter. The amount of each payment must be determined by this formula: Next payment = (PE-CV)/Y, where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.]

[(D) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current plugging and abandonment cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subparagraph (C) of this paragraph.]

[(E) If the owner or operator establishes a plugging and abandonment trust fund after having used one or more alternate mechanisms specified in this section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph.]

[(F) After the pay-in period is completed, whenever the current plugging and abandonment cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current plugging and abandonment cost estimate, or obtain other financial assurance as specified in this section to cover the difference.]

[(G) If the value of the trust fund is greater than the total amount of the current plugging and abandonment cost estimate, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current plugging and abandonment cost estimate.]

[(H) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for release of the amount in excess of the current plugging and abandonment cost estimate covered by the trust fund.]

[(I) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subparagraphs (G) or (H) of this paragraph, the executive director may instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.]

[(J) After beginning final plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for plugging and abandonment activities, the executive director will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of plugging and abandonment will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (9) of this section, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment.]

[(K) The executive director will agree to termination of the trust when:]

[(i) An owner or operator substitutes alternate financial assurance as specified in this section; or]

[(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.]

[(2) Surety bond guaranteeing payment into a plugging and abandonment trust fund.]

[(A) An owner or operator must satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the executive director with the application for a permit or for approval to operate under rule. The bond must be provided at least 60 days before the commencement of drilling of a new well. The bond must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the bond shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of Treasury.]

[(B) The wording of the surety bond must be identical to the wording in §331.147(b) of this title (relating to Wording of the Instruments).]

[(C) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements specified in paragraph (1) of this section, except that:]

[(i) an originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and]

[(ii) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these requirements:]

[(I) payments into the trust fund as specified in paragraph (1) of this section;]

[*(II)* updating of Schedule A of the trust agreement (see §331.147(a) of this title (relating to Wording of the Instruments)) to show current plugging and abandonment cost estimates;]

[*(III)* annual valuations as required by the trust agreement; and]

[*(IV)* notices of nonpayment as required by the trust agreement.]

[(D) The bond must guarantee that the owner or operator will:]

[*(i)* fund the standby trust fund in an amount equal to the penal sum of the bond before beginning of plugging and abandonment of the injection well; or]

[*(ii)* fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin plugging and abandonment is issued by the executive director or a United States district court or other court of competent jurisdiction; or]

[*(iii)* provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.]

[(E) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.]

[(F) The penal sum of the bond must be in amount at least equal to the current plugging and abandonment cost estimate, except as provided in paragraph (7) of this section.]

[(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.]

[(H) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the Executive Director as evidenced by the returned receipts.]

[(I) The owner or operator may cancel the bond if the executive director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.]

[(3) Surety bond guaranteeing performance of plugging and abandonment.]

[(A) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the bond to the executive director. An owner or operator of a new facility must submit the bond to the executive director with the permit application or for approval to operate under rule. The bond must be provided at least 60 days before commencement of the drilling of a new well. The bond must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the bond shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of the Treasury.]

[(B) The wording of the surety bond must be identical to the wording specified in §331.147(c) of this title (relating to Wording of the Instruments).]

[(C) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. The standby trust must meet the requirements specified in paragraph (1) of this section, except that:]

[*(i)* an original signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and]

[*(ii)* unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:]

[*(I)* payments into the trust fund as specified in paragraph (1) of this section;]

[*(II)* updating of Schedule A of the trust agreement (see §331.147(a) if this title (relating to Wording of the Instruments)) to show current plugging and abandonment cost estimates;]

[*(III)* annual valuations as required by the trust agreement: and]

[*(IV)* notices of nonpayment as required by the trust agreement.]

[(D) The bond must guarantee that the owner or operator will:]

[*(i)* perform plugging and abandonment in accordance with the plugging and abandonment plan and other requirements of the permit for the injection well whenever required to do so; or]

[*(ii)* provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.]

[(E) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination that the owner or operator has failed to perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, under terms of the bond the surety will perform plugging and abandonment as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.]

[(F) The penal sum of the bond must be in an amount at least equal to the current plugging and abandonment cost estimate.]

[(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either

cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section. Whenever the plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.]

[(H) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.]

[(I) The owner or operator may cancel the bond if the executive director has given prior written consent. The executive director will provide such written consent when:]

[(i) an owner or operator substitute alternate financial assurance as specified in this section; or]

[(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.]

[(J) The surety will not be liable for deficiencies in the performance of plugging and abandonment by the owner or operator after the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.]

[(4) Plugging and abandonment letter of credit.]

[(A) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the executive director. An owner or operator of an injection well must submit the letter of credit to the executive director during submission of the permit application or for approval to operate under rule. The letter of credit must be provided at least 60 days before the commencement of drilling of a new well. The letter of credit must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the letter of credit shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.]

[(B) The wording of the letter of credit must be identical to the wording specified in §331.147(d) of this title (relating to Wording of the Instruments).]

[(C) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Executive Director. This standby trust fund must meet the requirements of the trust fund specified in paragraph (1) of this section, except that:]

[(i) an originally signed duplicate of the trust agreement must be submitted to the executive director with the letter of credit; and]

[(ii) unless the standby trust fund is funded pursuant to the requirements of this sections, the following are not required by these regulations:]

[(I) payments into the trust fund as specified in paragraph (1) of this section;]

[(II) updating of Schedule A of the trust agreement (see §331.147(a) of this title (relating to Wording of the Instruments) to show current plugging and abandonment cost estimates;]

[(III) annual valuations as required by the trust agreement; and]

[(IV) notices of nonpayment as required by the trust agreement.]

[(D) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name, and address of the facility, and the amount of funds assured for plugging and abandonment of the well by the letter of credit.]

[(E) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.]

[(F) The letter of credit must be issued in an amount at least equal to the current plugging and abandonment cost estimate, except as provided in paragraph (7) of this section.]

[(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the amount of credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the amount of the credit may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.]

[(H) Following a determination that the owner or operator has failed to perform final plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, the executive director may draw on the letter of credit.]

[(I) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director will draw on the letter of credit if the owner or operator has failed to provide alternate financial

assurance as specified in this section and obtain written approval of such assurance from the executive director.]

[(J) The executive director will return the letter of credit to the issuing institution for termination when:]

[(i) an owner or operator substitutes and receives approval from the executive director of the commission for alternate financial assurance as specified in this section; or]

[(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.]

[(5) Plugging and abandonment insurance.]

[(A) An owner or operator may satisfy the requirements of this section by obtaining plugging and abandonment insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the executive director. An owner or operator of a new injection well must submit the certificate of insurance to the executive director with the permit application or for approval to operate under rule. The insurance must be provided at least 60 days before the commencement of drilling of a new well. The insurance must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the insurance shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.]

[(B) The wording of the certificate of insurance must be identical to the wording specified in §331.147(e) of this title (relating to Wording of the Instruments).]

[(C) The plugging and abandonment insurance policy must be issued for a face amount at least equal to the current plugging and abandonment estimate, except as provided in paragraph (7) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurers future liability will be lowered by the amount of the payments.]

[(D) The plugging and abandonment insurance policy must guarantee that funds will be available whenever final plugging and abandonment occurs. The policy must also guarantee that once plugging and abandonment begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.]

[(E) After beginning plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for plugging and abandonment activities, the executive director will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of plugging and abandonment will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (9) of this section, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment of the injection well.]

[(F) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in subparagraph (J) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.]

[(G) Each policy must contain provisions allowing assignment to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.]

[(H) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:]

[(i) the executive director deems the injection well abandoned; or]

[(ii) the permit is terminated or revoked or a new permit is denied; or]

[(iii) plugging and abandonment is ordered by the executive director or a United States district court or other court of competent jurisdiction; or]

[(iv) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or]

[(v) the premium due is paid.]

[(I) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current plugging and abandonment estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the face amount may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.]

[(J) The executive director will give written consent to the owner or operator that he may terminate the insurance policy when:]

[(i) an owner or operator substitutes alternate financial assurance as specified in this section; or]

[(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.]

[(6) Financial test and corporate guarantee for plugging and abandonment.]

[(A) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either clause (i) or (ii) of this subparagraph.]

[(i) The owner or operator must have:]

[(I) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and]

[(II) net working capital and tangible net worth each at least six times the sum of the current plugging and abandonment cost estimate; and]

[(III) tangible net worth of at least $10 million; and]

[(IV) assets in the United States amounting to at least 90% of his total assets or at least six times the sum of the current plugging and abandonment cost estimate.]

[(ii) The owner or operator must have:]

[(I) a current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and]

[(II) tangible net worth at least six times the sum of the current plugging and abandonment cost estimate; and]

[(III) tangible net worth of at least $10 million; and]

[(IV) assets located in the United States amounting to at least 90% of his total assets or at least six times the sum of the current plugging and abandonment cost estimates.]

[(B) The phrase "current plugging and abandonment cost estimate" as used in paragraph (A) of this paragraph refers to the cost estimate required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer §331.147(f) of this title (relating to Wording of the Instruments).]

[(C) To demonstrate that he meets this test, the owner or operator must submit the following items to the executive director:]

[(i) a letter signed by the owner's or operator's chief financial officer and worded as specified in §331.147(f) of this title (relating to Wording of the Instruments); and]

[(ii) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and]

[(iii) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:]

[(I) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and]

[(II) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.]

[(D) An owner or operator of a new injection well must submit the items specified in subparagraph (C) of this paragraph to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (C) of this paragraph.]

[(E) After the initial submission of items specified in subparagraph (C) of this paragraph, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (C) of this paragraph.]

[(F) If the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.]

[(G) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph (A) of this paragraph, require reports of financial condition at any time from the owner or operator in addition to those specified in subparagraph (C) of this paragraph. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.]

[(H) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subparagraph (C)(ii) of this paragraph). An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.]

[(I) The owner or operator is no longer required to submit the items specified in subparagraph (C) of this paragraph when:]

[(i) an owner or operator substitutes alternate financial assurance as specified in this section; or]

[(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.]

[(J) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantee must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in subparagraphs (A)-(H) of this paragraph and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §331.147(g) of this title (relating to Wording of the Instruments). The corporate guarantee must accompany the items sent to the executive director as specified in subparagraph (C) of this paragraph. The terms of the corporate guarantee must provide the following:]

~~*(i)* If the owner or operator fails to perform plugging and abandonment of the injection well covered by the corporate guarantee in accordance with the plugging and abandonment plan and other permit requirements whenever required to do so, the guarantee will do so or establish a trust fund as specified in paragraph (1) of this section in the name of the owner or operator.]~~

~~*(ii)* The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.]~~

~~*(iii)* If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the Executive Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.]~~

~~[(7) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per injection well. These mechanisms are limited to trust funds, surety bonds, guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (2), (4), and (5), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the adjusted plugging and abandonment cost. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use that trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The executive director may invoke any or all of the mechanisms to provide for plugging and abandonment of the injection well.]~~

~~[(8) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one injection well. Evidence of financial assurance submitted to the executive director must include a list showing, for each injection well, the EPA Identification Number, name, address, and the amount of funds for plugging and abandonment assured by the mechanism. If the injection wells covered by the mechanism are in more than once EPA region, identical evidence of financial assurance must be submitted to the executive director. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each injection well. In directing funds available through the mechanism for plugging and abandonment of any of the injection wells covered by the mechanism, the executive director may direct only the amount of funds designated for that injection well, unless the owner or operator agrees to use additional funds available under the mechanism.]~~

~~[(9) Release of the owner or operator from the requirements of this section.]~~ Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the executive director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the [~~injection~~] well, unless the executive director has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan. Financial Assurance may not be released without the written approval of the executive director.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239 -1966

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Subchapter J. STANDARDS FOR CLASS I SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.171

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. The amendment is also proposed under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; and, TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection wells.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §§5.103, 5.105, 27.019, and 27.073; and Texas Health and Safety Code, §361.085.

§331.171. Post-Closure Care.

(a) The owner or operator of a Class I salt cavern solid waste disposal well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of subsection (b) of this section, and that is acceptable to the executive director.

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

(3) The plan shall provide [~~assure~~] financial assurance [~~responsibility~~] as required in this chapter [~~§§331.141-331.147)~~ of ~~this~~ title ~~(relating to Financial Responsibility)~~]. The owner or operator shall demonstrate and maintain financial assurance in the amount of the post closure cost estimate to cover post closure in a manner that meets the requirements of this chapter and Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells). The amount of the funds available shall be no less than the amount identified in paragraph (4)(F) of this subsection.

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

(b) (No change.)

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

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Chapter 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

Subchapter K. STORAGE, TREATMENT, AND REUSE PROCEDURES FOR PETROLEUM-SUBSTANCE CONTAMINATED SOIL

30 TAC §§334.484, 334.485, 334.508

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§334.484, 334.485, and 334.508, concerning Underground and Aboveground Storage Tanks.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 334 as the result of ongoing efforts by the commission for regulatory reform. This chapter focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 305, 324, 330, 331, 335, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments to Chapter 334.

SUBCHAPTER K: STORAGE, TREATMENT, AND REUSE PROCEDURES FOR PETROLEUM-SUBSTANCE CONTAMINATED SOIL

Section 334.484 is proposed to be modified to delete a cross-reference.

Section 334.485 is proposed to be amended to delete redundant language and to add a cross- reference in order to provide clarification that the owner or operator is subject to the compliance rules under Chapter 37, Subchapter K.

Section 334.508 is proposed to modify a cross-reference.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 334, Underground and Aboveground Storage Tanks, would consolidate financial assurance requirements which are currently located in various chapters throughout the programs' rules including: Chapter 37-Financial Assurance; Chapter 305- Consolidated Permits; Chapter 324-Used Oil Standards; Chapter 330-Municipal Solid Waste; Chapter 331-Underground Injection Control; Chapter 334-Underground and Aboveground Storage Tanks, Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed amendments would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission,

but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed because they implement critical portions of the state law concerning financial assurance. Finally, these rules are not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rules consistent with commission and federal rules. Promulgation and enforcement of the rule amendments will not create a burden on private real property. There are few significant, new requirements added. In the few instances where substantive changes are proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; and under TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission; and Texas Health and Safety Code, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

The proposed amendments implement TWC, §§5.103, 5.105, 26.346, and 26.352; and HSC,§361.085.

§334.484. Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.

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

(c) Any person who intends to store or treat petroleum-substance waste at a Class A or Class B facility after the effective date of this subchapter shall submit an application for registration on a form approved by the executive director. Such person shall submit information to the executive director which is sufficiently detailed and complete to enable the commission to determine whether such storage or treatment is compliant with the terms of this subchapter. Such information shall include, at a minimum:

(1)-(15) (No change.)

(16) documentation on the financial assurance required [~~(see §334.508 of this title)~~];

(17)-(21) (No change.)

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

§334.485. Suspension or Revocation of Registration.

(a) A registration may be suspended or revoked for the following reasons:

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

(4) if the registrant fails to maintain [~~insurance or~~] financial assurance as required by this subchapter and Chapter 37, Subchapter K of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities);

(5)-(6) (No change.)

(b) (No change.)

§334.508. Closure Requirements Applicable to Class A and Class B Facilities.

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

(g) The facility owner or operator shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in Chapter 37, Subchapter B of this title (relating to Financial Assurance Requirements for Closure) [~~§37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates)~~].

(h)-(i) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906712
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Chapter 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§335.7, 335.112, 335.152, 335.167, and 335.179 and new §335.128, concerning Industrial Solid Waste and Municipal Hazardous Waste.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 335 as the result of ongoing efforts by the commission for regulatory reform. This chapter focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 305, 324, 330, 331, 334, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules in have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently the requirements were repetitive, and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to

indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments and proposed additional sections to Chapter 335.

SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

The title of §335.7 is proposed to be amended from *Bond or Other Financial Assurance Required* to *Financial Assurance Required* to more accurately reflect the subject matter of the section and for the purposes of consolidation. Further proposed amendments are made for the purposes of consolidation, to correct cross-references, to clarify that the amount of financial assurance to be demonstrated is the amount specified in the permit, and to specify the requirements for the financial assurance demonstration. For consistency with statute, the proposed amendments would allow the executive director to require liability coverage for solid waste facilities, including nonhazardous facilities, if it is merited.

SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

Section 335.112 is proposed to be amended for the purpose of consolidation, for consistency with commission rules, and to delete the adoption by reference of numerous federal financial assurance requirements since provisions relating to the same subject matter are being simultaneously proposed in Chapter 37.

New §335.128 is proposed to be added to mandate and specify the amount of, and the requirements of, financial assurance for financial assurance for closure, post closure, corrective action, and liability for interim status Resource Conservation Recovery Act (RCRA) facilities. Consistent with statute, the new section allows the executive director to require post closure financial assurance for units, other than land based units, if it is merited.

SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

Section 335.152 is proposed to be amended for the purpose of consolidation, for consistency with commission rules, and to delete the adoption by reference of numerous federal financial assurance requirements since provisions relating to the same subject matter are being simultaneously proposed in Chapter 37.

Section 335.167 is proposed to be amended for consolidation, to provide cross-references, and to clarify that the amount of financial assurance that will be required for corrective action will be an amount acceptable to the executive director.

Section 335.179 is proposed to be amended for consolidation, to expand an existing rule which mandates and specifies the amount and requirements of financial assurance for closure, post closure, corrective action, and liability for permitted RCRA facilities. Consistent with statute, the new section allows the executive director to require post closure financial assurance for units, other than land based units, if it is merited.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, would consolidate financial assurance requirements which are currently located in various chapters throughout the programs' rules including: Chapter 37-Financial Assurance; Chapter 305-Consolidated Permits; Chapter 324-Used Oil Standards; Chapter 330-Municipal Solid Waste; Chapter 331-Underground Injection Control; Chapter 334-Underground and Aboveground Storage Tanks; and Chapter 336-Radioactive Substance Rules. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed

amendments would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments and new section revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed because they implement critical portions of the state law concerning financial assurance. Finally, these rules are not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rules consistent with commission and federal rules. Promulgation and enforcement of the rule amendments and new section will not create a burden on private real property. There are few significant, new requirements added. In the few instances where substantive changes are proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

Subchapter A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.7

STATUTORY AUTHORITY

The amendment is proposed under the Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in Texas Health and Safety Code (HSC), §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted hazardous waste facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.017, 361.024, and 361.085.

§335.7. [~~Bond or Other~~] Financial Assurance Required.

Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of [~~a surety bond or other~~] financial assurance for the amount(s)

specified in its permit in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), [~~acceptable to the executive director, in an amount specified in the permit~~] which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other rules of the commission. The commission may require the execution and maintenance of [~~a surety bond or other~~] financial assurance in accordance with Chapter 37, Subchapter P of this title [~~acceptable to the executive director~~] for the closing of any solid waste facility exempt from the requirement of a permit under this chapter, but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning financial assurance and closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the executive director determines that there is a significant risk to human health and the environment from sudden or nonsudden accidental occurrences resulting from the operations of a solid waste storage, processing, or disposal facility, the owner or operator may be required to provide coverage for sudden and/or nonsudden accidental occurrences in accordance with Chapter 37, Subchapter P of this title.

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906713
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §335.112, §335.128

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted hazardous waste facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment and new section implement TWC, §5.103 and §5.105; and HSC, §§361.017, 361.024, and 361.085.

§335.112. Standards.

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

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

(7) Subpart H–Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832); except 40 CFR §§265.140, 265.141, [§]265.142(a)(2), [;] 265.142(b)-(c), 265.143(a)-(g), 265.144(b)-(c), 265.145(a)-(g), 264.146, 265.147(a)-(d), 265.147(f)-(k), 265.148, 265.149, and 265.150 [~~provided that the corporate guarantee for closure or for post-closure care, described in 40 CFR §265.143(e)(10) or §265.145(e)(11), respectively, may be provided by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title (relating to Definitions), with the entity guaranteed~~];

(8)-(22) (No change.)

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

§335.128. Financial Assurance.

(a) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the owner or operator must:

(1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in addition to the requirements specified in §335.112(a)(7) of this title (relating to Standards).

(2) establish financial assurance for the amount of the post closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title, in addition to the requirements specified in §335.112(a)(7) of this title, if the facility:

(A) includes a disposal facility;

(B) includes a pile, and/or surface impoundment from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §335.112 of this title;

(C) includes a tank system that is required under §335.112 of this title to meet the requirements for landfills;

(D) includes a containment building that is required under §335.112 of this title to meet the requirements for landfills; or

(E) is notified by the executive director of the need for post closure financial assurance for another type of unit.

(b) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility or a group of such facilities subject to this subchapter, the owner or operator must establish financial

assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title (relating to Financial Assurance).

(c) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility containing a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title.

(d) If the executive director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a hazardous industrial solid waste facility that is not a surface impoundment, landfill, or land treatment facility, the owner or operator may be required to comply with subsection (c) of 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 October 7, 1999.

TRD-9906714
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §§335.152, 335.167, 335.179

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted hazardous waste facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.017, 361.024, and 361.085.

§335.152. Standards.

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

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

(6) Subpart H–Financial Requirements (as amended through June 10, 1994, in 59 FedReg 29958); except 40 CFR §§264.140, 264.141, [§]264.142(a)(2), 264.142(b)-(c), 264.143(a)-(h), 264.144(b)-(c), 264.145(a)-(h), 264.146, 264.147(a)-(d), 264.147(f)-(k), 264.148, 264.149, 264.150, and 264.151; and subject to the following limitations [~~set forth in this section~~]: Facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and 37.6031(c) of this title (relating to Financial Assurance Requirements for Liability).

[~~(A) Facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.142(a), §264.144(a) and §264.147(b);~~]

[~~(B) Facilities which qualify for the corporate guarantee for liability are additionally subject to 40 CFR §264.147(g)(2) and §264.151(h)(2). The corporate guarantee for liability may be provided by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title (relating to Definitions), with the entity guaranteed; and~~]

[~~(C) The corporate guarantee for closure or for post-closure care, described in 40 CFR §264.143(f)(10) or §264.145(f)(11), respectively, may be provided by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title, with the entity guaranteed;~~]

(7)-(20) (No change.)

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

§335.167. Corrective Action for Solid Waste Management Units.

(a) (No change.)

(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan) and in accordance with this section, 40 Code of Federal Regulations Part 264 Subpart S, and §335.152 of this title (relating to Standards). The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan [~~and assurances of financial responsibility for completing such corrective action~~]. Financial assurance for such corrective action shall be established and maintained in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities) in an amount acceptable to the executive director.

(c) The owner or operator must implement corrective actions beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has

migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Financial assurance for such corrective action shall be established and maintained in accordance with Chapter 37, Subchapter P of this title, in an amount acceptable to the executive director [~~Assurances of financial responsibility for such corrective action must be provided to the executive director~~].

§335.179. Financial Assurance.

(a) Before a permit may be issued, amended, extended, or renewed for a solid waste facility for storage, processing, or disposal of hazardous waste, the commission shall determine the type or types of financial assurance which may be used by the applicant to comply with applicable regulations.

(b) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the permittee must:

(1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in addition to the requirements specified in §335.152(a)(6) of this title (relating to Standards); and

(2) establish financial assurance for the amount of the post closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title, in addition to the requirements specified in §335.152(a)(6) of this title, if the facility:

(A) includes a disposal facility;

(B) includes a pile, and/or surface impoundment from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments)) and 40 Code of Federal Regulations, §264.258;

(C) includes a tank system that is required under §335.152 of this title, to meet the requirements for landfills;

(D) includes a containment building that is required under §335.152 of this title, to meet the requirements for landfills; or

(E) is notified by the executive director of the need for post closure financial assurance for another type of unit.

(c) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title (relating to Financial Assurance).

(d) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility containing a hazardous waste surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for nonsudden liability coverage for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title.

(e) If the executive director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the owner or operator may be required to comply with subsection (d) of this section.

[~~(b) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit has been issued, amended, extended, or renewed, the permittee shall execute the financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility.~~]

[~~(c) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow as provided by the commission an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.~~]

[~~(d) In addition to other forms of financial assurance authorized by the commission regulations, an applicant may use the letter of credit form of financial assurance if either the issuing institution or another institution which guarantees payment under the letter:~~]

[~~(1) is a bank chartered by the state or by the federal government; and~~]

[~~(2) is federally insured and its financial practices are regulated by the state or the federal government.~~]

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 October 7, 1999.

TRD-9906715
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Chapter 336. RADIOACTIVE SUBSTANCE RULES

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§336.502, 336.514, 336.517, 336.607, 336.736, and 336.737, concerning Radioactive Substances Rules.

EXPLANATION OF PROPOSED RULES

Changes have been proposed to Chapter 336 the result of ongoing efforts by the commission for regulatory reform. This rule focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transferred those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are being simultaneously coordinated with proposed changes to 30 TAC Chapters 37, 305, 324, 330, 331, 334, and 335. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those

requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The proposed financial assurance rules have been consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently, the requirements were repetitive and often identical. These proposed rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The proposed amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the proposed modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The proposed amendments in this chapter are for purposes of simplification and clarification and involve few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes in the proposed rules are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with federal requirements, and protection of human health and the environment. Substantive changes in the regulations are specifically articulated in this preamble to make those instances easily identifiable. In general, these rule amendments involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Water Code, §26.352, requires the commission to adopt rules requiring financial assurance for underground storage tanks. Texas Water Code, §27.073 provides the commission with the authority to require financial assurance for underground injection well facilities. The provisions of Texas Health and Safety Code, §361.085 necessitate the commission to require financial assurance demonstrations for permitted facilities. Texas Health and Safety Code, §371.026, requires the commission to adopt rules requiring financial assurance from used oil handlers.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

These rules are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed amendments to Chapter 336.

SUBCHAPTER F: LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

Proposed §336.502 is included to cross-reference Chapter 37, Subchapter S for financial assurance requirements and financial assurance mechanisms.

Section 336.514 is proposed to correct a cross-reference and to move the mechanism to the appropriate section.

Section 336.517 is proposed to correct cross-references.

SUBCHAPTER G: DECOMMISSIONING STANDARDS

Section 336.607 is proposed to correct a cross-reference.

SUBCHAPTER H: LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF RADIOACTIVE WASTE

Section 336.736 and §336.737 are proposed to correct terms and cross-references.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments to Chapter 336, Radioactive Substance Rules, would consolidate financial assurance requirements which are currently located in Chapter 37, entitled Financial Assurance, and in various chapters throughout the programs' technical rules including: Chapter 305- Consolidated Permits; Chapter 324-Used Oil Standards; Chapter 330-Municipal Solid Waste; Chapter 331-Underground Injection Control; Chapter 334-Underground and Aboveground Storage Tanks; and Chapter 335-Industrial Solid Waste and Municipal Hazardous Waste. Financial assurance regulations are intended to reduce or eliminate the necessity of using federal or state funds to close or remediate facilities. The rules also include acceptable mechanisms for demonstrating financial responsibility. The proposed amendments would consolidate into a single source, Chapter 37, the financial assurance requirements and procedures.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be enhanced clarity in general commission processes and enhanced understanding by making the rules consistent with current procedures. These benefits are anticipated to assist

the public and the regulated community in their understanding of the regulations and make certain regulatory requirements easier to find.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

The purpose of this action is to clarify the commission's administrative rules relating to financial assurance by correcting cross-references, by providing better organization, and by making the rules more consistent with current commission practice. There is no anticipated cost to persons who are required to comply with the amended sections, as proposed. In accordance with the commission's ongoing regulatory reform initiative, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization, to fulfill the requirements of state law and to achieve consistency with federal requirements. In the instances where substantive changes are proposed, there are no such changes which modify the procedures and criteria that are used by the commission and by the regulated community for providing financial assurance that would increase the cost or create a new cost for compliance with the proposed rules. More simply stated, there are no anticipated adverse economic impacts to persons, small businesses, or micro-businesses. In fact, persons, industry, small businesses, and micro-businesses should benefit from the enhanced clarity and organization of the rules. In the unlikely event that the proposed financial assurance rules were found to have an adverse economic effect on small businesses or on micro-businesses, reduction of that effect would be neither legal or feasible because the rules are proposed to achieve consistency with federal law which is necessary to maintain equivalency of several federally delegated programs and to fulfill state statutory provisions requiring financial assurance, including Texas Water Code, §26.352 and §27.073 as well as Texas Health and Safety Code, §361.085 and §371.026.

DRAFT REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to §2001.0225 of the Texas Government Code because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. Specifically, the proposal does not exceed a standard set by federal law. Although the rules are adopted to protect the environment and reduce risk to human health, this proposal is not a major environmental rule because it does 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. The rules will not adversely affect in a material way the aforementioned aspects of the state because, generally, the proposed changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being proposed, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the proposed rules are a "major environmental rule." The proposed rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way by the few proposed substantive changes. In fact, the proposed changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the existing rules are protective of human health and the environment, this proposal does not result in a decrease in the protection of the environment or human health. More simply stated, the amendments revise the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety. Furthermore, these rules do not meet any of the four applicability requirements listed in §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This proposal does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for some of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The proposed amendments are not being made solely under the general powers of the commission, but are also being made under the requirements of specific state law that allows the commission to provide these programs. The existing rules are still needed because they implement critical portions of the state law concerning financial assurance. Finally, these rules are not proposed on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to delete obsolete language; to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language; and to make the rules consistent with other commission rules. Promulgation and enforcement of the rule amendments will not create a burden on private real property. There are few significant, new requirements being added. In the few instances where substantive changes are proposed, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created.

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 which are found in 31 TAC §501.12 and §501.14. 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 (CNRAs). 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. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts various aspects and the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification implemented by these proposed rules is insignificant in relationship to the CMP and have no impact upon CNRAs.

The proposed rulemaking does contain minor, substantive changes. In the few instances where substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these proposed rules will not have a direct or significant, adverse effect on CNRAs. The modifications proposed to be made to these rules will not result in changes to the technical permitting requirements of waste facilities nor result in a change to the amount of financial assurance that must be demonstrated. Instead, these proposed financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules will not change the amount of financial assurance required in existing rules, the rules are consistent with the applicable CMP goal. 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 not change the amount of financial assurance required in existing rules. The rule modifications will not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications will result in no substantive effect on the management of coastal areas of the state. 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

Subchapter F. LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

30 TAC §§336.502, 336.514, 336.517

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in Texas Health and Safety Code (HSC), §361.015 and §361.018, which provide the commission with the authority to regulate the disposal of radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.015, 361.018, 361.085, 401.051, and 401.412.

§336.502. Definitions.

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions. [:]

(1) (No change.)

(2) Funding plan - a plan, equivalent to the decommissioning funding plan of 10 Code of Federal Regulations §30.35 (relating to financial assurance and recordkeeping for decommissioning) and §40.36 (relating to financial assurance and recordkeeping for decommissioning), submitted by the holder of an existing license before the development of a detailed decommissioning plan. The funding plan includes:

(A) (No change.)

(B) a description of the financial assurance mechanism(s) as specified in Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material) utilized; and

(C) a certification by the licensee that a signed original of the financial assurance mechanism as specified in Chapter 37, Subchapter S of this title, for decommissioning was submitted to and approved by the executive director.

(3) (No change.)

§336.514. Financial Assurance for Decommissioning.

(a) A financial assurance mechanism or combination of mechanisms in accordance with Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material) [~~Subchapter I of this chapter (relating to Financial Assurance)~~] is required for all entities currently licensed or proposed to be licensed. [~~Federal, State or local government licensees may submit a statement of intent containing a cost estimate for decommissioning based upon the appropriate criteria listed below and indicating that funds for decommissioning will be obtained when necessary.~~]

(b) Applicants for a new license to decommission an inactive disposal site shall submit with the application a signed statement regarding how the applicant will provide financial assurance for decommissioning using one or more of the mechanisms specified in Chapter 37, Subchapter S of this title [~~Subchapter I of this chapter~~]. The amount of financial assurance shall be based upon the detailed cost estimate included in the decommissioning plan submitted with the application. The financial assurance for decommissioning shall be provided at least 30 days prior to license issuance and be effective upon license issuance.

(c) Holders of licenses issued before January 1, 1998 shall submit a funding plan before January 1, 1998. Each funding plan must contain:

(1) a cost estimate for decommissioning;

(A) Each holder of a license authorizing the disposal of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in §336.521, Appendix A, of this title (relating to Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning) or when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in §336.521, Appendix A of this title, shall submit a certification of financial assurance for decommissioning in an amount at least equal to $750,000, in accordance with the criteria set forth in this subchapter and Chapter 37, Subchapter S of this title [~~Subchapter I of this chapter~~]; or

(B)-(C) (No change.)

(2) a description of the financial assurance mechanism of assuring funds for decommissioning as specified in Chapter 37, Subchapter S of this title [~~Subchapter I of this chapter~~], including means for adjusting cost estimates and associated funding levels annually over the life of the facility; and

(3) a certification by the licensee that a signed original of the financial assurance mechanism for decommissioning, in accordance with criteria set forth in this section and Chapter 37, Subchapter S of this title [~~Subchapter I of this chapter~~], has been submitted to and approved by the executive director in the amount specified in paragraph (1) of this subsection.

(d)-(e) (No change.)

§336.517. Financial Assurance for Control and Maintenance.

(a) An applicant or licensee required to demonstrate financial assurance for control and maintenance of a site shall maintain financial assurance for control and maintenance upon license issuance and during the decommissioning period. The applicant or licensee shall provide sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. The financial assurance mechanism(s) for control and maintenance shall comply with Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material) [~~Subchapter I of this chapter (relating to Financial Assurance)~~] including increasing annually the financial assurance amount for inflation or whenever modifications to the control and maintenance activities or changes to the amount being demonstrated causes the amounts for control and maintenance to increase.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906716
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter G. DECOMMISSIONING STANDARDS

30 TAC §336.607

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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 laws of this state. The amendment is also proposed under Texas Health and Safety Code (HSC), §361.015 and §361.018, which provide the commission with the authority to regulate the disposal of radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and HSC, §§361.015, 361.018, 361.085, 401.051, and 401.412.

§336.607. Criteria for License Termination under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if all of the following conditions are met:

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

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are those [~~listed~~] in Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material), or Chapter 37, Subchapter T of this title (relating to Financial Assurance for Near-Surface Land Disposal of Radioactive Waste) [~~Subchapter I of this chapter (relating to Financial Assurance)~~];

(4) (No change.)

(5) Residual radioactivity at the site has been reduced so that if the institution controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and would not exceed either:

(A) (No change.)

(B) 500 mrem (5 mSv) per year provided the licensee:

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

(iii) provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every 5 years to assure that the criteria of §336.603(a) of this title (relating to Radiological Criteria for Unrestricted Use) are met and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Chapter 37, Subchapter S of this title, or Chapter 37, Subchapter T of this title [~~Subchapter I of this chapter~~].

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 October 7, 1999.

TRD-9906717
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000
For further information, please call: (512) 239 -1966

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Subchapter H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF RADIOACTIVE WASTE

30 TAC §336.736, §336.737

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (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 laws of this state. These rules are also proposed under the Solid Waste Disposal Act in the Texas Health and Safety Code (HSC), §361.015 and §361.018, which provide the commission with the authority to regulate the disposal of radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §5.103 and §5.105; and HSC, §§361.015, 361.018, 361.085, 401.051, and 401.412.

§336.736. Funding for Disposal Site Closure and Stabilization.

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

(c) The licensee's financial assurance [~~surety~~] mechanism shall be reviewed annually by the executive director to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(d) The amount of financial assurance [~~surety liability~~] should change in accordance with the predicted cost of future closure and stabilization. Factors affecting cost estimates for closure and stabilization include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and any other conditions affecting costs. This shall yield a closure amount [~~surety~~] that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next annual review.

(e) Financial assurance mechanisms submitted to comply with this section shall meet the requirements specified in Chapter 37, Subchapter T of this title (relating to Financial Assurance for Near- Surface Land Disposal of Radioactive Waste) [~~Subchapter I of this chapter (relating to Financial Assurance)~~].

§336.737. Funding for Institutional Control.

(a) (No change.)

(b) During the term of the license before the institutional control period, the licensee shall provide the total amount of required funding by means approved by the executive director, such as a combination of periodic payments into the fund and financial assurance covering the remainder of the total amount. Financial assurance mechanisms shall meet the requirements of Chapter 37, Subchapter T of this title (relating to Financial Assurance for Near-Surface Land Disposal of Radioactive Waste) [~~Subchapter I of this chapter (relating to Financial Assurance)~~].

(c) (No change.)

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

Filed with the Office of the Secretary of State, on October 7, 1999.

TRD-9906718
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: January 12, 2000

For further information, please call: (512) 239 -1966

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TITLE 34. PUBLIC FINANCE

Part 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 25. MEMBERSHIP CREDIT

Subchapter L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.161

(Editor's note: The Teacher Retirement System of Texas proposes for permanent adoption new §25.161 it adopts on an emergency basis in this issue. The text to new §25.161 is in the Emergency Rules section of this issue.)

The Teacher Retirement System of Texas (TRS) proposes new §25.161 concerning the purchase of service credit for certain work experience required for certification as a career or technology teacher. The proposed new rule will implement Government Code, §823.404, which was passed by the 76th Legislature, 1999, in House Bill 3660. The proposed new rule has been simultaneously adopted on an emergency basis.

In accordance with the new law, the rule sets forth the cost to purchase one or two years of equivalent membership service credit for applicable work experience. The rule adopts actuarial tables, and language describing their operation, for use in calculating the cost of purchasing this type of service credit. In addition, the rule describes the certification needed to establish that the member is entitled to salary step credit under the Education Code, §21.403(b) and makes clear that the five-year permissive service credit purchase restrictions for non-qualified service under Government Code, §823.006 may be applicable.

Ronnie Jung, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Jung has also determined that for each year of the first five years the rule is in effect the public benefit anticipated will be that the process for administering the new law will be in place for TRS members. Specifically, TRS staff will know how to calculate the cost of purchasing the career or technology work experience credit, what certification is needed, and what members are eligible to make such a purchase. There will be no effect on small businesses. There are no anticipated economic costs to the public or to the persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The new rule is proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. It is also adopted under Government Code §823.404, which requires the Board of Trustees to adopt the rates and tables recommended by the actuary and Government Code, §825.506, which authorizes the Board to adopt rules necessary for the retirement system to be a qualified plan.

Other laws affected by this proposed rule are Education Code §21.403(b) and Government Code, §823.006.

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 October 6, 1999.

TRD-9906668
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 17, 1999
For further information, please call: (512) 391-2115

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

Chapter 1. ORGANIZATION AND ADMINISTRATION

Subchapter A. OBJECTIVES, MISSION, AND PROGRAM

37 TAC §1.42

The Texas Department of Public Safety proposes new §1.42, concerning the Department of Public Safety (DPS) Volunteer Program. The DPS is committed to providing the best services to its customers and the community. Since funds and professional staff time are limited, volunteers provide the extension of staff necessary to accomplish DPS goals. The new section sets forth the policy and procedures of the DPS Volunteer Program.

In appreciation of volunteers donating their time and skills, the DPS Volunteer Program offers professional development to its volunteers including mentoring, human resources walkthrough (application process, job posting, and screening), mock interviews, and assistance with resume/application. A performance appraisal will be given to all volunteers upon the completion of their volunteer assignment or every six months (whichever comes first). The volunteers will also have the opportunity to evaluate the volunteer program and offer recommendations.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be fiscal implications to the state as a result of the department having to provide accidental and liability insurance for each volunteer. The department estimates the cost will be approximately $100 the first year; $200 the second year; $400 the third year; $700 the fourth year; and $1,000 the fifth year. There is no anticipated economic cost to local governments.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be professional development to the volunteers. There is no anticipated economic cost to

individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 7873-0140, (512) 424-2890.

The new section is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Government Code, Chapter 2109.

Texas Government Code, §411.006(4) and Texas Government Code, Chapter 2109 are affected by this proposal.

§1.42. Volunteer Program.

(a) Volunteer. A volunteer is any individual who donates time and services to facilitate Department of Public Safety (DPS) programs. Volunteers may serve as committee or task force members, interpreters, resource developers, office assistants, or interns performing non-paid work to meet degree requirements and could be involved in any aspect of policy, planning, and program development. DPS volunteer work will count as actual work experience when applying for a job within the agency.

(1) Persons interested in volunteering should be referred to the DPS volunteer coordinator in Austin, Texas. The volunteer coordinator is aware of all DPS volunteer opportunities and is best equipped to match the volunteer's skills and interests with DPS needs. As the volunteer program expands and volunteer opportunities are identified in respective regions, a volunteer coordinator must be appointed to oversee their region's program. All volunteer coordinators will work closely with the volunteer coordinator in Austin to ensure consistency and efficiency throughout the program.

(2) Volunteers may use DPS office space, supplies, files and records, equipment, and computers as deemed necessary to complete their assigned duties. DPS will maintain files that include records of donated time and services, a volunteer registration form, a confidentiality agreement, training records, emergency information, DPS volunteer evaluation forms, and commendations. Information from these files may be used for recognition and employment (internal/external) purposes.

(3) Accident and personal liability insurance is required and is carried on all DPS volunteers.

(4) Volunteer candidates must undergo a standard background check or record check depending on their volunteer positions. This check must be completed before the volunteer begins their duties. A conviction and/or probated or suspended sentence on any felony will disqualify the volunteer candidate. Volunteers must adhere to DPS policies and procedures. Failure to do so will terminate the volunteer relationship with DPS.

(5) Volunteers must wear appropriate identification and will have access to their designated workstation.

(b) Students, interns, and other volunteers. An intern is a person enrolled in a high-school, university or college who desires to volunteer for limited periods of time; or who is enrolled in university/college courses which require "internship" programs that utilize business/agency practical experience and training for course credit and/or pre-professional training and work experience. Student interns are not employees of the agency and are considered "volunteers." These interns must adhere to DPS policies and procedures.

(1) It is the responsibility of the students and interns to communicate their class requirements before they are placed as volunteers.

(2) The DPS volunteer coordinator will ensure that students receive appropriate support.

(c) Supervisor responsibilities for volunteers. Each volunteer working directly for DPS must be supervised by a staff person. Although a volunteer may work with more than one staff person, the volunteer's supervisor should be clearly identified. That supervisor must have at least the level of job responsibility as the volunteer being supervised. Every supervisor must receive training in volunteer management (conducted by volunteer coordinator) prior to volunteer arrival. The supervisor is responsible for making sure adequate training, guidance, and instruction are provided for the volunteer; making sure hours are recorded and appropriate forms are completed and filed.

(d) Orientation. Staff assigned to supervise volunteers must attend an orientation to obtain additional information and requirements pertaining to volunteers. Staff will be notified of orientations by the volunteer coordinator.

(e) Supervision. Supervisors of volunteers are responsible for the day-to-day supervision of their volunteer(s). It is the responsibility of each supervisor to have planned activities and/or projects and to have adequate workspace and materials for their volunteer(s). Supervisors should be available to monitor the progress of the volunteer(s), and be accessible to answer any questions.

(f) Mentoring. Supervisors of volunteers should provide training, guidance, and support for their volunteer(s). It is the responsibility of the supervisor to set a good example and to be a role model for their volunteer. Supervisors should provide enrichment and learning opportunities to their volunteer(s).

(g) Time sheets. Volunteers are required to keep a time sheet to record their daily activities at DPS. The time sheets should be submitted to the volunteer coordinator.

(h) Evaluation. Evaluation forms should be completed by each supervisor and submitted to the volunteer coordinator. A college, university, or high school may request evaluation forms to verify an individual completed his/her internship.

(i) Recognition. Official DPS certificates and letters of commendation may be requested from the volunteer coordinator. Volunteer supervisors should submit this request in writing to the volunteer coordinator.

(j) Requesting volunteers. DPS staff must recruit and place volunteers without regard to age, race, sex, religion, color, national origin, or disability.

(1) DPS departments should contact the volunteer coordinator to determine if a particular job is appropriate for volunteer performance.

(2) DPS staff should submit a request for volunteers through their immediate supervisor to the volunteer coordinator. Written job functions must accompany all requests. Volunteer opportunities will be posted in the Human Resources Bureau.

(3) Request forms may be obtained from the volunteer coordinator.

(4) The volunteer coordinator will conduct or assist in the screening and referral processes.

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

Filed with the Office of the Secretary of State, on October 8, 1999.

TRD-9906739
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-2135

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Chapter 15. DRIVERS LICENSE RULES

Subchapter H. ADVERTISING

37 TAC §15.131

The Texas Department of Public Safety proposes new §15.131, concerning Advertising in Texas Drivers Handbook. The purpose of the new section is to recover the cost of printing and distribution of the Texas Drivers Handbook.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be a positive fiscal impact. The department predicts a positive fiscal impact by recouping part of or all of the costs associated with publishing and distribution of the Texas Drivers Handbook. There should be no fiscal impact on other state agencies and local government.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the potential for easier access to the handbooks by including the handbooks on the internet should sufficient private sector funding be generated. The anticipated economic cost to persons or small or large businesses that contract to advertise and are subsequently required to comply with the rule as proposed cannot be determined due to the individuality of contract negotiated terms. Likewise, any revenue increase generated for those persons or small or large businesses that contract to advertise cannot be determined due to individuality of advertisements and customer response.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78752, (512) 424-2890.

The new section is proposed pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department, and Texas Transportation Code, §521.005 and §521.006.

Texas Government Code, §411.006(4) and Texas Transportation Code, §521.005 and §521.006 are affected by this proposal.

§15.131. Advertising in Texas Drivers Handbook.

The department may contract with a person or a small or large business to provide advertising in the Texas Drivers Handbook. The ad price will be based on circulation at the time of ad purchase, ad placement, and printing costs. The frequency of printing the handbooks is driven by the print schedule of the Reproduction Bureau. The appropriate personnel such as Graphics, Reproduction, and Cost Recovery will coordinate work efforts such as advertising specifications (camera ready ads, number of colors within ads, ad location, and printing deadlines).

(1) all advertisements solicited by the department must be in good taste and must be approved by the appropriate department authority prior to use in the handbook.

(2) the following subjects or types of advertising may not be included in the handbook:

(A) religious ads;

(B) controversial organizations;

(C) ballot measures;

(D) tobacco ads;

(E) ads contrary to agency goals;

(F) political ads;

(G) gambling ads;

(H) controversial issues;

(I) alcoholic beverage ads;

(J) personal or offensive issues; and

(K) ads which mention the department anywhere in the advertisement.

(3) the department reserves the right to add additional exclusions if warranted to be in the public's best interest.

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

Filed with the Office of the Secretary of State, on October 8, 1999.

TRD-9906740
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-2135

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Part 3. TEXAS YOUTH COMMISSION

Chapter 81. INTERACTION WITH THE PUBLIC

37 TAC §81.35

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

The Texas Youth Commission (TYC) proposes the repeal of §81.35, concerning Involvement of Victims. This section is being repealed to allow for the publication of a new section.

Terry Graham, Assistant Executive Deputy Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state

or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the increased information in the acknowledgment of the rights of the victims' of TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The repeal is proposed under the Human Resources Code, §61.0421, concerning Public Interest Information, which provides the Texas Youth Commission with the authority to prepare information of public interest describing the functions of the commission and describing the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

The proposed repeal implements the Human Resource Code, §61.034.

§81.35. Involvement of Victims.

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 October 8, 1999.

TRD-9906736
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-6244

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The Texas Youth Commission (TYC) proposes new §81.35, concerning Rights of Victims. The new section will provide for the right of information to victims of youth committed to TYC who request certain information under the Texas Family Code, §57.001. A victim may request in writing information regarding TYC's procedures for release or transfer of a youth, the proceedings for release under supervision and other movements, and/or the youth's release under supervision and other specified movements. A victim on written request, may provide a written statement for inclusion in the youth's file and/or may request and receive permission to provide input in person at the youth's staffing for release under procedures in this section.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the increased efficiency in providing information requested by a victim consistent with law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The new section is proposed under the Human Resources Code, §61.0421, concerning Public Interest Information, which provides the Texas Youth Commission with the authority to prepare information of public interest describing the functions of the commission and describing the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

The proposed rule implements the Human Resource Code, §61.034.

§81.35. Rights of Victims.

(a) Purpose. The purpose of this rule is to acknowledge the rights of victims as described in the Texas Family Code, §57.001, provide information as required, and allow victims to provide input into the release process of youth committed to the Texas Youth Commission (TYC).

(b) Applicability. Rules governing confidentiality of youth records can be found in (GAP) §99.1 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse) and (GAP) §99.9 of this title (relating to Access to Youth Records).

(c) Explanation of Terms Used.

(1) Victim–a person who as the result of the delinquent conduct of a child suffers a pecuniary loss or personal injury or harm.

(2) Close relative of a deceased victim–a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(3) Guardian of a victim–a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetence of the victim.

(d) All of the rules and procedures afforded to a victim of a youth in TYC custody, as indicated by the use of the term victim in this section, are equally afforded to the victim's guardian or close relative if the victim is deceased.

(e) Victim's Right to Information.

(1) A victim may request, in writing, any of the information listed below:

(A) information of the procedures for release or transfer of the youth from one program placement to another including to the custody of the pardons and paroles division of the Texas Department of Criminal Justice (TDCJ) for parole;

(B) notification of the proceedings for release under supervision including release on parole status, or release to a non-institutional community placement, or transfer to TDCJ for parole concerning the youth; and

(C) notification of the youth's release under supervision including release on parole status, or release to a non-institutional community placement, or transfer to TDCJ for parole.

(2) The requested information, if appropriate, will be sent to the victim at his or her most current address on file by TYC staff at the youth's placement program.

(3) For a victim who has requested information, TYC staff MAY reveal only the following:

(A) youth is under TYC's jurisdiction, the minimum length of stay, and the committing offense;

(B) conditions of parole supervision (except specialized treatment);

(C) information about a TYC administrative hearing for the offense in which the victim was involved;

(D) that the youth has been transferred to another location and the name of that location unless the program is only for substance abuse treatment; and

(E) the name of the youth's caseworker or parole officer.

(f) Victim's Right to Participation.

(1) A victim may provide to TYC for inclusion in the youth's masterfile information to be considered by the Commission before the release under supervision including release on parole status, or release to a non-institutional community placement, or TDCJ transfer for parole.

(2) If the victim requests in writing and receives permission to provide input in person, he or she may participate in a youth's staffing for release under supervision (home on parole status), or movement to a non-institutional community placement, or transfer to TDCJ parole. The victim shall not be allowed to attend the entire staffing regarding the youth.

(3) Victims who appear in person will be provided a waiting area separate from any location where they might encounter youth.

(g) Victim Appeal. The victim has no right of appeal in any TYC decision.

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

Filed with the Office of the Secretary of State, on October 8, 1999.

TRD-9906735
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-6244

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37 TAC §81.61

The Texas Youth Commission (TYC) proposes an amendment to §81.61, concerning Notification of a Facility Opening or Closing. The amendment to the section clarifies that a 60-day notice to a local governmental entity is only necessary when the local governmental entity has provided TYC documentation of a resolution and request to be notified of construction or operation of a correctional or parole program within 1000 feet of certain designated areas. This amendment also includes the new requirement of a sign to be posted at the site of the program when the written notification is requested.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased efficiency in providing information regarding the opening or relocating of a TYC facility in the community, consistent with law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.0421, concerning Public Interest Information, which provides the Texas Youth Commission with the authority to prepare information of public interest describing the functions of the commission and describing the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

The proposed rule implements the Human Resource Code, §61.034.

§81.61. Notification of a Facility Opening or Relocating.

(a) Purpose. The purpose of this rule is to provide for notification to the public and elected officials of the opening or relocation of certain Texas Youth Commission (TYC) [~~TYC~~] operated and contracted residential programs at selected sites.

(b) [~~Thirty-day~~] Notice. Except as provided in subsection (d) of this section , [~~30 days~~] as soon as practical before beginning operation or construction of a TYC operated or contract operated [~~contracted~~] residential program that serves six or more solely TYC youth or before relocating such a program that is currently operated elsewhere, notice indicating the proposed address and general description of the program will be given to the public and certain elected officials as follows:

(1) notice will be published in a newspaper of general circulation in the county in which the proposed program is to be located and include where public comment on the proposal may be sent for review; and

(2) notice will be mailed to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed program is to be located.

(c) Public Meeting. Upon request by one of the elected officials, a public meeting conducted by TYC or the contract operator will be held to inform the public about the proposed residential program and to receive public comment.

~~[(1) Thirty days before the date of the meeting, TYC or the contract operator will publish notice of the date, hour, place, and subject of the meeting in three consecutive issues of a newspaper that has a general circulation in the county in which the proposed facility is to be located.]~~

[(2) Thirty days before the date of the meeting, TYC or the contract operator will mail a copy of the notice to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed program is to be located.]

[(3) A private vendor conducting a public meeting under this section, other than a vendor that operates as a nonprofit corporation, is responsible for the costs of providing notice and holding the public meeting.]

[(4) The notice of the meeting must specifically state the address of the proposed facility, a description of the proposed program and the purpose of the meeting.]

[(5) The public meeting will be held at a site as close as practicable to the proposed site of the residential program.]

(d) Sixty-day Notice for Sites 1,000 Feet from Designated Places and When Written Notice is Received by a Local Governmental Entity. [If a request to be provided such notice has been made, 60 days before beginning construction or operation of a TYC or contracted residential facility or district office that is located within 1,000 feet of a residential area, a primary or secondary school, a park or public recreation area, or a place of worship, TYC or the contract operator will mail the commissioners court and governing body of the municipality notice of the proposed location. This section does not apply to:]

(1) Only if a written request pursuant to §244.005 of the Local Government Code has been received by TYC, then pursuant to §244.002 of the Local Government Code sixty days before beginning construction or operation, whichever occurs first, of a TYC or contracted residential facility or parole office that is located within 1,000 feet of a residential area, a primary or secondary school, a park or public recreation area, or a place of worship, TYC or the contract operator shall mail to the commissioners court and governing body of the municipality notice of the proposed location.

(2) TYC shall prominently post an outdoor sign at the proposed location of the correctional facility stating that a correctional facility is intended to be located on the premises and providing the name and business address of the entity. The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size and may be required to be both in English and a language other than English as required by the requesting municipality or county.

(e) This section does not apply to:

(1) facilities that on September 1, 1997, are in operation, under construction, under contract for operation or construction, or planned for operation on land owned or leased for the purpose;

(2) foster homes;

(3) temporary facilities operating less than one year at the location;

(4) expansion of existing facilities;

(5) facilities not operating primarily for use as a correctional or rehabilitation facility, but housing TYC youth only for a treatment or educational purpose;

(6) facilities that require special or conditional use permits for operation; and

(7) district offices located in commercial use areas.

(f) [(e)] Denial of Consent to Operate. A TYC operated or contract operated residential facility or parole office that is subject to the 60-day notice requirement of subsection (d) of this section may not be operated at the proposed location if not later than the 60th day after the date on which notice is received by a commissioners court or governing body as provided for in subsection (d) of this section, the commissioners court or governing body determines by resolution after a public hearing that the operation of a TYC or contract residential facility or parole office at the proposed location is not in the best interest of the county or municipality. [A residential facility or district office that is subject to the 60-day notice requirement of subsection (d) of this section may not be operated at the proposed location if consent for its operation there is denied by resolution of the commissioners court or governing body of the municipality.]

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 October 8, 1999.

TRD-9906738
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-6244

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Part 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

Chapter 211. ADMINISTRATION

37 TAC §211.105

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §211.105 concerning emergency telecommunicator acknowledgment.

The provisions of this section have been renumbered and a proposal for adoption is being made in §221.28.

Dr. D.C. Jim Dozier, Executive Director of the Commission has determined that for the first five year period that the repeal is in effect, there will be no fiscal implications for the state and local government as a result of enforcing or administering this section.

Dr. Dozier has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing this section will be the elimination of obsolete references and better organization of rules relating to particular topics. There will be no effect on small business. There is no anticipated increase in economic costs to individuals who seek to obtain the certification. Telecommunicators are not required to comply with these voluntary certifications.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The repeal is proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by the proposed repeal: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§211.105. Telecommunicator Acknowledgment.

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 October 11, 1999.

TRD-9906787

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: January 1, 2000

For further information, please call: (512) 936-7700

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Chapter 221. PROFICIENCY CERTIFICATES AND OTHER POST BASIC LICENSES

37 TAC §221.25, §221.26

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §221.25 and §221.26, concerning emergency telecommunications operator proficiency and emergency telecommunications technician proficiency.

The provisions of these sections have been renumbered and a proposal for adoption is being made in § 221.28.

Dr. D.C. Jim Dozier, Executive Director of the Commission has determined that for the first five year period that the repeals are in effect, there will be no fiscal implications for the state and local government as a result of enforcing or administering these sections.

Dr. Dozier has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing these sections will be the elimination of obsolete references and better organization of rules relating to particular topics. There will be no effect on small business. There is no anticipated increase in economic costs to individuals who seek to obtain the certification. Telecommunicators are not required to comply with these voluntary certifications.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The repeals are proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by these proposed repeals: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.25. Emergency Telecommunications Operator Proficiency.

§221.26. Emergency Telecommunications Technician Proficiency.

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 October 11, 1999.

TRD-9906788

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: January 1, 2000

For further information, please call: (512) 936-7700

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37 TAC §221.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §221.28, concerning emergency telecommunications proficiency certifications.

The new section is being proposed to implement new proficiency certifications for individuals who have met the standards for basic, intermediate or advanced telecommunication certificates specified in this section.

Dr. D.C. Jim Dozier, Executive Director of the Commission has determined that for the first five year period that the new section is in effect, there will be no fiscal implications for the state and local government as a result of administering this section.

Dr. Dozier has also determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering this section will be more knowledgeable and proficient telecommunicators. There will be no effect on small business. Economic impact is negligible. Implementation of the new telecommunication proficiency certification is an option for telecommunicators who seek to obtain the certification, telecommunicators are not required to comply with these voluntary certifications.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

The new section is proposed under Texas Government Code Annotated, Chapter 415, §415.010 which authorizes the Commission to promulgate rules for the administration of Chapter 415.

The following statute is affected by this proposed new rule: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.28. Emergency Telecommunications Proficiency.

(a) The commission shall issue certificates to an individual who has met the standards for basic, intermediate or advanced certificates as specified in this section; and has been properly reported to the commission by an agency as currently appointed as a telecommunicator with or for that agency.

(b) The standards for the Basic Telecommunications Certificate shall be successful completion of a course which consists of at least the 40-hour required minimum; and has been developed or approved by the commission.

(c) The standards for an Intermediate Telecommunications Certificate shall be:

(1) A Basic Telecommunications Certificate;

(2) Cumulative experience in Public Safety Telecommunications to equal or exceed two (2) years; and

(3) Completion of required courses as specified by the commission.

(d) The standards for an Advanced Telecommunicator Certificate shall be:

(1) An Intermediate Telecommunications Certificate;

(2) Cumulative experience in Public Safety Telecommunications to equal or exceed four (4) years; and

(3) Completion of required courses as specified by the commission.

(e) The effective date of this section is January 1, 2000.

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 October 11, 1999.

TRD-9906790
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: January 1, 2000
For further information, please call: (512) 936-7700

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Part 9. TEXAS COMMISSION ON JAIL STANDARDS

Chapter 253. DEFINITIONS

37 TAC §253.1

The Commission on Jail Standards proposes amendments to §253.1 concerning Definitions to provide definitions consistent with proposed changes, current terminology and worksheets utilized with county jail facilities.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide consistent definitions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§253.1. Definitions.

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

(1) (No change.)

(2) Capacity–The number of inmates a facility is authorized by the commission to house, excluding holding, detoxification, [~~medical,~~] and violent cells.

(3)-(21) (No change.)

(22) Separation Cell–A special purpose cell designed to accommodate one inmate. The cell minimally contains one bunk, mirror, toilet, lavatory, shower, [~~floor drain,~~] table, and seat. This cell is used to house inmates requiring protection or whose behavior requires close supervision.

(23)-(25) (No change.)

(26) Single Cell–A cell designed to accommodate one inmate. The cell minimally contains one bunk, toilet, lavatory, table and seat.

(27) (No change.)

(28) Special Purpose Cell–Detoxification cell, holding cell, separation cell, violent cell, negative pressure cell and medical cells. These cells are not required to be provided with day rooms or safety vestibules.

(29)-(31) (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 October 6, 1999.

TRD-9906628
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Chapter 259. NEW CONSTRUCTION RULES

Subchapter B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.140

The Commission on Jail Standards proposes amendments to §259.140 concerning New Construction Rules to provide a standard consistent with legislative action repealing the provision of a hammock within a violent cell.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide

a standard consistent with statutory law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to revise, amend or change rules and procedures if necessary.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.140. Violent Cells.

A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment.

(1) Furnishings. The cell shall be equipped with a minimum 2' 3" wide by 6' 3" long bench not more than 8" above the floor which abuts the wall and extends the length or width of the cell. [~~The cell shall be equipped with a hammock, not less than 2' 3" wide and 6' 3" long, made of an elastic or fibrous fabric. A bench abutting the wall, the length or width of the cell, at least 2' 3" wide and 6' 3" long and not more than 8" above the floor may be provided in lieu of a hammock.~~]

(2)-(4) (No change.)

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

Filed with the Office of the Secretary of State, on October 6, 1999.

TRD-9906629
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Subchapter C. NEW LOCK UP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.233

The Commission on Jail Standards proposes amendments to §259.233 concerning New Construction Rules in New Lock-Up Design. The amendment will not require day room space be provided with single cells, multiple occupancy cells and dormitories.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide decreased cost and space requirements in lock-up design where arrestees are held no more than 72 hours. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.233. Day Rooms.

Single [~~All single~~] cells, multiple occupancy cells, and dormitories may [~~shall~~] be provided with day room space. Holding cells and detoxification cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room.

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 October 6, 1999.

TRD-9906630
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Subchapter H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.738

The Commission on Jail Standards proposes amendments to §259.738 concerning New Construction Rules in New Long-Term Incarceration Design. The amendment will limit the number of inmates within a day room space to no more than 48 inmates.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a limited number of inmates within a day room space at any one time. There will be no effect on small businesses. There

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

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.738. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with day room space. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. Seating and table for at least one inmate may be provided in day rooms serving administrative segregation cells upon Commission approval. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the day room.

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 October 6, 1999.

TRD-9906631
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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37 TAC §259.742

The Commission on Jail Standards proposes amendments to §259.742 concerning New Construction Rules to provide a standard consistent with legislative action repealing the provision of a hammock within the violent cell.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a standard consistent with statutory law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to revise, amend or change rules and procedures if necessary.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.742. Violent Cells.

A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment.

(1) Furnishings. The cell shall be equipped with a minimum 2' 3" wide by 6' 3" long bench not more than 8" above the floor which abuts the wall and extends the length or width of the cell. [~~The cell shall be equipped with a hammock, not less than 2' 3" wide and 6' 3" long, made of an elastic or fibrous fabric. A bench abutting the wall, the length or width of the cell, at least 2' 3" wide and 6' 3" long and not more than 8" above the floor may be provided in lieu of a hammock.~~]

(2)-(4) (No change.)

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

Filed with the Office of the Secretary of State, on October 15, 1999.

TRD-9906883
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Chapter 263. LIFE SAFETY RULES

Subchapter D. PLANS AND DRILLS FOR EMERGENCIES

37 TAC §263.42

The Commission on Jail Standards proposes amendments to §263.42 concerning Life Safety Rules to provide that the facility be inspected annually by a local fire official.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide increased fire safety within jail facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and pro-

cedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§263.42. Fire Prevention Plan.

Each facility, after consultation with the local fire department or Texas Commission on Fire Protection, shall have and implement a written plan, approved by the commission, for fire prevention and a fire hazard inspection checklist which shall be evaluated no less than each calendar quarter. The facility shall be inspected annually by a local fire official.

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 October 6, 1999.

TRD-9906632
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Chapter 265. ADMISSION

37 TAC §265.4, §265.12

The Commission on Jail Standards proposes amendments to §265.4 and §265.12 concerning Admission to provide the separation of medical records from other inmate records upon intake and isolating inmates suspected of a reportable communicable disease as detailed by the Department of Health.

Jack E. Crump, Executive Director, 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 as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to provide the county greater flexibility in separating inmate medical records. Moreover the amendments will promote efficient operation of the facility without having staff separate inmates suspected of "any type" of communicable disease. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by the rules are Local Government Code, Chapter 351, 351.002 and 351.015.

§265.4. Inmate Files.

(a) Upon intake, a file on each inmate shall be established. The file shall include:

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

(3) gender [~~sex~~];

(4)-(15) (No change.)

(b) Upon intake, a medical record shall be established and shall be kept separate [~~should be located in a separate file~~].

§265.12. Communicable Disease.

Inmates suspected of having a reportable [~~any type of~~] communicable disease shall be isolated and immediate arrangements made for the inmate's transfer to a facility equipped to handle the suspected disease, unless the admitting facility can safely and effectively segregate and maintain a medically prescribed course of treatment.

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 October 6, 1999.

TRD-9906633
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Chapter 269. RECORDS AND PROCEDURES

Subchapter A. GENERAL

37 TAC §269.4

The Commission on Jail Standards proposes amendments to §269.4 concerning Records and Procedures to substitute the term sex with the term gender.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a more professional term to describe one's sex. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§269.4. Equitable Treatment.

Each sheriff/operator shall have and implement a written procedure providing for equitable treatment regardless of race, religion, national origin, gender [~~sex~~], age, or disabilities. The treatment of inmates

with disabilities shall be in accordance with Title II, Subtitle A, of the Americans with Disabilities Act, 42 United States Code, §§12131-12134 and its regulations at 28 Code of Federal Regulations, Part 35, §§35.101-35.190.

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 October 6, 1999.

TRD-9906634
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 463-5505

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Chapter 271. CLASSIFICATION AND SEPARATION OF INMATES

37 TAC §§271.1, 271.3, 271.4, 271.7

The Commission on Jail Standards proposes amendments to §§271.1, 271.3, 271.4 and 271.7 concerning Classification and Separation of Inmates to provide inmates in administrative or segregative separation access to a shower every other day and custody reassessment of an inmate upon any disciplinary action and/or change in legal status which would affect classification. Further changes are grammatical.

Jack E. Crump, Executive Director, 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 as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to provide a more effective jail operation. Providing inmates access to showers every other day provides greater flexibility in scheduling inmates who are predominantly confined to a segregative cell and don't neccessarily require daily showers. Moreover the current language requires the reassessment of an inmate even if the inmate is moved from housing units of the same security level. Other changes are grammatical. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by the rules are Local Government Code, Chapter 351, 351.002 and 351.015.

§271.1. Objective Classification Plan.

(a) Each sheriff/operator shall develop and implement an objective classification plan approved by the commission by January 1, 1997. The plan shall include principles, procedures, instruments and explanations for classification assessments, housing assignments, reassessments and inmate needs. [~~Existing classification and risk assessment plans shall remain valid until plans~~] Plans utilizing an approved objective classification system shall be [~~are~~] submitted and approved by the commission. The following principles and procedures shall be addressed:

(1) inmates shall be classified and housed in the least restrictive housing available without jeopardizing staff, inmates or the public, utilizing risk factors which include any or all of the following [~~the following risk factors~~]:

(A)-(G) (No change.)

(2)-(9) (No change)

(10) single cells may be utilized for disciplinary or administrative separation. Inmates in administrative separation shall be provided access to a day room for at least one hour each day. Inmates in disciplinary separation shall be provided a shower every other day [~~single cells may be utilized for disciplinary or administrative separation provided inmates are allowed access to a shower and day room for at least one hour each day~~].

(b) The following classification procedures shall be conducted utilizing the approved classification instruments [~~The following approved, validated classification instruments and explanations for completing those instruments shall be provided~~]:

(1) Intake Screening [~~Instrument~~]. To be completed immediately on all inmates admitted for purposes of identifying any medical, mental health or other special needs that require placing inmates in special housing units;

(2) Initial Custody Assessment [~~Instrument~~]. To be completed on all newly admitted inmates prior to housing assignments to determine custody levels. This shall be accomplished within 72 hours of admission. [~~Supervisory override capability with written justification shall be provided; and~~]

(3) Custody Reassessment/Review. A custody reassessment shall be conducted within 30-90 days of the Initial Custody Assessment and immediately upon any disciplinary action and/or change in legal status which would affect classification. A documented classification review to determine the necessity for a complete reassessment shall be conducted every 30-90 days thereafter. [~~Custody Reassessment Instrument. To be completed within 30-90 days of the Initial Custody Assessment and every 30-90 days thereafter, immediately upon any change in custody level and prior to any changes in housing assignments. This form relies upon criteria that emphasize institutional behavior. Supervisory override capability with written justification shall be provided.~~]

(c) (No change.)

§271.3. Training.

The plan shall provide that all [~~All~~] staff whose duties include classification, shall undergo at least four hours of training on the principles, procedures and instruments for classification assessments, housing assignments, reassessments and inmate needs.

§271.4. Appeals.

The plan shall provide that a [~~A~~] documented appeals process shall be provided for classification assessments, reassessments, housing, work and program assignments [~~and reassessments~~].

§271.7. Audit.

The plan shall provide that an [~~An~~] annual, internal audit shall be conducted on the classification system. Audit records shall

be maintained for commission review. The audit shall assess the following features of the objective classification system:

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

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

Filed with the Office of the Secretary of State, on October 6, 1999.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

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Chapter 273. HEALTH SERVICES

37 TAC §§273.4-273.6

The Commission on Jail Standards proposes amendments to §§273.4-273.6 concerning Health Services to provide grammatical clarifications and include inmates within the mental disabilities/suicide prevention plan who may be both mentally disabled and suicidal.

Jack E. Crump, Executive Director, 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 as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to provide a more understandable rule and ensure an inclusive mental disabilities/suicide prevention plan. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by the rules are Local Government Code, Chapter 351, 351.002 and 351.015.

§273.4. Health Records.

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

(d) Each facility shall report to the Texas Department of Health (TDH) the release of an inmate who is receiving treatment for tuberculosis in accordance with TDH Guidelines.

§273.5. Mental Disabilities/Suicide Prevention Plan.

(a) Each sheriff/operator shall develop and implement a mental disabilities/suicide prevention plan, in coordination with available medical and mental health officials, approved by the commission by March 31, 1997. The plan shall address the following principles and procedures:

(1) Training. Provisions for staff training (including frequency and duration) on the procedures for recognition, supervision, documentation, and handling of inmates who are mentally disabled and/or[~~and~~] potentially suicidal [~~inmates~~]. Supplemental training should be provided to those staff members responsible for intake screening;

(2) Identification. Procedures for intake screening to identify inmates who are mentally disabled and/or [~~and~~] potentially suicidal [~~inmates~~] and procedures for referrals to available mental health officials;

(3) Communication. Procedures for communication of information relating to inmates who are mentally disabled and/or [~~and~~] potentially suicidal [~~inmates and procedures between staff members~~];

(4) Housing. Procedures for the assignment of inmates who are mentally disabled and/or [~~and~~] potentially suicidal [~~inmates~~] to appropriate housing;

(5) Supervision. Provisions for adequate supervision of inmates who are mentally disabled and/or [~~and~~] potentially suicidal [~~inmates~~] and procedures for documenting supervision;

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

(8) Follow-Up Review. Procedures for follow-up review of policies by the sheriff/operator and mental health and medical officials following [~~of~~] all [~~potential,~~] attempted or[~~, and~~] completed suicides.

(b) (No change.)

§273.6. Tuberculosis Screening Plan.

(a) (No change.)

(b) The tuberculosis screening plan shall be developed and implemented in accordance with 25 TAC §§97.171-97.180 (relating to Communicable Diseases) and the Texas Health and Safety Code, §§89.001-89.102 and shall be approved by the Tuberculosis Elimination Division, Texas Department of Health [~~(TDH)~~] prior to use. The plan shall be made available to the commission upon request. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement shall accompany an inmate transferred from one correctional facility to another or to TDCJ-ID and be available for medical review upon arrival of the inmate. [~~Each facility shall report to TDH the release of an inmate who is receiving treatment for tuberculosis.~~]

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 October 6, 1999.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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Chapter 275. SUPERVISION OF INMATES

37 TAC §§275.1, 275.4, 275.6

The Commission on Jail Standards proposes amendments to §§275.1, 275.4 and 275.6 concerning Supervision of Inmates to provide adequate staffing and allow the county to determine who must be searched for contraband.

Jack E. Crump, Executive Director, 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 as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to clarify staffing requirements and the flexibility for staff to reenter the secured perimeter without being searched. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statutes that are affected by the rules are Local Government Code, Chapter 351, 351.002 and 351.015.

§275.1. Regular Observation by Corrections Officers.

Every facility shall have the appropriate number of corrections officers [~~a corrections officer~~] at the facility 24 hours each day. Facilities shall have an established procedure for visual, face-to-face observation of all inmates by corrections officers at least once every hour. Observation shall be performed at least every 30 minutes in areas where inmates known to be assaultive, potentially suicidal, mentally ill, or who have demonstrated bizarre behavior are confined. There shall be a two-way voice communication capability between inmates and staff at all times. Closed circuit television may be used, but not in lieu of the required personal observation.

§275.4. Staff.

Inmates shall be supervised by an adequate number of corrections officers to comply with state law and these standards. One corrections officer shall be provided on each floor of the facility where ten or more inmates are housed, with no less than one corrections officer per 48 inmates or increment thereof on each floor for direct inmate supervision. This officer shall provide visual inmate supervision not less than hourly. Sufficient staff to include supervisors, correctional officers and other essential personnel as accepted by the commission shall be provided to perform required functions. A plan, concurred in by both commissioners' court and sheriff's department, which provides for adequate and reasonable staffing of a facility, may be submitted to the Commission for approval. [~~may be submitted to the commission for approval which provides for adequate and reasonable staffing of a facility.~~] This rule shall not preclude the Texas Commission on Jail Standards from requiring staffing in excess of minimum requirements when deemed necessary to provide a safe, suitable, and sanitary facility nor preclude submission of variance requests as provided by statute or these rules.

§275.6. Searches for Contraband.

For the protection of corrections personnel and inmates:

(1) any items brought into the security perimeter of the facility by anyone should [~~shall~~] be searched for contraband;

(2)-(4) (No change.)

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

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Jack E. Crump
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Texas Commission on Jail Standards
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Chapter 277. CLOTHING, PERSONAL HYGIENE, AND BEDDING

37 TAC §277.10

The Commission on Jail Standards proposes amendments to §277.10 concerning Clothing, Personal Hygiene, and Bedding to ensure operationally that mattresses are stored above the ground consistent with the jail construction standards.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide consistent standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§277.10. Mattresses.

Mattresses shall be swept, aired, [~~and~~] sprayed with a nontoxic disinfectant and stored off the ground prior to reissue.

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 October 6, 1999.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

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Chapter 279. SANITATION

37 TAC §279.1

The Commission on Jail Standards proposes amendments to §279.1 concerning Sanitation to provide grammatical corrections.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a more understandable standard. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§279.1. Sanitation Plan.

Each facility shall have and implement a written plan, approved by the commission, for the maintenance of an acceptable level of cleanliness and sanitation throughout the facility. Such plan shall provide for:

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

(5) the maintenance of toilets, lavatories, showers, other equipment throughout the facility in good working order;

(6) the maintenance of all counters, shelves, tables, equipment, and utensils with which food or drink comes into contact in a clean condition and in good repair;

(7) clean washing aids, such as brushes, dishcloths, and other hand aids used in dish washing operations and for no other purposes;

(8) a well ventilated place for storing and drying mops and other cleaning tools;

(9) the continuous compliance of the water system and sewage system with the minimum requirements for such public systems;

(10) the prohibition of excessive storage of food in cells and day rooms.

~~[(5) the maintenance of toilets, wash basins, sinks, and other equipment throughout the facility in good working order; the maintenance of all counters, shelves, tables, equipment, and utensils with which food or drink comes into contact in a clean condition and in good repair;]~~

~~[(6) clean washing aids, such as brushes, dishcloths, and other hand aids used in dish washing operations and for no other purposes;]~~

~~[(7) a well ventilated place for storing and drying mops and other cleaning tools;]~~

~~[(8) the continuous compliance of the water system and sewage system with the minimum requirements for such public systems;]~~

~~[(9) the prohibition of excessive storage of food in cells and day rooms.]~~

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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For further information, please call: (512) 463-5505

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Chapter 283. DISCIPLINE AND GRIEVANCES

37 TAC §§283.1-283.3

The Commission on Jail Standards proposes amendments to §§283.1-283.3 concerning Discipline and Grievances to allow an inmate to seek aid during disciplinary due process if the inmate cannot secure his own help. Moreover, the rules are amended to ensure that the rules and regulations, as provided by the Commission for review and approval, have been explained to the inmate.

Jack E. Crump, Executive Director, 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 as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to ensure adequate inmate discipline and grievance procedures are provided. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by the rules are Local Government Code, Chapter 351, 351.002 and 351.015.

§283.1. Inmate Discipline Plan.

Each sheriff/operator shall develop and implement a written disciplinary plan, approved by the Commission, governing inmate conduct. The plan shall provide for the firm, fair, and consistent application of rules and regulations. For purposes of inmate discipline, violations of institutional rules and regulations shall be divided into Minor Infractions and Major Infractions.

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

(3) Disciplinary Due Process Requirements.

(A)-(C) (No change.)

(D) provisions may be included for inmates to waive the right to a disciplinary hearing provided proper notification is given prior to the signing of the waiver. The waiver shall include the appropriate identification of charges, the allowable sanctions [~~maximum sanctions allowed~~], and the sanctions offered by the waiver. A waiver shall not include the loss of good time as a sanction;

(E) (No change.)

(F) provisions shall be made for an opportunity to be heard in person and to present documentary defensive evidence when not unduly hazardous to institutional safety and correctional goals. [~~Provisions shall be made for inmates to call relevant witnesses on his or her behalf for disciplinary hearings when not unduly hazardous to institutional safety and correctional goals;~~]

(G) provisions shall be made for inmates to call relevant witnesses on his or her behalf for disciplinary hearings when not unduly hazardous to institutional safety and correctional goals;

(H) provisions should be made permitting the inmate to seek the aid of another inmate if the inmate is illiterate or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case. If that is not permissible, substitute aid from the staff or from an inmate designated by the staff shall be provided;

(I) provisions shall be made for a written statement by the disciplinary board or disciplinary officer at the conclusion of the hearing indicating the evidence relied upon and reasons for the disciplinary action taken. The statement shall be delivered to the inmate and the Sheriff/Operator and shall be placed in the inmate's disciplinary file; and

(J) provisions shall be made for a documented appeals process, if requested by the inmate, by a person or persons not a member of the disciplinary board.

[~~(G) provisions shall be made permitting the inmate to seek the aid of another inmate if the inmate is illiterate or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case. If that is not permissible, substitute aid from the staff or from an inmate designated by the staff should be provided;~~]

[~~(H) provisions shall be made for a written statement by the disciplinary board or disciplinary officer at the conclusion of the hearing indicating the evidence relied upon and reasons for the disciplinary action taken. The statement shall be delivered to the inmate and the Sheriff/Operator and shall be placed in the inmate's disciplinary file; and~~]

[~~(I) provisions shall be made for a documented appeals process, if requested by the inmate, by a person or persons not a member of the disciplinary board.~~]

(4) The following sanctions are prohibited:

(A)-(G) (No Change.)

(H) deprivation of physical recreation or physical exercise [~~unless such activity would create an unsafe condition~~].

§283.2. Inmate Rules and Regulations.

Every facility shall have prescribed rules and regulations governing inmate conduct. A copy of the institutional rules and regulations shall be made available to each inmate and read to illiterate inmates. A written acknowledgment by the inmate that the rules have been explained shall be retained. A [~~Oral~~] translation shall be provided in an understandable language when necessary. The rules and regulations shall outline both Major and Minor Infractions, the types and ranges of possible sanctions for each category, due process requirements and specific procedures for filing a grievance. The rules and regulations , as provided to the inmate, shall be submitted to the commission for approval.

§283.3. Inmate Grievance Plan.

Every facility shall have and implement a written plan, approved by the commission, for inmate grievance procedures. This plan shall be an administrative means for the resolution of grievances. It supplements, but does not replace any informal grievance procedure. Each plan shall:

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

(5) provide safeguards to prevent reprisals against the inmate in the resolution of a grievance [~~provide safeguards for the inmate against reprisals in the resolutions of a grievance~~];

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

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

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

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Chapter 285. RECREATION AND EXERCISE

37 TAC §285.1

The Commission on Jail Standards proposes amendments to §285.1 concerning Recreation Exercise to eliminate the duplication of ADA requirements within the standard and the need for outdoor recreation.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a securer environment by conducting exercise within the facility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for programs of rehabilitation, education, and recreation in county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§285.1. Physical Exercise.
Each facility shall have and implement a written plan, approved by the commission, for inmate physical exercise and physical recreation. [~~The plan shall provide for accessibility for disabled inmates.~~] Documentation of physical exercise and physical recreation shall be maintained for commission review. Each inmate shall be allowed one hour of supervised physical exercise or physical recreation at least three days per week [~~, outside if possible~~].

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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Jack E. Crump
Executive Director
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Chapter 287. EDUCATION AND REHABILITATION PROGRAMS

37 TAC §287.1, §287.4

The Commission on Jail Standards proposes amendments to §287.1 and §287.4 concerning Education and Rehabilitation Programs to eliminate the duplication of ADA rules within the jail standard and provide an approved library plan.

Jack E. Crump, Executive Director, 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 as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to provide changes commensurate with current jail operation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for programs of rehabilitation, education, and recreation in county jails.

The statutes that are affected by the rules are Local Government Code, Chapter 351, 351.002 and 351.015.

§287.1. Education and Rehabilitation Plan.
Each facility shall have and implement a written plan, approved by the commission, for inmate rehabilitation and education. The plan shall make maximum use of the resources available in and to the community in which the facility is located. [~~The plan shall provide for program accessibility by disabled inmates.~~] The plan should include programs for voluntary participation by inmates such as:

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

§287.4. Library Plan.
Each facility shall have and implement a written plan approved by the Commission for providing recreational library services to inmates.

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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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

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Chapter 291. SERVICES AND ACTIVITIES

37 TAC §291.2

The Commission on Jail Standards proposes amendments to §291.2 concerning Services and Activities which provides rejection of inmate correspondence on a case by case basis by staff.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a safe and secure facility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§291.2. Inmate Correspondence Plan.
Each facility shall have and implement a written plan, approved by the commission, governing inmate correspondence. The plan shall provide for the handling of privileged and nonprivileged correspondence, both outgoing and incoming, and shall provide for the collection and distribution of correspondence.

(1) General Requirements.

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

(E) Correspondence may be rejected on a case by case basis[~~,~~] provided it is a violation of the inmate rules. For purposes of this plan such correspondence is defined as:

(i)-(iii) (No change.)

(2)-(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.

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Jack E. Crump
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Chapter 297. COMPLIANCE AND ENFORCEMENT

37 TAC §297.5

The Commission on Jail Standards proposes amendments to §297.5 concerning Compliance and Enforcement to provide grammatical corrections.

Jack E. Crump, Executive Director, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide an understandable rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§297.5. Notice of Noncompliance/Administrative Order.

(a) When the commission finds that a facility is not in compliance with state law; [~~with the~~] minimum jail standards [~~prescribed by the commission~~], or conditions necessitate administrative remedies, it shall issue a notice of noncompliance or an administrative order to the owner and sheriff/operator responsible for the facility that is not in compliance. Such notice of noncompliance or administrative order shall be sent to such officials by certified mail, return receipt requested. A copy of such notice of noncompliance or administrative order shall be sent to the governor.

(b) (No change.)

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

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Jack E. Crump
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 15. MEDICAID ELIGIBILITY

The Texas Department of Human Services (DHS) proposes to amend §15.442, concerning personal property; §15.443, concerning resources essential to self-support (real and personal properties); §15.450, concerning general principles concerning income; and §15.725, concerning restitution, in its Medicaid Eligibility chapter. The purpose of the amendments is to clarify existing policy. Section 15.442(c) clarifies that life insurance policies owned by the client on any other individual may be a countable resource. In §15.443(a)(4), the word "nonbusiness" is added to prevent confusion in the treatment of business and nonbusiness property that produces income. Sections 15.450(g) and 15.725(1)(I) are added to remind staff that income tax refunds, although not counted to determine eligibility, are subject to restitution policy for applied income purposes, to the extent that withholding tax was excluded in the applied income budget.

Eric M. Bost, commissioner, 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 governments as a result of enforcing or administering the sections.

Mr. Bost 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 that long term care Medicaid eligibility policy will be applied correctly and uniformly throughout the state. The amendments to Chapter 15 will not have an adverse economic effect on small or micro-businesses, because they apply only to a client's financial eligibility for Medicaid benefits, not to the operation of a business.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-003, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under Section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Subchapter D. RESOURCES

40 TAC §15.442, §15.443

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides

the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.442. Personal Property.

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

(c) Life insurance. If the total face value of life insurance policies owned by a client (or spouse, if any) is $1,500 or less per person, the department does not consider as a resource the value of the life insurance. If the total face value of all life insurance policies owned by a client, eligible spouse, or ineligible spouse whose resources are deemed to the client are more than $1,500 per insured person, the cash surrender values of the policies are resources. This also includes policies owned on other individuals. The department does not include dividend additions with the face value of a life insurance policy to determine if the policy is excluded as a resource. A life insurance policy is a resource available only to the owner of the policy, regardless of whom it insures.

(d) - (g) (No change.)

§15.443. Resources Essential to Self-support (Real and Personal Properties).

(a) Property essential to self-support. The department may exclude as a resource property essential to self-support but count the income that the property produces. To be considered as a excludable resource, business property (including personal, business- related property) must be in current use in the client's trade, business, or employment. If the property is not in current use, the department excludes the property only if it has been used by the client in the past, and if it is reasonable to expect that it will be used again.

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

(4) Income-producing nonbusiness [~~business~~] property. If a client's equity in income-producing nonbusiness property exceeds $6,000, and the property is producing a net annual rate of return of at least 6%, the excess equity value is a countable resource. (Total equity value minus $6,000 equals the amount to be counted, together with any other resources.) If the net annual rate of return is less than 6% of the equity value, the total equity value is a countable resource.

(5) Multiple [~~Income~~]income-producing nonbusiness properties [~~property~~]. In some instances, a client may own more than one income-producing nonbusiness property. To be excludable, each property must separately produce a 6% net annual rate of return. A maximum of $6,000 may be excluded from the combined equity value of all properties producing a 6% net annual rate of return. The combined equity value in excess of $6,000 is a resource. A note cannot be excluded under the $6,000/6% policy. This exclusion applies only to real property or a degree of interest in real property, such as mineral rights.

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

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

Filed with the Office of the Secretary of State, on October 8, 1999.

TRD-9906764
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 438-3765

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Subchapter E. INCOME

40 TAC §15.450

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.450. General Principles Concerning Income.

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

(g) Any amount refunded on income taxes already paid is not income for eligibility purposes. Income tax refunds are subject to restitution policy (in the month of receipt) for applied income purposes, to the extent that withholding tax was excluded in the applied income budget.

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 October 8, 1999.

TRD-9906765
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 438-3765

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Subchapter H. CLIENT RIGHTS AND RESPONSIBILITIES

40 TAC §15.725

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.725. Restitution.

Restitution applies only to clients in intermediate and skilled nursing facilities and in community-based ICF-MR facilities. The department does not seek restitution from clients or the client's responsible party for vendor payments made to state schools or centers.

(1) Overpayments for restitution. The department pursues restitution for MAO and SSI cases if the overpayment is not the result of department error or income averaging and any of the following situations occur:

(A) - (H) (No change.)

(I) Income tax refunds are subject to restitution policy (in the month of receipt) for applied income purposes, to the extent that withholding tax was excluded in the applied income budget.

(2) (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 October 8, 1999.

TRD-9906766
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 438-3765

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Chapter 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

Subchapter I. RESIDENT ASSESSMENT

40 TAC §19.801

The Texas Department of Human Services (DHS) proposes an amendment to §19.801, concerning resident assessment, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to reinstate the pediatric assessment rules. When the Health Care Financing Administration (HCFA) published revised Minimum Data Set (MDS) regulations, new rules were prepared. The rules were effective October 1, 1999. When §19.801 containing the old rules was deleted, the segment regarding pediatric assessments was inadvertently eliminated. There was never an intention to delete these rules and they need to be reinstated in the requirements.

Eric M. Bost, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost 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 that children in nursing facilities will continue to have specialized assessment and educational needs met. There will be no effect on small or micro businesses because it is a reinstatement of rules inadvertently deleted. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Sharon Balcezak at (512) 438-3529 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-032, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Health and Safety Code, Chapter 242, which gives the department the authority to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.037.

§19.801. Resident Assessment.

The facility must conduct initially and periodically a comprehensive accurate, standardized, reproducible assessment of each resident's functional capacity. In Medicaid-certified and dually certified nursing facilities, admission, annual, quarterly and significant change assessments must be transmitted electronically to the Texas Department of Human Services (DHS).

(1)-(11) (No change.)

(12) Pediatric resident assessment.

(A) Pediatric assessments should be performed by staff experienced in the care and assessment of children. Parents or guardians should be included in the assessment process. The potential for community transition should be discussed with the parents or guardians whenever an assessment occurs.

(B) The comprehensive assessment for children must include a record of immunizations, blood screening for lead, and developmental assessment. The local school district's developmental assessment may be used if available. See §19.1934 of this title (relating to Educational Requirements for Persons Under 22).

(C) Facility staff should assess the child's functional status in relation to pediatric developmental levels, rather than adult developmental levels.

(D) The facility staff must ensure pediatric residents receive services in accordance with the guidelines established by the Texas Department of Health's Texas Health Steps (THSteps). For Medicaid-eligible pediatric residents between the ages of six months and six years, screening for lead poisoning must be done in accordance with THSteps guidelines.

(E) The facility must coordinate educational opportunities for pediatric residents from birth to age three with the local office of Early Childhood Intervention (ECI).

(F) The facility must coordinate educational opportunities for pediatric residents age three to 22 years with the local school district. See §19.1934 of this title (relating to Educational Requirements for Persons Under 22).

(G) Not later than the third day after a child with a developmental disability is placed in a facility, the facility must notify:

(i) the local community resource coordination group (CRCG); and

(ii) the regional DHS office, which will notify the CRCG in the county of residence of the parent or guardian.

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 October 8, 1999.

TRD-9906767
Paul Leche

General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 438-3765

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Part 2. TEXAS REHABILITATION COMMISSION

Chapter 101. GENERAL RULES

40 TAC §101.23, §101.24

The Texas Rehabilitation Commission (TRC) proposes new §101.23 and §101.24, concerning Excused Absences and Responsibilities of the Commissioner.

The new sections are proposed to conform the rules to the 1999 amendments to Chapter 111, Human Resources Code.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, 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. Harrison 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 to conform the rules to the 1999 amendments to Chapter 111, Human Resources Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new sections are proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§101.23. Excused Absences.

A member's absence from a board meeting may be excused by a majority vote of a quorum of the members present.

§101.24. Responsibilities of the Commissioner.

(a) The Commissioner is the executive head of the Commission.

(b) The Commissioner's management responsibilities include:

(1) making all decisions regarding the daily operations of the Commission;

(2) implementing all policies and/or rules adopted by the Board;

(3) making long-range and intermediate plans for the scope and development of the program, and making decisions regarding allocation of resources;

(4) certification of funds for disbursement;

(5) delegation of authority to officers and employees of the Commission to carry out responsibilities of the Commissioner;

(6) doing all acts necessary to manage the Commission; and

(7) executing all authority delegated by the Board.

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

Filed with the Office of the Secretary of State, on October 11, 1999.

TRD-9906769
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-4050

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Chapter 106. CONTRACT ADMINISTRATION

Subchapter E. RATES FOR MEDICAL SERVICES

40 TAC §106.50

The Texas Rehabilitation Commission (TRC) proposes a new Subchapter E, Rates for Medical Services, §106.50, concerning Schedule of Rates for Medical Services.

The section is proposed to conform the rules to the 1999 amendments to Chapter 111, Human Resources Code.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government.

Mr. Harrison 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 to conform the rules to the 1999 amendments to Chapter 111, Human Resources Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new section is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal. SUBCHAPTER E. RATES FOR MEDICAL SERVICES.

§106.50. Schedule of Rates for Medical Services.

Pursuant to Human Resources Code, §111.055(a), the board adopts the following rules and standards governing the determination of rates the commission will pay for medical services.

(1) A proposed rate schedule for medical services will be developed and maintained by the Deputy Commissioner for Administrative Services. The proposed rate schedule will be updated and submitted for board approval at least annually. The proposed rate schedule will include a comparison of the proposed rate schedule to

other cost-based rates for medical services, including Medicaid and Medicare rates, and for any proposed rate that exceeds the Medicare or Medicaid rate, will document the reasons why the proposed rate ensures the best value in the use of dollars for clients.

(2) The current proposed rate schedule will be made available to members of the public upon request. Members of the public may submit written comments concerning the proposed rate schedule at any time to the Deputy Commissioner for Administrative Services, 4900 North Lamar Boulevard, Austin, Texas 78751.

(3) Annually, the board shall adopt by rule a schedule of rates based upon the proposed rate schedule submitted by the Deputy Commissioner for Administrative Services. The board shall hold a public hearing before adopting the rate schedule to allow interested persons to submit comments. In adopting the rate schedule, the board shall compare the proposed rate schedule to other cost-based rates for medical services, including Medicaid and Medicare rates, and for any rate adopted that exceeds the Medicare or Medicaid rate, document the reasons why the rate adopted ensures the bast value in the use of dollars for clients.

(4) The following standards will be used when determining the rates the commission will pay for medical services:

(A) Rates will be established based on Health Care Financing Administration (HCFA) relative value units (RVUs) for current procedural terminology (CPT). Where no HCFA RVU currently exists, rates that represent best value will be established based upon factors that include reasonable and customary industry standards for each specific service.

(B) Rates will be established at a level adequate to insure availability of qualified providers, and in adequate numbers to provide assessment and treatment, and within a geographic distribution that mirrors client/claimant distribution.

(C) Exceptions to established rates can be made on a case by case basis by the TRC medical director.

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 October 11, 1999.

TRD-9906770
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: November 21, 1999
For further information, please call: (512) 424-4050

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TITLE 43. TRANSPORTATION

Part 4. Texas Turnpike Authority Division of the Texas Department of Transportation

Chapter 53. CONTRACTING AND PROCUREMENT PROCEDURES

Subchapter E. CONTRACT WORKFORCE

43 TAC §§53.90-53.94

The Board of Directors (the "Board") of the Texas Turnpike Authority Division (the "authority") of the Texas Department of Transportation proposes new §§53.90-53.94, concerning procurement of contract workforce. These rules are proposed pursuant to Article IX, Section 9-11.18 of House Bill 1, the Appropriations Act of the 76th Legislature (the "Appropriations Bill"), which requires the development of policies and procedures for an agency's procurement of contract workforce and requires consideration of various issues in connection with the utilization of contract workforce.

The authority relies heavily on the use of contract workforce for the planning and development of turnpike projects pursuant to its authority under Transportation Code, Chapter 361. Given the magnitude of turnpike projects it is not feasible for the authority to retain all of the employees necessary to study, plan, design, construct, operate, and maintain those projects. Therefore, contract workforce is an important resource for the authority.

The Appropriations Bill requires that agencies review certain issues in connection with their use of contract workforce. The proposed rules are intended to implement that requirement recognizing the authority's unique need for the use of contract workforce relative to other state agencies.

Section 53.90 sets forth the purpose of Subchapter E, which is to require that certain analyses be conducted prior to using contract workforce.

Section 53.91 contains the definitions of certain terms used in the subchapter, including the phrase contract workforce which, pursuant to the Appropriations Bill, is defined to include independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants.

Section 53.92 requires the Authority to consider whether the use of contract workforce is consistent with its staffing strategies, and identifies criteria to consider in that analysis.

Section 53.93 requires the authority to conduct a cost-benefit analysis prior to using contract workforce, comparing, in general, the costs of utilizing contract workforce to the cost of meeting the needs through employees of the Authority.

Section 53.94 refers to a report prepared by the State Auditor's office (S.A.O. Report 99-326) as providing guidance on the analyses required under the rules contained in Subchapter E of Chapter 53.

Thomas H. Doebner, Interim Director, Finance Division, has determined that for the first five-year period the new sections are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the sections. There will be no effect on small businesses. There are no anticipated economic costs to persons required to comply with the sections as proposed.

Phillip R. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

Mr. Russell has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of compliance with the sections will be procurement procedures which will result in fair, efficient and economic contracting for turnpike improvement contracts, fair and efficient contracting for high quality architectural and engineering services, and for participation by disadvantaged

business enterprises and historically underutilized businesses in Authority contracts in compliance with state and federal law.

Written comments on the proposed new sections may be submitted to Phillip R. Russell, P.E., Texas Turnpike Authority Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 936-0903, fax (512) 305-9518. The deadline for receipt of comments will be 5:00 p.m. on November 21, 1999.

The new sections are proposed under Transportation Code, §361.042, which requires the Board to adopt rules of the regulation of its affairs and the conduct of its business, as well as under Transportation Code, §361.231, concerning contract awards and obligations assumed; and §361.049, regarding procurement of professional consulting services.

No other statutes, articles, or codes, are affected by these proposed new sections.

§53.90. Purpose.

The sections under this subchapter describe the analyses required prior to procuring and utilizing Contract Workforce.

§53.91. Definitions.

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

(1) Authority - The Texas Turnpike Authority Division of the Texas Department of Transportation.

(2) Contract Workforce - Independent contractors, temporary workers supplied by staffing companies, contract company workers and consultants.

(3) S.A.O. - The State Auditor's Office for the State of Texas.

§53.92. Prerequisites to Utilizing Contract Workforce.

Prior to utilizing the procurement processes described in the Texas Turnpike Authority Division of the Texas Department of Transportation (Authority) rules and applicable state laws to secure the services of Contract Workforce, the Authority shall consider whether the use of Contract Workforce is consistent with the Authority's staffing strategies. The Authority shall document in its records the results of the assessment shown in paragraphs (1)-(8) of this section. In making this assessment, the Authority shall consider the following:

(1) the Authority's mission, goals and objectives;

(2) existing and future employee skills needed;

(3) compensation costs;

(4) productivity;

(5) the nature of services to be provided;

(6) workload of Authority employees;

(7) legal and personnel issues related to the utilization of Contract Workforce; and

(8) the ability of Authority staff to perform unique or specialized services required, including consideration of current and prospective workload of Authority staff.

§53.93. Cost-Benefit Analyses.

Prior to hiring Contract Workforce or amending or renewing existing contracts with Contract Workforce, the Texas Turnpike Authority Division of the Texas Department of Transportation (Authority) will conduct a cost-benefit analysis. That analysis will, in general, compare the anticipated costs of utilizing Contract Workforce to the costs of meeting their requirements with existing or additional employees of the Authority.

§53.94. Guidance.

In implementing the provisions of this subchapter, the Texas Turnpike Authority Division of the Texas Department of Transportation (Authority) will consult the "Best Practices and Guidelines for Effectively Using a Contract Workforce", S.A.O. Report No. 99-326 (March 1999), as such report is periodically supplemented or updated.

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 October 11, 1999.

TRD-9906768

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Earliest possible date of adoption: November 21, 1999

For further information, please call: (512) 936-0960

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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 16. ECONOMIC REGULATION

Part 9. TEXAS LOTTERY COMMISSION

Chapter 401. ADMINISTRATION OF STATE LOTTERY ACT

Subchapter D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission has withdrawn from consideration for permanent adoption the amendment to §401.305, which appeared in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7119).

Filed with the Office of the Secretary of State on October 7, 1999.

TRD-9906669
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: October 7, 1999
For further information, please call: (512) 344-5113

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TITLE 34. PUBLIC FINANCE

Part 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 29. BENEFITS

Subchapter F. PARTIAL LUMP-SUM OPTION PLAN

34 TAC §29.70, §29.71

The Teacher Retirement System of Texas has withdrawn the emergency adoption of new §29.70 and §29.71, which appeared in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6391).

Filed with the Office of the Secretary of State on October 8, 1999.

TRD-9906749
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: October 28, 1999
For further information, please call: (512) 391-2115

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Chapter 31. EMPLOYMENT AFTER RETIREMENT

34 TAC §31.9

The Teacher Retirement System of Texas has withdrawn the emergency adoption of the amendment to §31.9, which appeared in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6392).

Filed with the Office of the Secretary of State on October 8, 1999.

TRD-9906751
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: October 28, 1999
For further information, please call: (512) 391-2115

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 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 13. CULTURAL RESOURCES

Part 2. TEXAS HISTORICAL COMMISSION

Chapter 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §§12.1, 12.3, 12.5, 12.7, 12.9

The Texas Historical Commission adopts new §§12.1, 12.3, 12.5, 12.7, and 12.9, with changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6164). Chapter 12 concerns the administration of a state grant program for the purposes of preserving historic county courthouses within the State of Texas. The chapter describes and defines the process by which eligible counties may apply for and potentially be granted funds from the Texas Historic Courthouse Preservation Program. The chapter also explains the basic criteria that the commission will use in evaluating and awarding those grants.

The following comments were received on the new chapter, as proposed, from Elizabeth Ann Gates and Patrick Heath of Preservation Texas, Kim Williams of the Williams Company, Donald Lee of the Texas Conference of Urban Counties, Jeff Moseley of the Texas Department of Economic Development, Judge Cyndi Taylor Krier of Bexar County, Mary Brennan of the City of McKinney, Elise Back of Collin County, Randy Cubriel of the Lieutenant Governor's Office, Judy Chapin of Lampasas County, Jane Jenkins of the National Trust for Historic Preservation, Nick Gallegos of Edwards County, members of the Courthouse Advisory Committee (Gene Terrell, Rollie Hyde, Tim Brown, Jean Kaspar, Betty Massey, Steve Adams, Peggy Robertson, and Paula Piper), and from the Coalition of Texans with Disabilities, the Austin Resource Center for Independent Living, Texas State Representative Elliott Naishtat, and Advocacy, Incorporated. Following each comment is the commission's response and any resulting change(s) to the chapter.

Comment: Regarding the §12.5, a commenter questioned part of the definition of a historic courthouse structure. The commenter asked why §12.5(6)(F) specifies that a courthouse designated by an ordinance of a municipality with a population of more than 1.5 million was considered historic but this section does not include small jurisdictions that have historic preservation ordinances. The commenter then asked if small jurisdictions could not be included.

Response: Since this language is taken directly from the House Bill 1341 that created the Texas Historic Courthouse Preservation Program, the commission cannot alter the rules to broaden this consideration for small communities. No change was made as a result of this comment.

Comment: Regarding §12.5, a commenter requested a clarification of the definition of "prior capital expenditures match," found within §12.5(13) and questioned whether the commission meant monies previously spent by a county for any past preservation projects, or whether this definition included any county expenditures or county expenditures on the courthouse structure.

Response: The commission agreed that the language was vague and amended §12.5(13) to clarify references to past courthouse preservation projects.

Comment: Regarding §12.5(13), a commenter suggested that a 30-month period be adopted for prior expenditure consideration.

Response: The commission agreed and the section was amended to address that concern.

Comment: Regarding §12.7(b), a commenter suggested that the language should include the 30-month period provided for in §12.5(13) and §12.5(14).

Response: The commission agreed and the section was amended to address the concern.

Comment: Regarding §12.7(e)(1), a commenter suggested that the words "reconstruction" and "rehabilitation" be added to this section to bring it into agreement with the funded work allowable under this chapter.

Response: The commission agreed and the section was amended to address the concern.

Comment: Regarding §12.7(g)(C)(ii), a commenter questioned the composition of the Advisory Committee, and requested that a representative of Preservation Texas be appointed to the Advisory Committee.

Response: The commission determined that a representative of Preservation Texas will be included on the Advisory Board, but no change in the chapter was needed to accomplish this goal.

Comment: Regarding §12.9(a)(6), a commenter questioned the requirement that a grant application include "copies of any plans, including a master preservation plan, that the county may have for the project" and asked whether this was mandatory, or if the wording might be clearer if stated "including the required master preservation plan."

Response: The commission agreed and amended §12.9(a)(6) to clarify the meaning as noted.

Comment: Regarding §12.9(c)(5), a commenter questioned the reference to "the historic significance of the courthouse" and how the commission defined historic significance.

Response: The commission agreed that a clear definition was needed and the newly revised §12.9(c)(9) was amended to add an appropriate citation from the National Register of Historic Preservation definitions.

Comment: Regarding §12.9(c)(16), a commenter questioned what the word "support" meant within the phrase "support of the county historical commission and other county-wide preservation efforts." The commenter questioned what kind of support the commission was talking about.

Response: The commission agreed and decided that this point will be clarified in the commission's review procedures. No change was made to the section as a result of this comment.

Comment: Regarding §12.9(c)(21) a commenter questioned the meaning of the phrase "a plan for protecting county records during restoration and afterwards," and the commenter speculated whether the commission meant the physical protection of the records during and after a courthouse's preservation. The commenter also questioned how this related to the retention schedule for all records that is prepared by Texas State Library and Archives Commission.

Response: The commission agreed that the reference was vague and the newly revised §12.9(c)(18) was amended to clarify that the each preservation master plan should address the physical protection of, as well as the space utilization for, public records. Planning should cover current and future space needs, as well as a plan for protecting the records during the restoration project.

Comment: Regarding §12.9, a commenter noted that the short time frame between now and the end of the first two grant cycles will make it difficult for the commission and architectural contractors to successfully complete the program scheduling if the schedule is not expanded. The commenter suggested that some priority should given to courthouse projects based on their ability to complete their project within the next two years.

Response: The commission believes that in order for the program to progress as intended by the legislature the present schedule will have to be retained. The commission did however, amend §12.9 in two areas. All required criteria contained within §12.9(a) and §12.9(c) were consolidated under a newly revised §12.9(a), and all weighted criteria were consolidated under a newly revised §12.9(c). Additionally, a new criterion was added to the newly revised §12.9(c) which will provide bonus points if a county turns in plans and specifications at the time of application, (provided the approved master plan is in place). The weighted criteria under §12.9(c) were then reordered in descending order from highest to lowest value.

Comment: Regarding §12.9(c)(25), a commenter questioned the intent and feasibility of whether some counties could actually achieve a "fully restored courthouse." The commenter expressed concern that some of the larger courthouses in fast-growing urban areas might never be fully restored to their original design, given the demands on program space, and would therefore be ineligible for the points.

Response: The commission believes that all courthouse preservation plans should address the feasibility of full restoration, and that the phases of the plan should move the project toward that goal expeditiously. No change was made as a result of this comment.

Comment: Regarding §12.9(e), a commenter expressed concern that the preservation easement clause of the rules would improperly bind future commissioner courts by the action of the present court.

Response: The commission disagrees because the legislative intent of this grant program is to create long-term preservation solutions to our state's deteriorating county courthouses, and counties also should be committed to that goal if they want grant funds. An easement is a proper and legal way that the county and future commissioner's courts may be bound. No change was made as a result of this comment.

Comment: Regarding §12.9(c)(24), a commenter suggested that court records should be used to determine which counties had or had not been in compliance with the state courthouse law.

Response: The commission disagrees because the only complete statewide records in this regard are kept by the Texas Historical Commission that administers §4542.008 of the Texas Government Code. The failure of the Commission to file a lawsuit for a violation of §442.008 does not establish compliance with the act. No change was made as a result of this comment.

Comment: Regarding §12.9(a)(6), a commenter requested that the various required elements of a master preservation plan be provided in writing.

Response: The commission has already produced the detailed master plan requirements and they are posted on the commission's website and/or are available upon request. No change was made as a result of this comment.

Comment: Regarding §12.9(a)(9), a commenter was concerned that the authority to require or consider "any other information that the commission may require," was unreasonable, and that last-minute changes could preclude some counties from due consideration or participation.

Response: Current state rule amendment provisions serve as protection against last-minute or arbitrary changes without a public review process, and the commission will also provide for adequate prior notice of any additional information required under this chapter. No change was made as a result of this comment.

Comment: Regarding §12.9(c)(19), a commenter stated that the grant consideration process must give preference to courthouses that are in enterprise zones as defined in the Texas Enterprise Zone Act.

Response: The commission agrees that this factor needs to be weighed within the scoring system, and the commission believes that this issue is addressed as an integral part of the current wording of §12.9(c)(21), therefore, no change was made as a result of this comment.

Comment: Regarding a general over-view of the proposed chapter a commenter requested that the commission should exercise some latitude in interpretation and discretion in application of the rules, and suggested that the commission not be bogged down in unattainable ideals or unrealistic requirements.

In particular, the commenter cited a need for latitude in the consideration of prior expenditures, master plan requirements, and encouraged an emphases on priorities recommended by the Governor's Courthouse Preservation Working Group. No specific rule changes were requested by the commenter.

Response: The Commission agrees with these generalized suggestions and will continue to consider these suggestions throughout the grant application process. No change was made as a result of this comment.

Comment: Several commenters recommended adding the following wording to §12.7, Grant or Loan Program: (5) All work must comply with the Texas Architectural Barriers Act, Section 9102 Revised Statutes, and the following wording to originally published §12.9, Application Requirements and Considerations: (10) evidence of submittal and approval of plans by the Texas Commission for Licensing and Regulation, or its successors, for compliance with the Texas Architectural Barriers Act and its regulations.

Response: The Texas Historical Commission intends for all project work to comply with applicable laws and will make specific reference to the Texas Architectural Barriers Act in the detailed master plan requirements. Architectural plans and specifications are not required to be submitted with the program application; therefore, it would be premature to require evidence of submittal and approval of such plans by the Texas Commission for Licensing and Regulation at the time of application.

The commission also made some additional clarifying changes for consistency throughout the rules and added needed punctuation and spelling corrections.

The new sections are adopted under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules for its programs. The adopted chapter will also affect Texas Government Code §442.0081, the statute implementing the Texas Historic Courthouse Preservation Program.

§12.1. Object.
The Texas Historical Commission, hereafter referred to as the commission, is specifically empowered to adopt reasonable rules concerning the Texas Historic Courthouse Preservation Program for the purpose of distributing funds provided by the State Legislature. Implementation of this grant and loan program is the objective of this chapter.

§12.3. Scope.
The intent of these rules is to provide a system by which the commission may grant or loan money to a county that owns a historic courthouse, for the purpose of preserving or restoring the courthouse, if the county's application meets the standards of the Texas Historic Courthouse Preservation Program. Restrictions on who can obtain funds and how the funds are used is within the legal authority of the commission, and can be defined through the rule-making authority of the commission.

§12.5. Definitions.
When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise.

(1) Texas Historic Courthouse Preservation Program. Means the grant or loan program created by the enactment of HB 1341 by the 76th Texas Legislature (1999).

(2) The Courthouse Fund Account. Means a separate account in the general revenue funds. The account consists of transfers made to the account, payment on loans made under the historic courthouse preservation program, grants and donations received for the purposes of the historic courthouse preservation program, and income earned on investments of money in the account.

(3) Texas Courthouse Preservation Program Advisory Committee. Means a committee that serves the commission in matters concerning the courthouse program.

(4) Historic courthouse. Means a county courthouse that is at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building.

(5) Historic courthouse project. Means an undertaking to preserve or restore a historic courthouse.

(6) Historic courthouse structure. Means a courthouse structure that is one or more of the following:

(A) a county courthouse that is at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building.

(B) listed on the National Register of Historic Places;

(C) designated a Recorded Texas Historic Landmark;

(D) designated a State Archeological Landmark;

(E) determined by the commission to qualify as an eligible property under the designations noted above;

(F) certified by the commission to other state agencies as worthy of preservation; or,

(G) designated by an ordinance of a municipality with a population of more than 1.5 million as historic.

(7) Master preservation plan or master plan. Means a comprehensive planning document that includes the historical background of a courthouse, as well as a detailed analysis of its architectural integrity, current condition, and future needs for preservation. The commission shall promulgate specific guidelines for developing the document.

(8) Restoration. Means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restored period. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(9) Reconstruction. Means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(10) Preservation. Means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(11) Rehabilitation. Means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(12) Match requirement. Means the percentage of the total grant project cost that must be provided by a county in the form of a prior capital expenditures match, prior in-kind match, current cash match, current in- kind match, or planning match.

(13) Prior capital expenditures match. Means monies previously spent by a county for past courthouse preservation projects in the 30-month period prior to the date of application.

(14) Prior in-kind match. Means materials donated to a county for past courthouse preservation projects in the 30-month period prior to the date of application.

(15) Current cash match. Means monies to be paid by a county as part of the preservation project described in a current request for grant or loan funding.

(16) Current in-kind match. Materials to be donated as part of the preservation project described in a current request for grant or loan funding.

(17) Planning match. Means monies spent on an approved master preservation plan.

§12.7. Grant or Loan Program.

(a) Property Eligibility. In order to be eligible for grants or loans under the courthouse program, a county's historic courthouse must be determined a historic courthouse structure as defined in §12.5 of this chapter.

(b) Master plan requirement. In order to be eligible for funding, a county must have completed a current master preservation plan, completed or updated in the 30-month period prior to the date of application, and received approval of the plan from the commission.

(c) Types of Assistance. The commission may provide financial assistance in the form of grants or loans. Grant or loan recipients shall be required to follow the terms and conditions of the Texas Historic Courthouse Preservation Program and other terms and conditions imposed by the commission at the time of the grant award or loan.

(d) Match for grant or loan assistance. Applicants eligible to receive grant or loan assistance must provide a minimum of 15% of the total project cost, of which not more than one half of the match may be derived from prior capital expenditures, prior in-kind match, and current in-kind match, and not less than one half of the match must be derived from current cash match and/or planning match. Prior capital expenditure and prior in-kind matches constitute credit for commission approved capital and planning expenditures during the 30-month period prior to the date of application.

(e) Allowable use of grant or loan monies.

(1) A county that receives money under the courthouse program must use the money only for preservation, reconstruction, rehabilitation, and restoration expenses that the commission determines eligible.

(2) All work must comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised).

(3) Individual grants or loans may not exceed $4 million.

(4) The commission may grant less than the amount requested in a courthouse grant application.

(f) Administration. The courthouse program shall be administered by the commission.

(g) Advisory Committee.

(1) The purpose of the advisory committee is to advise the commission on matters related to the Texas Historic Courthouse Preservation Program.

(2) The advisory committee shall consist of:

(A) members from the different geographical areas of the state;

(B) an equal number of members from counties with a population of:

(i) 24,999 or less;

(ii) 25,000 to 75,000; and

(iii) 75,001 or more; and

(C) at least the following members:

(i) one or more elected county officials;

(ii) one or more members of historical organizations or persons with knowledge of and experience in preservation who are not elected county officials; and

(iii) one or more members of the general public who do not meet the requirements of (C) (i) or (C) (ii) of this subchapter.

(3) The advisory committee shall meet annually, or as directed by the commission, to discuss issues related to paragraph (g)(1) of this section and provide a report in written form, or in other formats as determined by the commission, at a regularly scheduled commission meeting, or at times as otherwise determined by the agency.

(4) The advisory committee shall be abolished on August 31, 2003, unless specifically continued by an affirmative vote of the commission.

(h) Procedures. The commission shall adopt procedures, and revise them as necessary, to implement the Texas Historic Courthouse Preservation Program.

§12.9. Application Requirements and Considerations.

(a) A county that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

(1) the address of the courthouse;

(2) a statement of the historic designations that the courthouse has or is likely to receive;

(3) a statement of the amount of money or in-kind contributions that the county commits to contribute to the project;

(4) a statement of previous allowable money or in-kind contribution the county will use for their match;

(5) a statement of whether the courthouse is currently functioning as a courthouse;

(6) copies of any plans, including the required master preservation plan, that the county may have for the project;

(7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;

(8) statements of support from local officials and community leaders; and

(9) the current cost estimate of the proposed project; and

(10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

(1) the status of the building as a functioning courthouse;

(2) the age of the courthouse;

(3) the degree of endangerment;

(4) the courthouse is subject to a current conservation easement or covenant held by the commission;

(5) the proposal is in conformance with the approved master plan and addresses the work in proper sequence;

(6) the county agrees to place/extend a preservation covenant and/or deed restriction as part of the grant process;

(7) the importance of the building within the context of an architectural style;

(8) the proposal addresses and remedies former inappropriate changes;

(9) the historic significance of the courthouse, as defined by 36 CFR §101(a)(2) (A) and (E), and NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation."

(10) the degree of surviving integrity of original design and materials;

(11) if a county submits complete plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) the use of the building as a courthouse after the project;

(13) the county's provision of a match greater than 15% of the grant request;

(14) the proposal results in a fully restored county courthouse;

(15) the status of the courthouse in terms of state and local historical designations that are in place;

(16) the county government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;

(17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §442.008);

(20) the effort to protect and enhance surrounding historic resources; and

(21) the evidence of community support and county commitment to protection.

(d) The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(e) As a condition for a county to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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 October 11, 1999.

TRD-9906789
F. Lawerence Oaks
Executive Director
Texas Historical Commissioin
Effective date: October 31, 1999
Proposal publication date: August 13, 1999
For further information, please call: (512) 463-5711

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TITLE 22. EXAMINING BOARDS

Part 23. TEXAS REAL ESTATE COMMISSION

Chapter 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

Subchapter F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §§535.61-535.64, 535.66, 535.68-535.70

The Texas Real Estate Commission (TREC) adopts the repeal of §535.61, concerning examinations and acceptance of courses, §535.62, concerning waiver of examinations, §535.63, concerning broker education and experience, §535.64, con-

cerning salesperson education, §535.66, concerning accreditation of educational programs, §535.68, concerning broker alternative education and experience, §535.69, concerning additional core real estate courses and §535.70, concerning required coursework, without changes to the proposal as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4723). The subjects addressed in these sections will be covered in new sections TREC is adopting as part of its rule review process. Adoption of the repeals is necessary to reduce the volume of TREC's rules and make the rules easier for the public to use.

No comments were received regarding the proposal.

The repeals are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 October 4, 1999.

TRD-9906602
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: January 31, 2000
Proposal publication date: June 25, 1999
For further information, please call: (512) 465-3900

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22 TAC §§535.61-535.66

The Texas Real Estate Commission (TREC) adopts §535.61, concerning examinations, §535.62, concerning acceptable courses of study, §535.63, concerning education and experience requirements for a license, §535.64, concerning accreditation of schools and approval of courses and instructors, §535.65, concerning changes in ownership or operation of school; presentation of courses, advertising and records, and §535.66, concerning payment of annual fee, audits, investigations and enforcement actions. New §§535.62-535.66 are adopted with changes to the proposed text as published in the July 2, 1999, issue of the *Texas Register* (24 TexReg 4962). New §535.61 is adopted without changes and will not be republished. These new sections replace current sections addressing the same subjects and adopt by reference a series of revised forms relating to instructors and accredited schools. Adoption of the new sections is necessary to enhance the quality of education required of prospective licensees, to remove unnecessary restrictions on education providers, to shorten TREC's rules and to make the rules easier to use by reorganizing them.

New §535.61 addresses the confidentiality of the contents of TREC's licensing exams and provides grounds for action against licensees or applicants for obtaining or attempting to obtain examination questions and answers for the purpose of using the information to pass an examination or providing the information to another person who is either an applicant or a potential applicant. The new section requires examinations to be conducted in accordance with the contract with the testing service. The new section also specifies identification requirements for examinees, restrictions on the use of calculators and waiver of the examination for prior licensees. The new section requires applicants with a disability to contact the testing service to arrange for desired accommodation.

New §535.62 specifies the requirements for TREC to accept courses of study to satisfy the educational requirements for a real estate license. Courses may be either core real estate courses, the content of which are set by Texas Civil Statutes, Article 6573a, §7(a),or by TREC rule, or real estate related courses which TREC has determined to be acceptable. If content requirements are satisfied, courses are acceptable if offered by a wide range of providers, including schools accredited by TREC, accredited colleges or universities, or professional trade associations. The new section also provides a means of measuring the number of classroom hours of credit awarded by a provider using semester or quarter hours or continuing education units, and the student must either have been in the classroom for the hours of credit granted by the provider or completed makeup in accordance with the section. The new section also provides specific requirements, including a final examination, for any provider's core course offered by correspondence or an alternative delivery system such as a computer. Other restrictions on the acceptance of a core course addressed in the new section concern an applicant's submission of substantially similar courses, courses primarily concerning techniques or procedures of a particular brokerage or organization, or courses for which credit is based on life experience or an examination.

New §535.63 concerns experience and education requirements for a real estate license. The new section combines current provisions relating to broker and salesperson license applications and readopts an exemption for applicants licensed within a seven year period prior to filing the application. The new section also continues the requirement that an applicant for a broker license have completed at least 180 classroom hours of courses whose titles or course descriptions reflect a real estate discipline such as the core real estate courses listed in the Act or approved by TREC.

New §535.64 concerns the accreditation of real estate schools and approval of courses and instructors. The new section adopts by reference revised application forms, a school surety bond form, and guidelines for the development of an instructor's manual for a course. The forms have generally been shortened by the elimination of unnecessary questions. Schools accredited prior to the effective date of the section will be required to apply for accreditation prior to January 1, 2001. Instructors approved prior to the effective date of the section also will be required to apply for approval to teach at an accredited school after January 1, 2001. New accreditations and approvals will be for five-year periods. The new section establishes standards and procedural guidelines for the accreditation and approval processes for schools, courses and instructors.

New §535.65 addresses operation of a school after it has been accredited. Material changes in operation, including a change of ownership or management, will require prior approval by the commission, and , in the case of a change in ownership, information from the new owners corresponding to that submitted with an original application for accreditation. The new section also specifies requirements for the school facilities. With the exception of classes held in facilities to which a government entity may limit access, classes must be open to the public, whether held in the school facility or in a location

such as a broker's office. Schools will be responsible for each course, and the new section provides specific guidelines for the use of approved instructors or limited use of guest speakers, the number of questions, passing scores and procedures for required course examinations, the mandatory content of pre-enrollment agreements, the school's obligation to provide students with course materials, presentation of courses, course credit and records, acceptable make-up of missed classes, and prohibited advertising practices.

New §535.66 addresses the school's payment of an annual fee based on the anniversary date of the school's accreditation. The new section also provides guidelines for audits of the school by commission employees, complaints, investigations and hearings. Grounds for disciplinary action against schools and instructors are detailed, with specific indicators to show when a school's financial condition is insufficient for continuing operation, such as nonpayment of three or more liabilities when due.

Nearly 150 comments were received regarding the proposed sections. In addition to written comments, the public provided oral comments at TREC meetings held on August 2, 1999, and September 20, 1999. Most commenters were students opposed to limiting the daily classroom presentation of a core real estate course to eight hours in §535.62, and they urged the commission to keep the daily limit at 10 hours so as to reduce the number of days required to complete a course. The Texas Association of Realtors and the San Antonio Board of Realtors supported the 10 hour limit which had been in effect under current TREC rules. The commission concurred with the commenters and increased the daily limit to 10 hours in §535.62 on final adoption. Commenters, including the San Antonio Board of Realtors, urged the commission not to permit the offering of core courses in a real estate broker's office. The commenters urged the imposition of the restriction due to potential conflicts of interest, unfair competition by larger firms and possible interruptions in the presentation of the courses. The Texas Association of Realtors supported the proposed section, arguing that the question was only one of location, since all accredited providers were subject to the same requirements regarding presentation of courses. The Texas Association of Realtors also suggested language to require the provider to offer the courses in a location conducive to instruction, such as a classroom, training room, conference room, or assembly hall. The commission concurred with the suggestion and incorporated the change in the final adoption of §535.62. Several commenters supported a change limiting the acceptance of core courses offered by correspondence to accredited colleges and universities, suggesting that permitting schools accredited by TREC to offer correspondence courses would dilute the quality of education for correspondence students and create enforcement difficulties for TREC staff. In response to the comments, the commission modified §535.62 on final adoption to continue a long-standing practice of restricting acceptance of core real estate courses offered by correspondence to those offered by accredited colleges and universities. Commenters opposed the acceptance of courses from trade associations unless the associations were approved as providers. The commission declined to modify §535.62 in response to the comments, since the content, attendance and examination requirements in the section applied to all core courses, including those offered by trade associations and that the section clarified the current practice of accepting trade association courses. At the suggestion of staff, non-substantive changes were made to §535.62 and to §535.63 to correct typographical errors or to make the sections easier to read.

Several commenters opposed the requirement for schools and instructors to reapply for accreditation or approval to teach every five years as burdensome and unnecessary. The commission declined to modify §535.63 in response to the comments; by requiring schools and instructors to reapply, the section ensures that they meet current standards for providing education to real estate licensees and license applicants. Commenters also opposed the requirement in §535.63 of personal financial statements for accreditation or re-accreditation of a school, suggesting that business financial statements would be sufficient for the commission's purpose and that reliance upon personal financial information would invade the privacy of the school's owners. In response to the comments, the commission modified §535.64 and §535.65 to require business, rather than personal, financial statements. Commenters also urged the commission to require a market analysis and projected budget only upon the initial application for accreditation, when those matters would be more appropriate. The commission concurred and limited the requirement for a market analysis and proposed budget to the initial application for accreditation. Upon the suggestion of staff, the proposed Course Supplement Application form was deleted and combined with the proposed Course Application form to reduce the number of forms to be used in the approval of new courses. The forms adopted by reference in §535.63 were also revised to correct typographical errors or eliminate unnecessary questions. On the suggestion of TREC staff, language was added to §535.64 to clarify that courses offered by alternative delivery systems such as computers must meet requirements for alternative delivery courses previously established by TREC for mandatory continuing education courses. Changes also were made to provide a specific procedure and venue for instructor application disapprovals, to clarify delegation of approval authority to staff and to authorize the termination of an application due to the failure of the applicant to provide requested information.

Several commenters urged the commission not to adopt a minimum number of examination courses or passing score for core real estate courses, arguing that the school should have the ability to determine passing scores for courses of varying difficulty levels. Other commenters suggested that the suggested minimum of 60 questions for a course examination was too high for a math course. The commission agreed in part, and modified §535.65 on final adoption to require a minimum of 60 questions in courses other than math courses, for which a minimum of 20 questions would be required. A typographical error was corrected in §535.65 to require a student to be reported as "dropped" if the student missed more than one/third of a core course. Commenters suggested that the proposed section should be modified to required all examinations by schools to be "closed book". The commission determined that the exam methodology could be left to the individual school and declined to make the requested change. Commenters also opposed the elimination of written make-up for core courses and the proposal to require students to complete any required make-up prior to taking a course examination. The commission declined to make the changes as suggested; requiring actual attendance or presentation of an audio/video presentation of the missed section and completion of make-up prior to taking an examination would tend to increase the student's mastery of the subject matter.

At the suggestion of TREC staff changes were made in §535.66 to provide more specific guidelines for the handling of complaints, to clarify venue in disciplinary matters involving schools and instructors, and to provide for probation of orders against schools and instructors, consistent with disciplinary remedies for violations by other TREC licensees.

A number of comments were received regarding the nature and number of core real estate courses required for a person to obtain a real estate license. These comments addressed subjects beyond the scope of the proposed sections and would require legislative action. The commission declined to modify the proposed sections in response to these comments.

The new sections are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.62. Acceptable Courses of Study.

(a) Acceptable core real estate courses are those courses prescribed by Texas Civil Statutes, Article 6573(a) (the Act), §7(a) and by this section. Acceptable real estate related courses are those courses which have been determined to be acceptable by the commission. The commission will periodically publish lists of acceptable real estate related courses.

(b) The commission may require an applicant to furnish materials such as course outlines, syllabi and course descriptions in support of credit instruments. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a real estate broker or real estate salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or the real estate regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a post-secondary educational institution established by any state;

(4) the United States Armed Forces Institute or other service-related school; or

(5) a professional trade association.

(c) The commission shall measure classroom hour credits using the following equivalents:

(1) One semester hour: 15 hours.

(2) One quarter hour: 10 hours.

(3) One continuing education unit: 10 hours.

(d) A core real estate course also must meet each of the following requirements to be accepted.

(1) The course contained the content required by Texas Civil Statutes, Article 6573a, (the Act), §7, or this section.

(2) The daily course presentation did not exceed ten hours.

(3) With the exception of courses conducted by correspondence or by an alternative delivery method such as by computer, the student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(4) For a classroom course, successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(5) For a correspondence course, the course must have been offered by an accredited college or university, successful completion of a written final examination was a requirement for receiving credit from the provider, and the examination was administered under controlled conditions to positively identified students.

(6) For a course offered by an alternative delivery method, the course met the requirements of §535.71(r) of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors).

(7) The student must not have completed more than one course with substantially the same course content within a three year period.

(8) The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.

(9) For a classroom course, the course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(e) Course credits awarded by an accredited college or university for life experience or by examination are acceptable only for real estate related courses.

(f) In addition to the courses of study specified in the Act, §7(a), the following shall be considered core real estate courses.

(1) Promulgated Contract Forms (or equivalent) shall include but not be limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.

(2) Residential Inspection for Real Estate Agents (or equivalent) shall include but not be limited to repair-related contract forms and addenda, inspector and client agreement, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

§535.63. Education and Experience Requirements for a License.

(a) License or experience in another state. Except as provided by this section, the commission will not accept a person's license in another state or experience in real estate brokerage or any related business in satisfaction of education or experience required for a license.

(b) Education and experience requirements for a broker license.

(1) Experience as a real estate broker or salesperson is accepted as experience for the purpose of applying for a real estate broker license. Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.

(2) The commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(A) The applicant must have been licensed as a Texas real estate broker or salesperson no more than six years prior to the filing of the application.

(B) If the applicant was previously licensed as a Texas real estate broker, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant must satisfy all current education requirements for an original broker license.

(C) The applicant must have had not less than two years of active experience as a licensed real estate broker or salesperson during the eight-year period prior to the filing of the application.

(3) Under the Texas Civil Statutes, Article 6573a (the Act), §7(g), a person who is the designated officer of a corporation or limited liability company which is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. The term "state" means one of the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof. A person licensed in another state may derive the required two years' experience from periods in which the person was licensed in two or more states. A person whose real estate broker license is on inactive status is deemed to be a licensed real estate broker in another state.

(4) With respect to the education requirement of 60 semester hours in effect on or after January 1, 1985, the commission shall require not less than 12 semester hours (180 classroom hours) in courses reflecting course titles or course descriptions in the real estate disciplines including, but not limited to, the statutory subject areas identified in the Act, §7(a) and §7(j). The commission will publish periodically guidelines as to the acceptability of related courses. Provided, however, that an applicant for a broker license who was licensed as a salesperson subject to the annual education requirements set forth in this Act must provide the commission satisfactory evidence of having completed 12 semester hours (180 classroom hours) of core real estate courses that would have been required for the applicant's third annual renewal of a salesperson license.

(c) Education requirements for a salesperson license.

(1) In order to maintain a license, a salesperson subject to annual education requirements shall furnish documentation to the commission of successful completion of appropriate courses no later than the day the salesperson files an application with the commission to renew the salesperson's license.

(2) The commission may waive the education required for a real estate salesperson license if the applicant satisfies each of the following conditions.

(A) The applicant must have been licensed either as a Texas real estate broker or as a Texas real estate salesperson no more than six years prior to the filing of the application.

(B) The applicant must have completed any core real estate courses or real estate related courses which would have been required for a timely renewal of the prior license, or if the renewal of the prior license was not subject to the completion of core real estate courses or real estate related courses, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) Application. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to Texas Civil Statutes, Article 6573a, (the Act), §7(f), shall file an application on forms adopted by the commission accompanied by the fee prescribed pursuant to §11(9) of the Act. The commission may request additional information from an applicant which the commission deems to be relevant and material to the consideration of an application.

(b) Standards for approval of application for accreditation. To be accredited as a school, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person, such as an independent contractor, to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant also must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes.

(c) Financial review. The commission shall review the financial condition of each proposed school to determine whether the school has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth;

(2) on an initial application, a proposed budget for the first year of operation; and

(3) on an initial application, a market survey indicating the anticipated enrollment for the first year of operation.

(d) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by the Act, §7(f), the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of five years.

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period. If a school was accredited prior to the effective date of this section, the accreditation of the school expires January 1, 2001, and the school may apply for accreditation at any time.

(f) Disapproval of application. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Gov-

ernment Code, §2001.001, et. seq., and to Chapter 533 of this title (relating to Practice and Procedure).

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Form ED 1-0, Education Provider Application;

(2) Form ED 2-0, Principal Information Form;

(3) Form ED 3-0, Course Application;

(4) Form ED 4-0, Instructor Application;

(5) Form ED 5-0, Real Estate Provider Bond;

(6) Form ED 6-0; Evaluation Form; and

(7) Form ED 7-0, Instructor Manual Guidelines

(h) Obtaining approval to offer course. An applicant shall submit Form ED 3-0 the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3-0, file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course the school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Form ED 7-0, Instructor Manual Guidelines. Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.71(r) of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors.)

(i) Standards for instructor approval. The application for commission approval of an instructor must be filed on forms adopted by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess the following qualifications:

(1) a college degree in the subject area or five years professional experience in the subject area; and

(2) three years experience in teaching or training; or

(3) the equivalent of paragraphs (1) and (2) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(j) Approval of instructor. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of five years.

(k) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another five year period. If an instructor was approved prior to the effective date of this section, the approval of the instructor expires January 1, 2001, and the instructor may apply for approval at any time.

(l) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (i) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity , or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by the Act, §10. Hearings are subject to the Administrative Procedure Act, Texas Government Code, §2001.001, et. seq., and to Chapter 533 of this title (relating to Practice and Procedure).

(m) Additional information related to application. The commission may request an applicant to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant fails to provide the information within 60 days after the mailing of a request by the commission.

(n) Delegation of authority. The commission may authorize its director of licensing and education, or that person's designate, to determine whether applications for schools, courses, and instructors should be approved.

(o) Examination preparation courses. No school may be accredited or operate under commission approval for the sole purpose of offering courses of instruction designed to prepare its students for the state examination for any license issued by the commission. A school may offer an examination preparation course on a non-credit basis, provided the requirements of subsection (e) of this section have been met.

§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records.

(a) Changes in Ownership or Operation. A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.64 of this title (relating to Accreditation of Schools and Approval of Instructors). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:

(1) the proportion of ownership of each proposed new owner,

(2) a professional resume of each proposed new owner who would hold at least a 10% interest in the school;

(3) business financial statements of each proposed new owner who would hold at least a 10% interest in the school, which shall include the statement of financial condition and statement of net worth for the accounting period in which the application is made, prepared in accordance with generally accepted accounting principles;

(4) a statement of any proposed changes in the operation or location of the school;

(5) a new bond in the amount of $10,000 for the proposed new owner(s), a statement from the bonding company indicating that the former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under the Act, §7(f).

(6) a completed Form ED 1-0, Education Provider Application, reflecting all required information for the proposed new owner(s); and

(7) a completed Form ED 2-0, Principal Information Form, for each proposed new owner who would hold at least a 10% interest in the school.

(b) School facilities.

(1) A school shall maintain a fixed office in the State of Texas. The office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service. A school shall ensure that its classroom facilities are adequate for the needs of the school and pose no threat to the health or safety of students.

(2) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

(c) Responsibility of schools. A school is responsible to the commission for the conduct and administration of each course presentation, punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. A school shall establish business hours during which school staff are available for public inquiry and assistance. A school shall ensure that instructors or other persons do not recruit or solicit prospective salespersons or brokers in a classroom during class time.

(d) Instructors.

(1) A school shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, a school may not utilize an instructor unless the instructor has been approved by the commission. A school shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A school may use as a guest speaker a person who has not been approved as an instructor, provided that no more than a total of three hours of instruction in a 30-hour course are taught by persons who are not approved instructors.

(2) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.

(3) A school shall provide instructor evaluation forms for completion by students in every class and establish procedures for instructional review. The school shall file in the school records any comments by the school's management relevant to instructor evaluation reports. On demand by the commission the school shall produce student instructor evaluation forms for inspection.

(4) A school shall ensure that at the beginning of each examination preparation course, the instructor reads aloud to all students the provisions of subsection (a) of §535.61 of this title (relating to Examinations).

(e) Course examinations.

(1) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this section. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

(2) Except in the case of math courses which require a minimum of 20 questions, a school shall use final examinations consisting of at least 60 questions with an unweighted passing score of 70%. A school shall revise final course examinations for active courses at least annually and shall furnish the commission copies of all revisions. Each of the subjects required by statute or commission rule for a core course must be covered in the exam of that course. A school shall ensure that an examination proctor who is either a member of the school staff or faculty is present with the class during all regularly scheduled final course examinations.

(f) Pre-enrollment agreements, tuition and fees.

(1) Prior to the start of a course, a school shall provide each student with a pre-enrollment agreement signed by a representative of the school and the student. The agreement must include all of the following information:

(A) the tuition for the course;

(B) any fees charged by the school for supplies, materials, or books needed in course work, shown in an itemized fashion;

(C) the school's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily ;

(D) attendance requirements;

(E) acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; and

(F) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits.

(2) If the school cancels a course, the school shall fully refund all fees collected from students or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(3) Any written advertisement by the school which contains a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.

(g) Course materials.

(1) A school shall update course materials during the period of time a course may be given to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the

commission prior to implementation, and the commission may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

(2) A school shall provide each student with copies for the student's permanent use of any printed material which is the basis for a significant portion of the course. The school shall provide ample space on handouts for notetaking or completion of any written exercises.

(h) Presentation of courses.

(1) A school shall present core real estate courses prescribed by the Act, §7(a) and real estate related courses accepted by the commission in no less than 30 classroom hours of instruction. The school shall advertise and schedule a course for the full clock hours of time for which credit is awarded.

(2) A school may give one hour of credit for a minimum of 50 clock minutes of actual classroom session time. A school shall provide a break of at least 20 minutes to be given at least every two hours. While a school is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons such as taking medication or responding to the call of nature.

(i) Course credit and records.

(1) Within ten days following the completion of a course, a school shall provide the commission with a class roster in a format approved by the commission. The listing of students must be numbered and in alphabetical order, with each student's last name shown first, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. The school shall explain any other grade concisely but clearly. The school shall list all instructors used in the course on the roster.

(A) "Passed" must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.

(B) "Failed" must be limited to those students who had acceptable classroom attendance but failed the final course examination. If, however, the school permits the student to retake the examination in accordance with subsection (e) of this section, the first failure must be reported as an incomplete grade.

(C) "Incomplete" must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two/thirds of the scheduled course hours but did not complete acceptable makeup; or those who fail the final course examination but will be permitted to take a second examination. If a student is reported incomplete and later completes acceptable makeup and the final examination, the school shall file a supplemental report with the commission giving the student's name and final grade report and using the same format and course data as the original class report. The school shall file a separate supplemental report for each individual class but may include more than one student on the report if all students were in the same original class.

(D) "Dropped" must be limited to those students who missed more than one/third of the scheduled class in which they were originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director.

(2) A school may permit a student who attends at least two-thirds of a scheduled course to complete makeup work to satisfy attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course or the supervised presentation by audio or video recording of the class sessions actually missed. A school shall require all class makeup sessions to be completed within 90 days of the completion of the original course, or the student must be considered dropped with no credit for the course. A member of the school's staff must approve the makeup procedure to be followed. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not be changed by makeup sessions, and any hours accumulated may not be transferred to any other course.

(3) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

(4) A school shall maintain records of each student enrolled in any course for a minimum of five years. The full class file and student enrollment agreements must be retained for at least 12 months following completion of the class.

(5) A school shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel, and the commission may require presentation of financial statements or other financial records.

(j) Advertising. The following practices are prohibited:

(1) using any advertising which does not contain the school's name;

(2) representing that the school's program is the only vehicle by which a person may satisfy educational requirement for licensing;

(3) conveying a false impression of the school's size, importance, location, equipment or facilities;

(4) making unsubstantiated claims that the school's programs are superior to any other course of instruction;

(5) promoting the school directly or indirectly as a job placement agency, unless the school is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; or

(6) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression.

§535.66. Payment of Annual Fee, Audits, Investigations and Enforcement Actions.

(a) Payment of annual fee. A school shall pay the fee prescribed by Section 11(a)(10) of Texas Civil Statutes, Article 6573a (the Act) and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice.

(b) Audits and evaluations. Schools are subject to audit by commission employees. Commission employees may conduct on-site audits without prior notice to the school, and may enroll and attend a course without identifying themselves as employees of the commission. Commission employees also may evaluate the effectiveness of course materials or instructors through surveys of students. The commission may require a school to furnish students with an evaluation form approved by the commission and to request that the students complete and return the form directly to the licensing and education division of the commission. An audit report or evaluation indicating noncompliance with these sections will be treated as a written complaint against the school or instructor concerned and will be referred to the enforcement division of the commission for appropriate resolution.

(c) Complaints, investigations and hearings. The commission shall investigate complaints against schools or instructors which allege acts constituting violations of these sections. Complaints must be in writing, and the commission may not initiate an investigation or take action against a school or instructor based on an anonymous complaint. Complaints against a school or instructor received by any division of the commission will be referred to the enforcement division for appropriate resolution. Commission employees may file written complaints against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. The school or instructor named in the complaint will be provided with a copy of the complaint. Proceedings against schools and instructors will be conducted in the manner required by the Act, §17, the Administrative Procedure Act, Texas Government Code, §2001, et. seq., and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

(d) Grounds for disciplinary action against a school. The commission may issue a reprimand, place on probation, suspend or revoke accreditation of a school, or impose an administrative penalty when it has been determined that the school has been guilty of engaging in any of the following acts:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor;

(6) disregarding or violating a provision of these sections or of the Act; or

(7) failing to maintain sufficient financial resources to continue operation of the school without placing students at risk of financial loss.

(e) The existence of any of the following conditions shall constitute prima facie evidence that a school's financial condition is insufficient for continuing operation:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the school's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the school for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) execution of a writ of garnishment on any of the assets of the school.

(f) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of engaging in any of the following acts:

(1) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person

had completed an examination, or that the person had completed any other requirement for course credit;

(2) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(3) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(4) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against a school or instructor; or

(5) violating or disregarding any provision of the Act or a rule of the commission.

(g) Probation. An order of suspension or revocation issued under this section may be probated upon reasonable terms and conditions as determined 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.

Filed with the Office of the Secretary of State on October 4, 1999.

TRD-9906601
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: January 31, 2000
Proposal publication date: June 25, 1999
For further information, please call: (512) 465-3900

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Part 25. STRUCTURAL PEST CONTROL BOARD

Chapter 593. LICENSES

22 TAC §593.5

The Structural Pest Control Board adopts amendments of 22 TAC §593.5 without changes to the proposed text as published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6435) and will not be republished.

The justification for the rule is the amendments will clarify and simplify for the better understanding of the rules by customers/consumers, licensees/service providers and the public at large, and for the better application and enforcement of such rules for the benefit of the customer/consumer and the public at large.

The rule will function in that the amendment removes the reference to a specified fee of $30 and restates the fee provisions for examinations administered by the Board.

There were no comments received.

There were no groups or associations making comments for or against the rule being submitted for adoption.

The amendment is adopted under Vernon's Civil Statute Annotated, Article 135b-6 which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 September 28, 1999.

TRD-9906333
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: December 1, 1999
Proposal publication date: August 20, 1999
For further information, please call: (512) 451-7200

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22 TAC §593.21

The Structural Pest Control Board adopts amendments of 22 TAC §593.21 without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6237) and will not be republished.

The justification for the rule is the amendments will clarify and simplify the rules for the better understanding of the rules by customers/consumers, licensees/service providers and the public at large, and for the better application and enforcement of such rules for the benefit of the customer/consumer and the public at large.

The rule will function in that the amendments remove the reference to the specific fees of $36 and $30, and restates the fee provision for each application and for each examination category.

There were no comments received.

There were no groups or associations making comments for or against the rule being submitted for adoption.

The amendment is adopted under Vernon's Civil Statute Annotated, Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 September 28, 1999.

TRD-9906335
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: December 1, 1999
Proposal publication date: August 13, 1999
For further information, please call: (512) 451-7200

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22 TAC §593.24

The Structural Pest Control Board adopts amendments of 22 TAC §593.24 without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6257) and will not be republished.

Justification for the rule is the amendments will clarify and simplify the rules for the better understanding of the rules

by customers/consumers, licensees/service providers and the public at large, and for the better application and enforcement of such rules for the benefit of the customer/consumer and the public at large.

The rule will function in that the amendment specifies the continuing education course annual approval and monitoring fee as $75 in lieu of the fee theretofore specified.

There were no comments received.

There were no groups or associations making comments for or against the rule being submitted for adoption.

The amendment is adopted under Vernon's Civil Statute Annotated, Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 September 28, 1999.

TRD-9906336
Benny M. Mathis, Jr.
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TITLE 28. INSURANCE

Part 1. 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 Commissioner of Insurance adopts amended §9.1 concerning 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). Section 9.1 is adopted with changes to the proposed text as published in the August 27, 1999, issue of the *Texas Register* (24 TexReg 6630). There are corrective changes to certain proposed amendments to the Basic Manual which the section adopts by reference and which are more particularly described below. The rules and forms adopted herein were among those considered at the 1998 Texas Title Insurance Biennial Hearing, Rulemaking Phase (rulemaking hearing), held on August 10, 1999, under Docket Number 2393, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The remaining items considered at the rulemaking hearing are the subject of a separate rule proposal published in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8506) The amendments 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 facilitate the administration and regulation of title insurance in this state. These amendments to the Basic Manual clarify and standardize rules and forms in the regulation of title insurance. These amendments to the Basic Manual were published for consideration as agenda items at the rulemaking hearing on August 10, 1999. The department received no opposition. The items were republished in the *Texas Register* (24 TexReg 6630) on August 27, 1999, and the department received no comments other than as noted at the rulemaking hearing. The amendments update the current Facultative Reinsurance Agreement (Form T-18.1), repeal the existing Tertiary Facultative Reinsurance Agreement (Form T-21) and adopt a new Tertiary Facultative Reinsurance Agreement–Type I (Form T-21.1), and adopt a new Tertiary Facultative Reinsurance Agreement–Type II (Form T-21.2). These changes will better facilitate insurance agreements between title companies and allow for more efficient closings in which a title insurance company must seek reinsurance pursuant to the provisions of Article 9.19 of the Insurance Code. Amendments to Procedural Rule P-10 are adopted to maintain consistency with the reinsurance forms. Adoption of new Procedural Rule P-48 facilitates Y2K compliance in title insurance forms. Amendments to Procedural Rule P-28, Continuing Education Requirements, allow for consistent administration with the staggered renewal process for issuance and renewal of licenses for title agents, direct operations, and escrow officers. Amendments to the Administrative Rules in Section VI of the Basic Manual reflect implementation of staggered renewal dates for licenses and also recognize new entities such as limited liability companies, enabling the administrative rules to be consistent with changing business practices. Senate Bill 105, 76th Legislature, eliminated a reporting duty concerning a title insurance company's analysis of title agents' audit reports; therefore, Form T-19, Company Report of Agents Audit Report has been repealed. The Limited Pre-Foreclosure Policy (Form T-40) has been amended to correct a typographical error. These updating and housekeeping matters facilitate the practices of the title industry and the administration and regulation of title insurance. The department withdrew its submissions of a proposed new policy and amended procedural rule P-33 regarding proposed new Form T-11, United States of America Policy of Title Insurance.

The department has made corrective changes to the respective Schedule I attached to each of the new and amended facultative reinsurance agreements to delete the reference to the American Land Title Association or ALTA forms and their corresponding dates since these forms are adopted as Texas forms and to insert the Texas form number where appropriate. Accordingly, the department has also deleted the references to the ALTA forms and dates in Procedural Rule P-10. The department has also inserted for consistency "Type I" in the heading of the new Tertiary Facultative Reinsurance Agreement (Type I) (Form T-21.1) and the form number in the heading of the new Tertiary Facultative Reinsurance Agreement (Type II) (Form T-21.2).

Amended §9.1 incorporates by reference certain amendments to the Basic Manual which the Commissioner considered as individual agenda items at the rulemaking hearing on August 10, 1999, and for which the department received no opposition. Those items for which the department received comments in opposition have been republished as a separate rule proposal in the October 1, 1999, issue of the *Texas Register* (24 TexReg

8506). The items which are the subject of this adoption order are as follows:

Item 98-1 Submission by Texas Land Title Association to amend the Facultative Reinsurance Agreement (Form T-18.1). This form as adopted 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 must establish that it was prejudiced by the failure of the insured to give the reinsurer notice of claims within a reasonable time in order to use that 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. If the reinsurer fails to perform its obligations under the facultative reinsurance agreement, it 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 modification 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 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–Type I (Form T-21.1). This form as adopted 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 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 the new and revised reinsurance forms. This procedural rule is amended to refer to the newly adopted reinsurance forms and updated to reflect the change from "Board" to "commissioner." At the rulemaking hearing, the department made corrective changes to the procedural rule by adding underlines and strike-throughs to the new and deleted language which had been inadvertently left off. 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 new procedural rule updates promulgated title forms to reflect the correct calendar year. As noted in the text of the new 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 amendment 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 in light of the implementation of staggered renewal dates for title agent, direct operation and escrow officer licenses. This amendment 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. At the rulemaking hearing, 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.

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.

Item 98-15 Submission by Texas Department of Insurance to repeal Form T-19, Company Report of Agents Audit Report. This item was initially to update the form for reporting the title insurance company's analysis of title agents' audit reports. Senate Bill 105, 76th legislature eliminated this reporting duty; therefore, Form T-19 is no longer necessary. TLTA submitted comments suggesting the repeal of Form T-19. The department agreed and Form T-19 is repealed. 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 amended by adding a word that was inadvertently omitted from the promulgated form. No opposition was made to this item at the rulemaking hearing.

Comment: Three commenters spoke at the rulemaking hearing in support of the new and amended facultative reinsurance agreements (Agenda Items 98-1, 98-2, and 98-3) and the department's amendments to the procedural rule regarding those agreements (Agenda Item 98-4). One of the commenters submitted written testimony explaining the changes to the current form and highlighting the features of the new forms. The commenter noted that reinsurance forms are used by title insurance companies to cede or transfer to a reinsurer all or a portion of a risk as required by Article 9.19, Insurance Code, and by prudent insuring. The commenter also noted that the reinsurance forms are readily accepted and understood by title insurance companies and will facilitate reinsurance agreements between title insurance companies.

Agency Response: The department agrees and appreciates the comments.

For the section: Texas Land Title Association and Stewart Title Guaranty Company

The amended section is adopted pursuant to the Insurance Code, Articles 9.07, 9.21, and §36.001 (former Article 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. Insurance Code, §36.001 (former 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.

§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. 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 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 October 8, 1999.

TRD-9906762
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 28, 1999
Proposal publication date: August 27, 1999
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

Subchapter H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

Division 5. UNIVERSAL WASTE RULE

30 TAC §335.261, §335.262

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.261 and new §335.262, concerning industrial solid waste and municipal hazardous waste with changes to the proposed text as published in the April 16, 1999 issue of the *Texas Register* (24 TexReg 3036).

EXPLANATION OF ADOPTED RULES In response to the Association of Electric Companies of Texas' petition for rulemaking previously granted by the commission, the amendments and new section are adopted in order to revise the state rules to add paint and paint-related waste to the list of universal wastes and provide for management standards for the new universal waste. The adoption also contains cross-reference corrections and a technical correction to the definition of "small quantity handler of universal waste."

Section 335.261 is amended to correct several references to 40 Title Code of Federal Regulations (CFR) §273.6, relating to the definitions of "destination facility," "large quantity handler of universal waste," "small quantity handler of universal waste," "thermostat," and "universal waste." In addition, the definition of "small quantity handler of universal waste" is amended to conform to the technical correction made at 63 FedReg 71225, and the definition of "universal waste" is amended to add to the list of universal wastes "paint and paint-related waste as described in §335.262(b)." In a change from the proposal, the following proposed provision is not adopted under §335.261(b)(13)(F)(iv), because the State of Texas has been authorized for its original or "base" universal waste rule, which makes the provision unnecessary: "This clause is contingent

upon the United States Environmental Protection Agency's authorization of §335.261 of this title (relating to Universal Waste Rule), effective October 19, 1998, as amended."

New §335.262 relates to standards for management of paint and paint-related waste. Adopted §335.262(a) sets out the applicability of the standards for managing paint and paint- related waste and states that this section provides an alternative set of management standards in lieu of regulation under other portions of Chapter 335 not otherwise referenced under this section. Adopted §335.262(b) is the description, or definition, of paint and paint-related waste. Section §335.262(b) describes "paint and paint-related waste" as "used or unused paint and paint-related material which is 'hazardous waste' as defined under §335.1(56) of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities." Under adopted §335.262(c), certain definitions and requirements apply to persons managing paint and paint-related wastes, except as otherwise provided in §335.262. Under §335.262(c)(1), these would include those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261: Title 40 CFR §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70. In a change from the proposal, §335.262(c)(2) states that small quantity and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions), and provides the requirements relating to containment. The change from proposal is the substitution of the adopted phrase "in accordance with §335.4 of this title (relating to General Prohibitions)" for the proposed phrase "in a way that prevents releases of any universal waste or component of a universal waste to the environment." Under §335.262(c)(3), ignitable, reactive, or incompatible paint and paint-related waste must meet the applicable requirements of 40 CFR §§265.17, 265.176, and 265.177. Under §335.262(d), hazardous waste determinations made under §335.262(b) must be documented at the time of the determination and maintained for at least three years. Finally, proposed §335.262(e) is not adopted, because the State of Texas has been authorized for its original or "base" universal waste rule, which makes this provision unnecessary, as follows: "This section is contingent upon the United States Environmental Protection Agency's authorization of §335.261 of this title (relating to Universal Waste Rule), effective October 19, 1998, as amended."

FINAL REGULATORY IMPACT ASSESSMENT The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does 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. The rule will not adversely affect in a material way the aforementioned aspects of the state because the rule provides for streamlined waste management standards for certain paint and paint-related wastes, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. More simply stated, the amendments revise the commission's hazardous waste rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety, as explained below. The overall benefit from streamlining waste management standards for certain paint and paint-related wastes is due to the fact that the new standards would reduce the regulatory burden on persons generating or collecting these wastes. The streamlined waste management standards for certain paint and paint-related wastes would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule also provides benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state by facilitating environmentally sound collection and increasing the proper recycling or processing of paint and paint-related wastes. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because these rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In other words, the adopted standards are anticipated to reduce regulatory requirements while facilitating an alternative for the collection of paint and paint-related waste and increasing the proper recycling or processing of these wastes. Furthermore, this rule does not meet any of the four applicability requirements listed in §2001.0225(a). The rule does not exceed a standard set by federal law because the purpose of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in this rule are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because there is no express requirement in state law concerning universal wastes. This rule does not 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 because the rule fits the framework of the corresponding federal universal waste regulations. See 40 CFR §271.21, relating to procedures for revision of state programs and 40 CFR Part 273, relating to standards for universal waste management. The rulemaking adopts a rule under specific state law (i.e., Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024). Finally, this rulemaking is not being adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to provide an alternative for the collection of paint and paint-related waste, facilitating environmentally sound collection and increasing the proper recycling or processing of paint and paint-related wastes. The rules would substantially advance this stated purpose by adopting environmentally protective streamlined standards relating to universal wastes meeting the definition of paint and paint-related wastes. Promulgation and enforcement of these rules would not affect private real

property which is the subject of the rules because the rule language provides an alternative set of management standards for paint and paint-related waste in lieu of other more stringent hazardous waste regulations, representing a streamlined approach to the regulation of certain types of management of paint and paint-related wastes. The adopted standards are not considered to be more stringent than existing standards. In addition, this reduction of regulatory requirements may be taken only at the initiative of certain persons managing paint and paint-related waste. For these reasons, this action is not considered a burden to private real property and does not constitute a taking under Government Code, Chapter 2007. The subject regulations do not affect a landowner's rights in private real property.

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

Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because the rule would facilitate the environmentally sound collection and increase the proper recycling or processing of paint and paint-related wastes, and facilitate programs developed to reduce the quantity of these wastes going to municipal solid waste landfills or combustors. The rule would also assure that the wastes will go to appropriate processing or recycling facilities under full hazardous waste regulatory controls. Thus, the rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also serve 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 determined that the specific actions detailed in this section and earlier in this preamble under the sections concerning explanation of adopted rules, final regulatory impact assessment, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS The commission did not hold a public meeting on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., May 17, 1999. Written comments were submitted by the Association of Electric Companies of Texas, Inc. (AECT); Texas Eastman Division, Eastman Chemical Company (Eastman); and TXU Business Services, on behalf of TXU Electric & Gas, TXU SESCO & Gas, TXU Fuel Company, TXU Mining Company, TXU Pipeline Services, and TXU Lone Star Pipeline.

ANALYSIS OF COMMENTS AECT and TXU Business Services expressed strong support for adoption of the proposed rules.

The commission acknowledges these comments from AECT and TXU Business Services.

Eastman commented on proposed §335.262(c)(2) concerning the wording "... small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in a way that prevents releases of any universal waste or component of a universal waste to the environment." The commenter pointed out that the words "must" and "any" infer that there must be no release of any type (e.g., air emission, spillage, etc.) from the management/storage of the waste to the environment. For example, vaporizing emissions would not be allowed. The commenter pointed out that even the activity of adding waste to or removing waste from a container will create emissions in apparent conflict with the proposed rule. Also, the commenter noted that a person with a venting container would not be operating within the proposed regulation. Thus, the commenter suggested the following wording for this portion of §335.262(c)(2): "small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4."

The commission agrees with this comment. The commission believes that the requirements of §335.4, relating to General Prohibitions, provide in a reasonable fashion, the level of protection that was intended by the proposal. The requirements of §335.4 are that, in addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the commission; (2) the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare.

Eastman also commented that a careful reading of §335.262 would lead one to believe that the 40 CFR Part 265, Subparts AA, BB, and CC standards would apply, and suggested that these regulations, which deal with certain air emission standards, not be applied to container management in the proposed rule.

The commission disagrees with this comment, in that the proposal does not make the Part 265, Subparts AA, BB, and CC standards applicable to container management by small quantity handlers, large quantity handlers, or transporters of paint and paint-related waste. The referenced requirements under §335.262(c)(1), however, do make certain Part 265, Subparts AA, BB, and CC standards applicable to destination facilities, through the application of 40 CFR §273.60. If an owner or operator is operating within the requirements of this adopted rule, then there can be no interpretation that Part 265, Subpart AA, BB, or CC applies to paint and paint-related waste managed in containers, except for destination facilities. The commission considers it appropriate for the full range of applicable hazardous waste regulations, as referenced under 40 CFR §273.60, apply to destination facilities. Therefore, no change to the proposal has been made, in this regard.

STATUTORY AUTHORITY The amendment and new rule are adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§335.261. Universal Waste Rule.

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under Title 30 Texas Administrative Code. Except as provided in subsection (b) of this section, Title 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended and adopted through April 12, 1996, at 61 FedReg 16290.

(b) Title 40 CFR Part 273, except §273.1, is adopted subject to the following changes:

(1) The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Natural Resource Conservation Commission," "the agency," or "the commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) The term "treatment" is changed to "processing."

(4) In 40 CFR §273.2(a) and (b), references to "40 CFR part 266, subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(5) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(6) In 40 CFR §273.3(b)(1), the reference to "40 CFR 262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR 262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3))" is deleted.

(7) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(9) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR 261.2" are changed to "§335.1 of this title (relating to Definitions)."

(10) In 40 CFR §273.4(a), the reference to "40 CFR 273.6" is changed to §335.261(b)(13)(E) of this title (relating to Universal Waste Rule)" and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.5(a)(1), the reference to "40 CFR 261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "40 CFR 273.6" is changed to §335.261(b)(13)(F) of this title (relating to Universal Waste Rule)."

(12) In 40 CFR §273.5(a)(2), the reference to "40 CFR 261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and the reference to "40 CFR 273.6" is changed to §335.261(b)(13)(F) of this title (relating to Universal Waste Rule)."

(13) In 40 CFR §273.6, the following definitions are changed to the meanings described in this paragraph:

(A) "Destination Facility" means a facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste;

(B) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation;

(C) "Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated;

(D) "Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively;

(E) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section; and

(F) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of this section:

(i) batteries as described in 40 CFR §273.2;

(ii) pesticides as described in 40 CFR §273.3;

(iii) thermostats as described in 40 CFR §273.4; and

(iv) paint and paint-related waste as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste);

(14) In 40 CFR §273.10, the reference to "40 CFR 273.6" is changed to "§335.261(b)(13)(D) of this title (relating to Universal Waste Rule)."

(15) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(16) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR 262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(17) In 40 CFR §273.13(c)(3)(ii), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(18) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(19) In 40 CFR §273.20(a), the reference to "40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(20) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(21) In 40 CFR §273.30, the reference to "40 CFR 273.6" is changed to "§335.261(b)(13)(C) of this title (relating to Universal Waste Rule)."

(22) In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR 262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(24) In 40 CFR §273.33(c)(3)(ii), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(25) In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(26) In 40 CFR §273.40(a), the reference to "40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(27) In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(28) In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(29) In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(30) In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(31) In 40 CFR §273.60(a), the reference to "40 CFR 273.6" is changed to §335.261(b)(13)(A) of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "Title 30 Texas Administrative Code (relating to Environmental Quality)."

(32) In 40 CFR §273.60(b), the reference to "40 CFR 261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(33) In 40 CFR §273.80(a), the reference to "40 CFR 260.20 and 260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(34) In 40 CFR §273.80(b), the reference to "40 CFR 260.20(b)" is changed to "§20.15 of this title."

(35) In 40 CFR §273.81(a), the reference to "40 CFR 260.10" is changed to "§335.1 of this title (relating to Definitions)."

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and subpart G of 40 CFR part 273 as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(d) Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

§335.262. Standards for Management of Paint and Paint-Related Waste.

(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

(b) Paint and paint-related waste is used or unused paint and paint-related material which is "hazardous waste" as defined under §335.1(56) of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities.

(c) Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:

(1) Those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261 of this title (relating to Universal Waste Rule): Title 40 Code of Federal Regulations (CFR) §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70;

(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

(A) a container that remains closed, except when necessary to add or remove waste;

(B) a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(C) a container that does not meet the requirements of subparagraphs (A) and

(B) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraphs (A) and (B) of this paragraph; or

(D) a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

(E) a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes;" and

(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.

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 October 4, 1999.

TRD-9906604
Margaret Hoffman
Director
Texas Natural Resource Conservation Commission
Effective date: October 24, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

Part 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 25. MEMBERSHIP CREDIT

Subchapter B. COMPENSATION

34 TAC §25.24

The Teacher Retirement System of Texas (TRS) adopts a new §25.24 concerning performance pay as a form of creditable compensation for retirement with TRS. The new section is adopted without changes to the proposed text as published in the August 20, 1999, issue of the Texas Register (24TexReg6444) and therefore will not be republished.

The new section is adopted to implement §822.201(b)(4) of the Government Code relating to performance pay as a form of creditable compensation for retirement with TRS.

The new section provides guidelines and some definition for the TRS staff and school district reporting officials in administering new law passed in 1997 and amended in 1999 allowing performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district to be submitted as creditable compensation to TRS.

No comments were received regarding the adoption of this new section.

The section is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. In addition, the rule is adopted under Government Code §822.201(b)(4), which provides that performance pay is creditable, and Government Code §822.201(e)(6), which provides that a total compensation plan must satisfy any other requirements adopted by the retirement system.

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 October 8, 1999.

TRD-9906753
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: October 28, 1999
Proposal publication date: August 20, 1999
For further information, please call: (512) 391-2115

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Chapter 29. BENEFITS

Subchapter F. PARTIAL LUMP-SUM OPTION PLAN

34 TAC §29.70, §29.71

The Teacher Retirement System of Texas (TRS) adopts new §§29.70 and 29.71 concerning the Partial Lump Sum Option Plan as passed by the 76th Legislature in Senate Bill 1128.

Section 29.70 is adopted with non-substantive changes to the text as proposed in the August 20, 1999 issue of the Texas Register (24TexReg6444). Section 29.71 is adopted without changes to the text as proposed in the August 20, 1999, issue of the Texas Register (24TexReg6444) and the text will not be republished. The emergency adoption of these new sections as published in the August 20, 1999, issue of the Texas Register (24TexReg6392) is being withdrawn as of the effective date of this adoption.

The new sections are adopted in order to implement new law providing a partial lump sum option plan for TRS members. The non-substantive change to §29.70(d) provides more precise language regarding beneficiary designations and in §29.70(e) the word "provided" in the second sentence has been changed to "prescribed".

§29.70 provides for the methods of distribution of the lump-sum to include payments in the event of the death of the retiree and §29.71 provides the tables needed for calculation of the reduction to the retiree annuity when the option is selected.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. In addition, §824.2045(h) authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the implementation of the partial lump-sum option.

§29.70. Distribution.

(a) The partial lump-sum option payment shall be made at the same time as the initial retirement annuity payment is made. For those retirees selecting two or three annual lump-sum payments, the second and third payment shall be made on the appropriate anniversary date of the due date of the initial lump-sum payment. No interest will be paid on any lump-sum amounts paid in the second year, third year, or at any other time.

(b) A retiree who selected two or three annual lump-sum payments may receive all the money due at any time they elect in writing to do so.

(c) A retiree will be permitted to roll-over any amounts to a qualified plan to the extent authorized by law.

(d) In the event a retiree dies prior to receiving all payments due from the partial lump-sum option plan, the retirement system will pay any partial lump-sum benefits due in a single lump sum payment to the beneficiary eligible to receive the retirement benefits except in the circumstances where subsection (e) of this section applies.

(e) A retiree also has the option of designating a beneficiary specifically for any unpaid lump-sum payments due under this section upon the death of the retiree. Any such designation must be done on a form prescribed by and filed with the retirement system. The designation would be superior to subsection (d) of this section and would control the payment of a single lump sum payment of any money due upon the death of the retiree under the partial lump-sum option plan. In the event that the designated beneficiary named under this subsection dies prior to distribution, TRS will pay the lump sum benefit under subsection (d) of this section.

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

Filed with the Office of the Secretary of State on October 8, 1999.

TRD-9906750
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 391-2115

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Chapter 31. EMPLOYMENT AFTER RETIREMENT

34 TAC §§31.7, 31.10, 31.12

The Teacher Retirement System of Texas (TRS) adopts amendments to §31.7 concerning regular employment having no effect on annuity, §31.10 concerning monthly certified statements, and §31.12 concerning employment up to six months on as much as full time. The amendments are adopted without changes to the proposed text published in the August 20, 1999 issue of the Texas Register (24TexReg6445) and will not be republished.

The amendments implement new law passed by the 76th Legislature in Senate Bill 1128. The amendment to §31.7 makes it clear that substitute work may not be combined with other employment after retirement and adds the new concept of allowing work in an acute shortage area by a teacher. The amendment to §31.10 requires that employers must also certify the employment of retirees under the six month exception and under the new acute shortage area. It also deletes the word "regular" for clarification purposes. The amendments to §31.12 remove the concept of an election form which is no longer required for the six month exception. The employers will be required to report these six month exception retirees. The first six months worked in a school year will have to be used for the exception.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership and for the administration of the funds of the retirement system. In addition, new law found at Government Code, Chapter 824, §824.602 provides the basis for this adoption.

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 October 8, 1999.

TRD-9906754
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 391-2115

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34 TAC §31.9

The Teacher Retirement System of Texas (TRS) adopts amendments to §31.9 concerning definitions used in rules relating to employment after retirement. Section 31.9 is being adopted with non-substantive changes to the proposed text published in the August 20, 1999 issue of the Texas Register (24TexReg6446). The emergency adoption of this amendment as published in the August 20, 1999 issue of the Texas Register (24TexReg6392) is being withdrawn as of the effective date of this adoption.

The amendments are adopted to provide necessary definitions related to employment after retirement in an acute shortage area. The first non-substantive change in §31.9(c) clarifies that to be eligible for the exception, a retiree may not be employed as a substitute during the 12-month break in service. The other non-substantive change in §31.9(d) inserts a specific cite to the law regarding teaching in an acute shortage area.

The amendments add definitions that will make it clear that the 12 month separation from employment after retirement required in the law is a 12 consecutive month separation. In addition, the amended section makes it clear that teaching in an acute shortage area for at least one hour per day qualifies under the new law as employment in an acute shortage area as defined by the Commissioner of Education.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership and for the administration of the funds of the retirement system.

§31.9. Definitions.

(a) The definition of "public educational institution" is an educational institution in the State of Texas supported wholly or partly from public funds.

(b) The definition of "school year' for purposes of employment after retirement is a 12-month period beginning on September 1 and ending on August 31 of the next calendar year.

(c) For the teacher shortage area law, the 12 month separation period may be any 12 consecutive months following the month of retirement so long as the person is not employed in any position or capacity, including as a substitute, in a public school during any part of each of the 12 months.

(d) A retiree who teaches at least one classroom hour per day in a shortage area in accordance with Government Code, Chapter 824, §824.602(a)(5) will be considered eligible for the employment after retirement exception described in that 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.

Filed with the Office of the Secretary of State on October 8, 1999.

TRD-9906752
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
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Proposal publication date: August 20, 1999
For further information, please call: (512) 391-2115

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Chapter 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.17

The Teacher Retirement System of Texas (TRS) adopts an amendment to §47.17 concerning the calculation for an alternate payee's benefits to be received before a TRS member starts to receive his or her benefits. The amended section is adopted without changes to the proposed text as published in the August 20, 1999, issue of the Texas Register (24TexReg6447) and will not be republished.

The adopted amendment provides a plan that enables TRS to administratively figure the retirement benefits under a Qualified Domestic Relations Order (QDRO) when an alternate payee desires to begin receiving monthly payments before the member's benefit begins when such a distribution involves a member's participation in the new partial lump-sum option plan.

No comments were received on the adoption of the amended section.

The amended section is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and under the Government Code, Chapter 804, §804.005(g) which authorizes the retirement system to adopt rules for the administration of the law.

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

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Charles Dunlap
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 391-2115

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Part 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

Chapter 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.6

The Texas County and District Retirement System adopts an amendment to §101.6, concerning the time for filing retirement applications, without changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6249). The amendment is adopted to implement and administer changes made by Sections 26, 34, and 35, Senate Bill 1129, 76th Legislature (1999), which provide that applications for retirement may now be filed with the system on or before the date designated by the member as the member's effective

retirement date, and that a member is no longer precluded from retiring with less than one year of membership in those instances in which the member is otherwise eligible and whose most recent credited service is with a subdivision that has been participating in the system for more than one year. The amendment clarifies that although the system will recognize an application for retirement that is filed on or before the effective retirement date designated on the application as having been timely filed with respect to the designated retirement date, this does not impose an affirmative duty on a subdivision to modify its current administrative practices and procedures with respect to processing retirement applications of its members for filing with the system.

The amended rule will provide greater flexibility to a member when planning and electing an effective retirement date.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

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 October 8, 1999.

TRD-9906729
Terry Horton
Director
Texas County and District Retirement System
Effective date: December 31, 1999
Proposal publication date: August 13,1999
For further information, please call: (512) 328-8889

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Chapter 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.3

The Texas County and District Retirement System adopts an amendment to §103.3, concerning the beneficiary designations and payment elections requiring spousal consent, without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6249). The amendment requires that the member now certify to the member's current marital status on any document filed with the system on which the member makes a beneficiary designation (other than a designation of a beneficiary to receive a supplemental death benefit) or benefit payment election, and allows the system and employees of the system to rely upon the member's certification when making payment of benefits in accordance with the certification without liability to any other person even if the certification was untrue on its date of execution. The amendment also modifies the spousal consent rules to now require spousal consent whenever the member files a document with the system (other than a supplemental death benefit beneficiary designation) on which the member designates a person other than the member's spouse as primary beneficiary, and whenever a member who is eligible to apply for and receive a retirement annuity applies for a refund. The amendment eliminates the requirement of spousal consent if no service performed by the member as an employee of a participating subdivision and credited in the system, was performed during the marriage of the member and the spouse. The amendment also implements the change made by Section 38, Senate Bill 1129, 76th Legislature (1999), which provides that an unrevoked beneficiary designation in effect on December 31, 1999, continues in effect.

The amended rule provides greater conformity with the property code in recognizing the member's separate property interest in benefits earned before marriage; and in recognizing the spouse's community property interest in the member's benefit earned during marriage, and allows for more efficient administration of the benefit application process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

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-9906737
Terry Horton
Director
Texas County and District Retirement System
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Proposal publication date: August 13,1999
For further information, please call: (512) 328-8889

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34 TAC §103.9

The Texas County and District Retirement System adopts new §103.9 concerning the administration of the lump sum distribution option created by House Bill 2152, 76th Legislature (1999), without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6251). The amendment implements the lump sum distribution option which allows an eligible member of an adopting subdivision to elect to receive a portion of the member's retirement benefit in the form of a lump sum distribution on service retirement. New §103.9 establishes rules and procedures relating to the time and manner in which an eligible member may elect to receive a portion of the member's service retirement benefit in the form of a single payment; the manner in which the partial lump sum distribution may be paid; the manner in which the partial lump sum distribution and any related cost basis will be allocated; the payment of the partial lump sum distribution to an alternate payee in lieu of the interest awarded to the alternate payee under a qualified domestic relations order; and the treatment of the partial lump sum distribution for purposes of calculating the amount and taxation of the member's retirement benefit.

The rule establishes procedures to implement the new retirement benefit payment option, thereby allowing an eligible mem-

ber greater personal financial planning opportunities at retirement.

No comments were received regarding adoption of the new rule.

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

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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Terry Horton
Director
Texas County and District Retirement System
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For further information, please call: (512) 328-8889

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Chapter 105. CREDITABLE SERVICE

34 TAC §105.3

The Texas County and District Retirement System adopts the repeal of §105.3, concerning the definition of periods of organized conflict or crisis, without changes to the proposal as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6252). The repeal of the rule is necessary because of the change made by Section 19, Senate Bill 1129, 76th Legislature (1999), which eliminated the requirement that only that military service performed during periods of organized conflict or crisis could be used to establish credit in the retirement system for military service made the rule obsolete. The legislative change allows any military service performed under honorable conditions to be used in the calculation of current service credit for military service.

The repeal eliminates a rule made obsolete because of the legislative change.

No comments were received regarding adoption of the repeal.

The repeal of the rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

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 October 8, 1999.

TRD-9906731
Terry Horton
Director
Texas County and District Retirement System
Effective date: December 31, 1999
Proposal publication date: August 13,1999
For further information, please call: (512) 328-8889

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Chapter 107. MISCELLANEOUS RULES

34 TAC §107.6, §107.7

The Texas County and District Retirement System adopts new §107.6 concerning the penalty for late reporting and new §107.7 concerning the extension of the due date for reporting. The rules are necessary to administer the late reporting penalty established by Section 60, Senate Bill 1129, 76th Legislature, which provides that a subdivision must pay an administrative fee of $500 and interest on past-due contributions for each failure by the subdivision to provide all required information and contributions with respect to a calendar month of participation by the 15th day of the following month. New §107.6 establishes rules and procedures relating to the time and manner in which a subdivision will be informed of its failure to timely report and of the amount of the penalty; the time and manner in which the penalty will be assessed and credited to the appropriate funds in the system; and the time after which the penalty becomes fixed and no longer subject to modification. New §107.7 authorizes the director to grant to a subdivision an extension of time to submit its monthly report provided the subdivision files a written motion with the director on or before the due date of the report showing that there is good cause for such extension of time.

The rules are expected to cause an improvement in the timely submission of required information and contributions, thereby permitting the more efficient, effective and equitable administration of the system for the benefit of all participating subdivisions and members.

No comments were received regarding adoption of the rules.

The rules are adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

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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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 3. TEXAS YOUTH COMMISSION

Chapter 85. ADMISSION AND PLACEMENT

Subchapter B. PLACEMENT AND PLANNING

37 TAC §85.33

The Texas Youth Commission (TYC) adopts an amendment to §85.33, concerning Program Completion and Movement of Sentenced Offenders, without changes to the proposed text as published in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7181).

The justification for amending the section is to ensure that youth who may pose a greater risk to the public, including aggravated sexual assault, receive the highest level of internal review prior to any decision concerning a sentenced offenders movement.

The amendment will add to the group of sentenced offenders named category 1 sentenced offenders, the offense aggravated sexual assault and will remove the offense aggravated assault.

No comments were received regarding adoption of the amendment.

The amended section is adopted on an emergency basis under the Human Resources Code, §61.075, concerning Determination of Treatment, which provides the Texas Youth Commission authority to discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The adopted rule implements the Human Resource Code, §61.034.

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-9906771
Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6244

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Chapter 97. SECURITY AND CONTROL

Subchapter A. SECURITY AND CONTROL

37 TAC §97.41

The Texas Youth Commission (TYC) adopts an amendment to §97.41, concerning Detention, without changes to the proposed text as published in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7187).

The justification for amending the section is increased security and safety for the public through the detention in adult jails of certain youth consistent with changes to Human resources Code, 61.093 Escape and Apprehension, effective September 1, 1999.

The amendment will decrease the age of a TYC youth eligible to be referred to detention in an adult jail from 18 years old to 17 years old.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §§61.093, concerning Escape and Apprehension, which provides the Texas Youth Commission with the authority to refer a child who has been committed to the commission and placed by it in any institution or facility has escaped or has been released under supervision and broken the conditions of release, to an appropriate sheriff, deputy sheriff, constable, or police officer for the purposes of arrest. In addition the commission may detain a child who is arrested or taken into custody under Subsection (a) in any suitable place, including an adult jail facility if the person is 17 years of age or older, until the child is returned to the custody of the commission or transported to a commission facility.

The adopted rule implements the Human Resource Code, §61.034.

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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Steve Robinson
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Part 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

Chapter 221. PROFICIENCY CERTIFICATION AND OTHER POST BASIC LICENSES

37 TAC §221.38

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new to Title 37, Texas Administrative Code, §221.38, concerning civil process proficiency certification. The new section is being adopted without changes to the proposed text as published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6447) and will not be republished.

The new section is being adopted to implement a new proficiency certification for civil process officers. This certification promotes professionalism of justices of the peace, constables, and sheriffs through education and training.

No comments were received regarding the adoption of this section.

The new section is proposed under Texas Government Code Annotated, Chapter 415§415.010 which authorizes the Commission to adopt rules for administration of Chapter 415.

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-9906786
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: December 1, 1999
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For further information, please call: (512) 936-7700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 2. MEDICALLY NEEDY PROGRAM

Subchapter A. PROGRAM REQUIREMENTS

40 TAC §2.1002

The Texas Department of Human Services (DHS) adopts an amendment to §2.1002, concerning application procedures, in its Medically Needy Program chapter. The amendment is adopted without changes to the proposed text published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6450) and will not be republished.

The department is adopting this amendment to comply with Medicaid federal regulations that allow an applicant or recipient of Temporary Assistance for Needy Families (TANF)-related medical programs to choose an authorized representative regardless of the household's ability to conduct business.

The amendment will function by ensuring that households will be able to choose an authorized representative to apply for and receive their benefits when the applicant or recipient is unable to do so. This will allow clients to continually receive benefits and to not have to use public resources for medical care.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 32, which provides the department with the authority to administer medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§32.001-32.042.

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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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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Chapter 3. INCOME ASSISTANCE SERVICES

Subchapter C. THE APPLICATION PROCESS

40 TAC §3.307

The Texas Department of Human Services (DHS) adopts an amendment to §3.307, concerning authorized representative, in its Income Assistance Services chapter. The amendment is adopted without changes to the proposed text published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6450) and will not be republished.

The department is adopting this amendment to clarify our rules to allow an authorized representative to complete a Temporary Assistance for Needy Families (TANF) application for a family when the applicant is incapacitated or incompetent.

The amendment will function by ensuring that households will be able to access the TANF program even if the head of household is unable to complete the application process due to incapacity or incompetence.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 32, which provides the department with the authority to administer medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§32.001-32.042.

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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Paul Leche
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Texas Department of Human Services
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Chapter 4. MEDICAID PROGRAMS– CHILDREN AND PREGNANT WOMEN

Subchapter A. ELIGIBILITY REQUIREMENTS

40 TAC §4.1002

The Texas Department of Human Services (DHS) adopts an amendment to §4.1002, concerning application procedures, in its Medicaid Programs - Children and Pregnant Women chapter. The amendment is adopted without changes to the proposed text published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6451) and will not be republished.

The department is adopting this amendment to comply with Medicaid federal regulations that allow an applicant or recipient of Temporary Assistance for Needy Families (TANF)-related medical programs to choose an authorized representative regardless of the household's ability to conduct business.

The amendment will function by ensuring that households will be able to choose an authorized representative to apply for and receive their benefits when the applicant or recipient is unable to do so. This will allow clients to continually receive benefits and to not have to use public resources for medical care.

During the comment period, DHS received comments from the Texas Children's Health Insurance Program Coalition (CHIP). A summary of the comments and DHS's response follows:

Comment: The commenter commended the department in its efforts to simplify the Medicaid application process and indicated that they are willing to work with the department to further simplify the Medicaid eligibility process. They stated that enrolling children in health care should be as simple as possible and urged the department to simplify the Medicaid application and recertification process for children.

Response: DHS acknowledges the comments to simplify the application process and will consider them as we continue to participate in the overall CHIP project. The department is looking at Medicaid simplification in relation to CHIP and the TIERS project. As noted in comments from the Texas CHIP Coalition, DHS cannot unilaterally make changes in our application process to rectify an inequitable situation.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 32, which provides the department with the authority to administer medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§32.001-32.042.

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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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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Chapter 12. SPECIAL NUTRITION PROGRAMS

The Texas Department of Human Services (DHS) adopts amendments to §§12.2, 12.3, 12.5, 12.9, 12.11, 12.14, 12.15, 12.19, 12.24-12.26, 12.108, 12.121, 12.122, 12.209, 12.309, 12.402, 12.404, 12.405, 12.407, and 12.409, without changes to the proposed text published in the July 2, 1999, issue of the *Texas Register* (24 TexReg 4974).

The justification for the amendments is to implement provisions of the Child Nutrition Reauthorization Act of 1998 (Public Law 105-336), which was signed into effect on October 31, 1998, including incorporation of the Child and Adult Care Food Program (CACFP) At Risk Afterschool program and the National School Lunch Program (NSLP) Afterschool Care Snack program, implementation of requirements relating to a single agreement and claim for special nutrition programs, restrictions on certain applicants in the CACFP relating to "moving towards tax-exempt status," and mandatory preapproval visits of new CACFP contractors, as well as periodic visits of contractors determined to be at risk of program noncompliance.

The CACFP At Risk Afterschool program and the NSLP Afterschool Care Snack program provide for a meal supplement (snack) served to individuals through age 18 years participating in certain after school programs to be claimed for reimbursement through the CACFP and NSLP. There is no age restriction for claiming reimbursement for snacks served to individuals who have been determined to be mentally or physically disabled and who participate in a program organized to provide after school care. The after school program must be organized to provide care after school hours with regularly scheduled activities in a structured and supervised setting primarily to low-income children, and must have an educational or enrichment purpose. Contractors in the CACFP At Risk Afterschool program may be reimbursed for snacks served to children on weekends and holidays during the regular school year. School food authorities in the NSLP Afterschool Care Snack program may not be reimbursed for snacks served to children on weekends and holidays during the regular school year. Organized athletic programs engaged in interscholastic or community level competitive sports including, but not limited to, youth sports leagues such as baseball, football, community soccer leagues, and area swim teams are prohibited from participating in the programs. However, otherwise eligible after school programs that include supervised athletic activity may participate in the CACFP At Risk Afterschool program or the NSLP Afterschool Care Snack program provided that the programs are open to all and do not limit membership for reasons other than space or security or licensing requirements, if applicable.

The Act requires states that operate the NSLP or School Breakfast Program and any other United States Department of Agriculture (USDA) child nutrition program to establish a single agreement and claim for contractors that participate in more than one program. States must also conduct preapproval visits of new, non-governmental CACFP contractors, as well as periodic visits of non-governmental contractors determined to be at risk of program noncompliance. These visits are in addition to the administrative review requirements already required by federal regulations.

These amendments are required by the Child Nutrition Reauthorization Act of 1998 (Public Law 105-336).

During the comment period, DHS received no comments relating to §§12.2, 12.3, 12.5, 12.9, 12.11, 12.14, 12.15, 12.24, 12.25, 12.108, 12.121, 12.122, 12.209, 12.309,12.402, 12.404, 12.405, 12.407, and 12.409. DHS received comments from the Texas CACFP Sponsors Association, and three sponsoring organizations relating to §12.19(b), which requires periodic visits with contractors determined to be at risk of program noncompliance. One commenter asserted that DHS has not complied with the Administrative Procedures Act (APA) in implementing this policy. All commenters expressed concerns

that the specific criteria for identifying contractors at risk of noncompliance with program requirements were not published as part of this proposed rule.

Comments Related to Compliance with the APA: One commenter questioned whether DHS had complied with the APA, stating that the department had not provided for discussion of the policy by the Special Nutrition Programs Advisory Committee (SNPAC) or the Board.

Response: This policy was developed in full compliance with the APA. The APA does not require presentation of proposed rules to advisory committees; however, this item was presented to the SNPAC on March 11, 1999, and April 15, 1999. This item was also presented to the Board on May 21, 1999. No comment or testimony was received at the Board meeting.

Comments Related to the Substance of the Proposed Amendment Requiring Periodic Visits to Sponsors at Risk of Program Noncompliance - §12.19(b):

(1) All four commenters stated that specific criteria for identifying sponsors who are at risk of program noncompliance should be included as part of this rule (§12.19(b)). One commenter objected to the language as vague and unclear.

Response: The rule states that DHS will conduct periodic visits to private nonprofit and private for-profit contractors participating in the CACFP who have been determined by DHS through the program review process and technical assistance sessions to have demonstrated potential for noncompliance with program requirements. The rule stipulates that at-risk sponsors will be identified through the program review process and technical assistance sessions. DHS already has the right to visit contractors at any time. While it is understandable that sponsors would like to be able to anticipate any visits by DHS monitors, the program requirements which will be the focus of these visits have been set out in rule for some time, and as long as the program requirements are being met, the sponsors are not at risk of being sanctioned. These periodic reviews are not sanctions.

(2) Several commenters equated the proposed policy to the administrative review/sanction process currently in effect, and because of this equation, suggested that this periodic review policy was not necessary because it duplicated the sanction process.

Response: The periodic reviews are not sanctions. They are merely a monitoring tool intended to identify sponsors who are at risk of noncompliance with program requirements before they are actually out of compliance in order that technical assistance may be provided to these sponsors in an attempt to avoid noncompliance and sanctions. The periodic reviews are federally mandated.

(3) One commenter stated that DHS has received no guidance from USDA regarding implementation of these program requirements.

Response: DHS staff brought these policies to the Board in response to receiving detailed guidance and instructions from USDA issued in advance of federal regulations. DHS is publishing state rules implementing the requirements based on USDA guidance, in anticipation of federal regulations that will be issued as interim rules. Should USDA regulations deviate from the DHS rules, the state rules will be revised.

Subchapter A. CHILD AND ADULT CARE FOOD PROGRAM

40 TAC §§12.2, 12.3, 12.5, 12.9, 12.11, 12.14, 12.15, 12.19, 12.24-12.26

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement §§22.001-22.030 and 33.001-32.024 of the Human Resources Code.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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Subchapter B. SUMMER FOOD SERVICE PROGRAM

40 TAC §§12.108, 12.121, 12.122

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement §§22.001-22.030 and 33.001-32.024 of the Human Resources Code.

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

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Subchapter C. SPECIAL MILK PROGRAM

40 TAC §12.209

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-32.024 of the Human Resources Code.

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

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Subchapter D. SCHOOL BREAKFAST PROGRAM

40 TAC §12.309

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-32.024 of the Human Resources Code.

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

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Subchapter E. NATIONAL SCHOOL LUNCH PROGRAM

40 TAC §§12.402, 12.404, 12.405, 12.407, 12.409

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement §§22.001-22.030 and 33.001-32.024 of the Human Resources Code.

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

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Chapter 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

Subchapter D. FISCAL MONITORING

40 TAC §45.401

The Texas Department of Human Services (DHS) adopts an amendment to §45.401, without changes to the proposed text published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5462).

The justification for the amendment is to make non-substantive changes to the section. DHS previously required that any substitution for the documentation of service delivery form be approved prior to use to document service delivery. It has been determined that the requirement for preapproval is unnecessary and inappropriate. DHS is therefore deleting that requirement by this rule change.

The amendment will function by promoting quality of services, and providing better accessibility for clients and consumer satisfaction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

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

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Paul Leche
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Texas Department of Human Services
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Chapter 47. PRIMARY HOME CARE

Subchapter B. SERVICE REQUIREMENTS

40 TAC §§47.2902, 47.2910-47.2912

The Texas Department of Human Services (DHS) adopts amendments to §§47.2902, 47.2910, and 47.2912; and adopts new §47.2911, without changes to the proposed text published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5463).

The justification for the amendments and new section is to place into rules performance standards that didn't exist in rules before the adoption of these rules. DHS is adopting these rules because DHS has developed provider performance standards and uniform monitoring guides for use by regional staff, and without these rules we cannot enforce standards if deficiencies are found during the monitoring reviews. The rules also establish procedures for orientation of attendants, service plan changes, and additional documentation requirements when a service break occurs.

The amendments and new section will function by promoting quality of services, and providing better accessibility for clients and consumer satisfaction.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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Subchapter C. CLAIMS PAYMENT

40 TAC §47.3908

The Texas Department of Human Services (DHS) adopts the repeal of §47.3908 without changes to the proposed text published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6452).

Justification for the adoption is that Home and Community Support Services (HCSS) agencies that provide Primary Home Care currently have the option to participate in the Expedited Payment System. With the implementation of the claims management system, Community Based Alternatives HCSS providers can also participate in the expedited payment system. The policy will be implemented by repealing the expedited payment system rule under the Primary Home Care chapter and placing it in Chapter 49, Contracting for Community Care Services.

The adoption will function by making the expedited payment system available to Home and Community Support Services agencies that provide personal assistance services under the Community Based Alternatives (CBA) Program. Providers that participate in the expedited payment system will reduce the turnaround time for reimbursement, thus providing the agencies with better cash flow and potentially reducing their cost of doing business. The clients receiving personal attendant services through the participating agencies will continue to receive attendant services without interruption.

The department received no comments regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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 48. COMMUNITY CARE FOR AGED AND DISABLED

Subchapter J. 1915(C) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

40 TAC §48.6003

The Texas Department of Human Services (DHS) adopts an amendment to §48.6003, with changes to the proposed text published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4212).

The justification for the amendment is to implement existing Community Based Alternatives (CBA) policy which provides exceptions to eligible individuals from the first- come, first-served enrollment policy. This policy is applied to individuals who meet the exception criteria whether CBA enrollment is open or suspended pending receipt of additional funding. The department is adopting these rules because it needs to provide

continuity of services for children aging out of other comparable programs and adults who wish to leave nursing facilities.

The amendment will function by allowing individuals in one of three categories specified in the rules accessibility to CBA services without being placed on the interest list.

The department received a written comment from the Texas Association for Home Care and verbal comments during the August 20, 1999, DHS Board meeting regarding proposed §48.6003 from ADAPT of Texas and Advocacy, Inc. A summary of the comments and the department's responses follows.

Comment: In opposition to the exception for individuals living in Assisted Living facilities, Advocacy Inc. recommended that this exception not be approved or if approved, to limit it.

Response: The department agrees and has deleted the requirement, proposed as §48.6003(b)(1)(D), for an exception for individuals living in Assisted Living facilities.

Comment: ADAPT of Texas and the Texas Association for Home Care were in support of revising the exception criteria that individuals only need to be residents of a nursing facility within the past six months before they can qualify for the exception criteria.

Response: The department agrees and has revised this exception criteria in §48.6003(b)(1)(C).

In addition, in §48.6003(b)(1) the department corrected the phrase to read "first come, first served" and in §48.6003(b)(2) changed the cite to "paragraph (1)(A)-(C)," as a result of the deletion of §48.6003(b)(1)(D).

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§48.6003. Client Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

(1) be age 21 or above;

(2) meet the level-of-care criteria for medical necessity for nursing facility care in accordance with §19.2409 and §19.2410 of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination);

(3) meet the requirements for Preadmission Screening and Annual Resident Review (PASARR) and be determined appropriate for nursing facility care;

(4) choose home and community-based waiver services as an alternative to nursing facility placement based on an informed choice with approval conditional on feasible alternatives available under the waiver in accordance with 42 Code of Federal Regulations §441.302(d)(1);

(5) have an individual plan of care for waiver services as specified in §48.6006 of this title (relating to Individual Plan of Care for Waiver Services) whose cost does not exceed 100% of the individual's actual Texas Index for Level of Effort payment rate;

(6) meet the financial eligibility criteria for waiver services as specified in §48.6007 of this section (relating to Financial Eligibility Criteria); and

(7) have ongoing needs for waiver services whose projected costs, as indicated on the Individual Plan of Care, do not exceed the maximum service ceilings set for those services as listed below:

(A) Adaptive Aids and Medical Supplies service category cannot exceed $10,000 per individual per Individual Plan of Care year without approval by the waiver manager;

(B) minor home modifications service category cannot exceed $7500 per individual without approval by the waiver manager;

(C) respite care cannot exceed 30 days per individual per Individual Plan of Care year without approval by the waiver manager;

(8) receive waiver services within 30 days after waiver eligibility is established and

(9) reside either in his own home or in a licensed personal care facility or adult foster care home contracted with the Texas Department of Human Services to provide Community Based Alternatives (CBA) services. CBA services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed personal care facilities.

(10) meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument-Home Care Assessment for Nursing Home Risk as revised in April 1996 and summarized as follows:

(A) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;

(B) has a functional decline in the past 90 days;

(C) has a history of a fall two or more times in past 180 days;

(D) has a neurological diagnosis of Alzheimer's, Head Trauma, Multiple Sclerosis, Parkinsonism, or Dementia;

(E) has a history of nursing facility placement within the last five years;

(F) has multiple episodes of urine incontinence daily; and

(G) goes out of one's residence one or fewer days a week.

(b) Enrollment in the Community Based Alternatives (CBA) program is limited to the number of participants approved by the Health Care Financing Administration (HCFA) or the availability of state funding.

(1) Eligible individuals are to be enrolled from the CBA interest list on a "first come, first served" basis, except for individuals who meet the following criteria:

(A) children age 21 who are no longer eligible for the Medically Dependent Children's Program (MDCP);

(B) children age 21 who have been receiving nursing services through the Texas Health Steps Program and are no longer eligible; or

(C) individuals who have been residents of nursing facilities within the past six months.

(2) DHS will suspend enrollment into the CBA program when the census reaches funded capacity except for those individuals who meet the criteria specified in paragraph (1)(A)-(C) of this subsection.

(c) Participants may be enrolled in only one waiver program at a time.

(d) The nursing facility risk criteria will be applied at the time of the first annual reassessment for current Community Based Alternatives Program participants and at the time of initial enrollment for all new applicants.

(e) Individuals transferring from a nursing facility or the Medically Dependent Children's Program are exempt from subsection (a)(10) of this section.

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

Filed with the Office of the Secretary of State on October 8, 1999.

TRD-9906761
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: October 28, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 438-3765

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40 TAC §§48.6020-48.6024, 48.6052, 48.6058, 48.6078, 48.6090, 48.6092, 48.6096

The Texas Department of Human Services (DHS) adopts new §§48.6020- 48.6024; and adopts amendments to §§48.6052, 48.6058, 48.6078, 48.6090, 48.6092, and 48.6096, without changes to the proposed text published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5464).

The justification for the new sections and amendments is to place into rules performance standards that didn't exist in rules before the adoption of these rules. DHS is adopting these rules because DHS has developed provider performance standards and uniform monitoring guides for use by regional staff, and without these rules we cannot enforce sanctions if deficiencies are found during the monitoring reviews. The rules also establish timeframes and procedures for the pre-enrollment assessments and specify documentation requirements for service initiation, annual re-assessments, and service plan changes.

The new sections and amendments will function by promoting the quality of services, and providing better accessibility for clients and consumer satisfaction.

No comments were received regarding adoption of the new sections and amendments.

The amendments and new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new sections implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

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

Filed with the Office of the Secretary of State on October 11, 1999.

TRD-9906781
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 438-3765

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Chapter 49. CONTRACTING FOR COMMUNITY CARE SERVICES

40 TAC §49.10

The Texas Department of Human Services (DHS) adopts new §49.10 without changes to the proposed text published in the August 20, 1999, issue of the Texas Register (24 TexReg 6453).

Justification for the adoption is that Home and Community Support Services (HCSS) agencies that provide Primary Home Care currently have the option to participate in the Expedited Payment System. With the implementation of the claims management system, Community Based Alternatives HCSS providers can also participate in the expedited payment system. The policy will be implemented by repealing the expedited payment system rule under the Primary Home Care chapter and placing it in Chapter 49, Contracting for Community Care Services.

The adoption will function by making the expedited payment system available to Home and Community Support Services agencies that provide personal assistance services under the Community Based Alternatives (CBA) Program. Providers that participate in the expedited payment system will reduce the turnaround time for reimbursement, thus providing the agencies with better cash flow and potentially reducing their cost of doing business. The clients receiving personal attendant services through the participating agencies will continue to receive attendant services without interruption.

The department received no comments regarding adoption of the section.

The section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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 October 8, 1999.

TRD-9906760
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 1999
Proposal publication date: August 20, 1999
For further information, please call: (512) 438-3765

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Part 20. TEXAS WORKFORCE COMMISSION

Chapter 841. WORKFORCE INVESTMENT ACT

Subchapter A. GENERAL PROVISIONS

40 TAC §841.2

The Texas Workforce Commission (Commission) adopts amendments to §841.2, relating to the definitions applicable to implementation of the Workforce Investment Act (WIA) with changes as proposed in the July 23, 1999, issue of the *Texas Register* (24TexReg5691).

The purposes of the amendments are to provide clarity regarding the rules for early implementation of WIA and to establish uniform understanding and interpretation of the following terms: "certificate," "certified provider," "completion" and "performance standards."

The definition of "certificate" is added to clarify that the certificate pertains to proof of successful completion of a course, sequence of courses or programs which is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length for the purpose of establishing initial eligibility under §841.38. The Commission selected the minimum number of hours based on recent feedback from the public, particularly from community colleges, requesting clarification on the definition of "certificate" to allow for consideration of shorter duration courses or programs of training services that are non-credit, credit or continuing education offerings. After consultation with the training provider community, the Commission has proposed that a certificate program of training include a minimum of 9 credit hours, which is the equivalent of 144 clock/contact hours. This criterion is proposed in order to establish an appropriate amount of time to allow for a substantial body of knowledge to be conveyed. Within WIA, the term certificate is used in association with a program of training services. The Commission determined that a program of training services should constitute more than incidental or short-term training. Since the term is used in conjunction with post-secondary institutions, providing criterion that relates to credit or the equivalent clock/contact hours is appropriate.

The purpose of adding the terms "certified provider," "completion," and "performance standards" is to provide consistency.

Comments were received from the Dallas County Community College District, Office of Resource Development; the Continuing Education and Workforce Development Department, Tarrant County College, Community Campus; and the president of the Texas Administrators of Continuing Education. Some commenters approved of the rule, and others did not state whether they approved or disapproved of the rule but did suggest changes.

Comment: One commenter requested clarification of the definition of certificate to distinguish between programs measured in clock/contact hours and those measured in credit hours.

Response: The Commission agrees and will amend §841.2 (2) to read: "Certificate - For the purpose of establishing initial eligibility under §841.38, a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses, or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length."

Comment: One commenter recommended that non-credit certificate programs be at least 20 contact hours and that shorter courses be provided with the approval of the Local Workforce Development Board. Another commenter suggested that courses of less than 20 contact hours should be included.

Response: The Commission does not agree with the recommended change because the Commission selected a minimum number of hours based on feedback from community colleges requesting consideration of shorter duration courses that are non-credit, credit or continuing education offerings. Twenty contact hours would constitute incidental or short-term training. After consultation with the training provider community, the Commission proposed a minimum number of credit or clock/contact hours to establish an appropriate amount of time to allow for a substantial body of knowledge to be conveyed. The Commission determined that a program of training services should constitute more than incidental or short-term training. Further, training programs of shorter duration may still be considered for WIA certification as a non-exempt program application.

Comment: One commenter suggested that the maximum TWC-approved contact hours for non-credit courses be extended to 359. The commenter suggested this will accommodate the hours approved through the Guidelines for Instructional Programs in Workforce Education.

Response: The Commission sees no reason to set a limit of the maximum number of hours because the Commission wants to allow for programs which are over 360 hours as an option for participants.

Comment: One commenter proposed statewide certification of all credit and non-credit vocational courses listed in the Workforce Education Course Manual that is compiled by the Texas Higher Education Coordinating Board. The commenter suggested that this method of certifying courses would eliminate the need to handle "hundreds or thousands" of forms submitted by colleges.

Response: The Commission does not believe that the comment applies to the proposed amendment to §841.2, which only added definitions for four terms related to the Training Provider Certification process: certificate, certified provider, completion, and performance standards. The Commission recognizes the need to streamline the process and will take this recommendation under consideration.

Comment: One commenter suggested that there is confusion about the tracking of WIA students following training and job placement, and recommended that only WIA students be

tracked due to the cost and personnel requirements of such an effort. The commenter suggested this recommendation only if the tracking must be provided by Boards.

Response: The WIA requires tracking of information on WIA funded and non-WIA funded students as referenced in WIA §122 at (d)(1), (b)(2)(D)(ii), and (c)(5). The Commission does not have the discretion to change a statutory requirement. For this reason, no changes to the rule will be made at this time.

Background Regarding Early Implementation. The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. H.B. 1863 provided local elected officials the opportunity to form local workforce development boards (LWDBs) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

The federal Workforce Investment Act of 1998 recognizes the strides made in the development of Texas' workforce investment system and specifically provides for the state to maintain many features of H.B. 1863. Without these provisions, early implementation of WIA in Texas would be substantially more complicated. Key features of the system that Texas is preserving include the following.

The State Human Resource Investment Council, called the Texas Council on Workforce and Economic Competitiveness (TCWEC) and constituted under prior consistent state law, will function as the State Board.

The twenty-eight existing local workforce development areas (LWDAs), established under prior consistent state law, will function as the local workforce investment areas for purposes of WIA.

The State will continue to use the Allocation Rule established under prior consistent state law for the disbursement of WIA funds.

LWDBs established in conformity with prior consistent state law will function as the local workforce investment boards, including those functions required of a Youth Council.

In lieu of designating or certifying one-stop partners and operators as described in WIA, Texas requires LWDBs to partner with those entities outlined under prior consistent state law, and to competitively procure the Center Operator(s).

The LWDBs will also continue to make arrangements for financial services by selecting fiscal agents in accordance with the process established in prior consistent state law set out in the Texas Government Code.

Texas bases its strategies for implementing WIA requirements for the Texas workforce development system on four key principles determined by the Governor: (1) limited and efficient state government, (2) local control, (3) personal responsibility, and (4) support for strong families. The training provider certification system is guided by these four key principles which serve as a framework to guide the development of this system in order to allow maximum flexibility, emphasize customer choice, and demand strict accountability.

Within each LWDA, the LWDB and the Commission must find all providers of training services to be eligible and qualified to provide a training program before WIA funds may be used to pay for services provided by that training program. All providers must submit written applications in order for eligibility to be determined.

As described in §841.38, the LWDBs will develop an application to be used in two situations. The first situation is that of institutions which are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 and which provide a program that leads to an associate degree, baccalaureate degree, or certificate, when those institutions are seeking to be certified as an eligible provider for a program leading to an associate degree, baccalaureate degree, or certification. The second situation occurs when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider for a program under the National Apprenticeship Act.

A second application process, described in §841.39, is used in three situations. The first is when a post-secondary school is seeking certification as an eligible provider for a program which does not lead to an associate degree, baccalaureate degree, or certification. The second is when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider of a program which is not regulated under the National Apprenticeship Act. The third is when any other public or private provider of training services, including community-based and faith-based organizations, seeks to be certified as an eligible provider of training services.

The Commission solicited and received comments and input into the development of the provider certification procedures through meetings with representatives of community colleges, proprietary schools, literacy training providers, apprenticeship programs and LWDBs; the creation and maintenance of a website on the Internet; and a public hearing held on March 11, 1999. The Commission adopted rules for early implementation of WIA, which became effective June 22, 1999.

The amendments 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.

§841.2. Definitions.

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

(1) Administrative costs – The necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of employment and training services, as further defined by the federal regulations and subject to the cost limitations set forth in WIA §134(a)(3)(B) and the cost principles set forth in WIA §184(a)(2)(B).

(2) Certificate – For the purpose of establishing initial eligibility under §841.38, a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length.

(3) Certified provider – A training provider certified as eligible to receive training funds as authorized under WIA and state rules.

(4) Commission – The Texas Workforce Commission as established in the Texas Labor Code, §301.001 and designated by the Governor as the state administrative agency for WIA in Texas.

(5) Complainant – Any participant or other personally interested or personally affected party alleging a non-criminal violation of the requirements of WIA.

(6) Completion – Finishing a program or course of study and receiving a formal credential as currently recognized by the Commission, a designated partner agency or State regulatory board.

(7) Customized Training – As defined in WIA §101(8), training that is designed to meet the requirements of an employer, conducted with a commitment by the employer to employ an individual on successful completion of the training and for which the employer pays not less than 50 percent of the cost of the training.

(8) Hearing Officer – An impartial party who shall preside at a hearing on a grievance.

(9) ITAs – Individual Training Accounts.

(10) LWDA – Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(11) LWDB – Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261.

(12) On-the-Job Training – As defined in WIA §101(31), training by an employer that is provided to a paid participant while engaged in productive work in a job.

(13) One-Stop Partner – An entity which makes services available to participants through a one-stop delivery system under the terms of a memorandum of agreement with a LWDB.

(14) Participant – As defined in WIA §101(34), an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by WIA.

(15) Performance Standards – The minimum acceptable levels of performance based on established measures of performance as described in WIA §122.

(16) Respondent – The person, organization or agency against which a complaint has been filed for the alleged violation of the requirements of WIA.

(17) WIA – Workforce Investment Act, P.L. 105-220, 29 U.S.C.A. §2801, *et seq.*

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 October 7, 1999.

TRD-9906722
J. Randel Hill
General Counsel
Texas Workforce Commission
Effective date: October 27, 1999
Proposal publication date: July 23, 1999
For further information, please call: (512) 936-3501

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action

The Commissioner of Insurance, at a public hearing under Docket No. 2426 scheduled for November 23, 1999, at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rule 74, including Section E.3., drug and alcohol driving awareness training credits, and also Rules 77 and 79. The amendment's purpose is to implement the provisions of the Insurance Code, Article 5.03-4 adopted by the 76th Legislature in House Bill 3757. Staff's petition (Ref. No. A-1099-17-I), was filed on October 13, 1999.

Staff proposes to amend three portions of Manual Rule 74, Private Passenger Auto Classifications, as set forth in the following narrative. Directly following the rule's caption, the following words should be deleted: "Applicable to Liability and Collision Insurance." This deletion is needed because some portions of the rule (both current and proposed) also apply to Medical Payments and Personal Injury Protection coverage. The parenthetical phrase directly following the above recommended deletion should be amended to read as follows, "(Unless otherwise specified, this rule does not apply to risks rated in accordance with the miscellaneous types rule.)" (Emphasis is used only to show proposed additional language.) This additional wording is needed because proposed Section E.3. will apply to miscellaneous type vehicles.

The paragraph following the caption of Rule 74.E., driver credits, currently reads, "This rule does not apply to an auto that is subject to experience rating or is a miscellaneous type vehicle." The following sentence will need to be added to that paragraph: "However, Subsection 3, drug and alcohol driving awareness training credits, applies to a miscellaneous type vehicle."

Staff proposes that Rule 74.E.3. be amended in several ways, as mandated by statute, but some of the current wording of Section E.3. is to be retained, such as the amount of the credit (5%). One of the required changes is to delete references to Texas A&M University, Safety Education Program and to restrict the credit to persons who complete programs that are regulated and approved by the Texas Education Agency (TEA) under the Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29c). The current duration of three years for the 5% credit is to be removed, as the new statutory discount is unlimited in duration. If a covered person is convicted of DWI or a similar offense, then nobody under the policy (unless the convicted person is excluded from the policy) will be eligible for the credit for seven years from the conviction date, but will then become eligible, regardless of when the program was completed. All those who had completed the program would then resume receiving the discount.

Staff proposes that Rule 77, Miscellaneous Type Vehicles, and Rule 79, Motorcycle Operator Credits, be amended so as to make it more obvious that revised Rule 74.E.3. will apply to miscellaneous type vehicles (which include motorcycles, motor scooters, etc.). The amendment to Rule 77 would consist of adding a second paragraph under the rule's caption, which new paragraph would read as follows: "Rule 74.E.3., drug and alcohol driving awareness training credits, applies to a miscellaneous type vehicle." The amendment to Rule 79 would consist of adding a first paragraph following the explanatory note that follows the rule's caption, which new paragraph would read as follows: "Rule 74.E.3., drug and alcohol driving awareness training credits, applies to motorcycles or similar vehicles described in this rule."

The State Board of Insurance in Order No. 60509, issued October 12, 1993, effective December 1, 1993, established a mandatory 5% credit for personal automobile coverage for each qualified person completing a drug and alcohol driving awareness course meeting certain criteria set forth in Manual Rule 74.E.3. One requirement was

that the Texas Commission on Alcohol and Drug Abuse (TCADA) approve the course. The Commissioner of Insurance in Order No. 96-1369, issued November 22, 1996, effective March 1, 1997, amended that rule to require that such a course be approved by Texas A&M University, Safety Education Program, rather than TCADA. That order resulted from TCADA's advice that such a change was needed, primarily because of a lack of funding for TCADA's continued operations of this program.

The 76th Texas Legislature, through the enactment of House Bill 3757, added Article 5.03-4 to the Insurance Code. Article 5.03-4, effective September 1, 1999 requires the Commissioner to adopt a rule requiring a 5% premium discount applicable to an auto afforded personal auto coverage for the driver's completion of a drug and alcohol driving awareness program that has been approved by TEA under the Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29c), provided all requirements of both statutes are met. This statutory requirement applies to a policy "delivered, issued for delivery, or renewed on or after January 1, 2000."

The same statute (Insurance Code, Article 5.03-4) also provides that a policy "delivered, issued for delivery, or renewed before January 1, 2000, is governed by the law as it existed immediately before the effective date of this Act." A conflict exists between this provision and the one concerning a policy "delivered, issued for delivery, or renewed on or after January 1, 2000." For example, an insurance company often issues and delivers a renewal policy in December even though the actual renewal occurs in the following January, when the existing policy expires. Another example of the conflict occurs with the issuance of a policy in December 1999, with delivery occurring in January 2000. The wording in these statutory provisions regarding dates makes it impossible to comply with both provisions under various circumstances. To minimize problems associated with the implementation of this mandatory 5% credit, Staff recommends the interpretation set forth below.

Under Staff's proposal, for a policy that becomes effective prior to January 1, 2000, the current provisions of Rule 74.E.3. will apply. However, when such a policy terminates on or after January 1, 2000, the credit will no longer apply for the completion of a program that does not meet the requirements of Article 5.03-4, regardless of when the training occurred. The Insurance Code, Article 5.03-4(d) provides in part:

A person is not eligible for, and an insurer may not offer, a premium discount applicable to a personal motor vehicle insurance policy for completion of a drug and alcohol driving awareness program that does not use the applicable uniform curriculum developed under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes).

Staff has requested that its proposed amendments be adopted to become effective January 1, 2000, and applicable to policies that become effective on or after such date.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-1099-17-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Associate Commissioner, Property & Casualty Program, Automobile and Homeowners Division, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9906824
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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The Commissioner of Insurance, at a public hearing under Docket No. 2427 scheduled for November 23, 1999 at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rules 134 and 141, and the Texas Standard Provisions for Automobile Insurance Policies (the Standard Provisions), auto rental liability policies, by adding a new Amendatory Endorsement RC 001. The amendment's purpose is to implement the provisions of the Insurance Code, Article 21.09, Section 2, adopted by the 76th Legislature in Senate Bill 957. Staff's petition (Ref. No. A-1099-18-I), was filed on October 13, 1999.

Staff proposes to amend Manual Rule 134 by condensing and clarifying it in a manner that will conform to new statutory wording. Section A would be preceded by an introductory sentence on applicability, including a reference to Rule 141 for provisions governing the sale of automobile rental liability coverage to renters or prospective renters. Section A would be shortened to one sentence, reading, "For automobiles leased or rented with drivers refer to the truckers rule or the public automobile classification rule."

Rule 141.A.1. currently sets forth the types of vehicles that are eligible for coverage under auto rental liability policies, and Staff proposes revision of the list of such vehicle types and adding certain vehicle equipment, as required by new statutory wording. The revised listing is considerably more inclusive than the current one, as the new listing includes motorcycles, motor homes, trailers weighing 10,000 pounds or less, and trucks weighing 26,000 pounds or less, as well as cartop carriers, tow bars, and tow dollies designed for use with a vehicle.

Staff proposes to amend the Manual and the Standard Provisions by adding a new Amendatory Endorsement RC 001, which would amend the Texas Automobile Rental Liability Policy and the Texas Automobile Rental Liability Excess Policy. This new endorsement would amend the definition of "Auto" to include the types of vehicles and vehicle equipment required by new statutory wording.

Effective May 30, 1998, the Commissioner of Insurance through Order No. 98-0513 adopted policy forms, rules, and rule amendments concerning automobile rental liability insurance pursuant to the Insurance Code, Article 21.07, Section 21. That section of Article 21.07 is repealed and replaced with Article 21.09, Section 2 by the 76th Legislature in Senate Bill 957, which requires the Texas Department of Insurance to issue an appropriate license under new Article 21.09, Section 2, not later than January 1, 2000, to a person currently holding an agent license under current Article 21.07, Section 21. Upon the issuance of that new license, the license holder becomes subject to Article 21.09. Staff requests that its proposals for Manual rules be adopted to become effective January 1, 2000.

Staff is not proposing any amendments to the rates for coverage at this time.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual and the Standard Provisions is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-1099-18-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Associate Commissioner, Property & Casualty Program, Automobile and Homeowners Division, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9906825
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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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

Employees Retirement System of Texas

Title 34, Part 4

Chapter 73. Benefits

The Employees Retirement System of Texas (ERS) has reviewed Chapter 73, concerning Benefits, in accordance with the Appropriations Act, Article IX, §167, passed by the 75th Texas Legislature (1999), and now found in Article IX, §9-10.13, passed by the 76th Texas Legislature. The ERS proposes that the following rules be readopted, as the agency's reason for adopting these rules continues to exist.

§73.3. Time Retirement Becomes Effective.

§73.5. Service Retirement of Incompetent Member.

§73.7. Service in the Month Following Retirement.

§73.9. Additional Retirement Option.

§73.13. Proportionate Retirement under Programs Administered by the Board.

§73.15. Proportionate Retirement Program - Benefits.

§73.17. Disability Retirement - Eligibility.

§73.25. Payment to an Estate.

§73.31. Adjustment to Annuities.

§73.33. Retirement Incentive for Employee Class.

§73.35. Supplemental Payment.

§73.37. Plan Limitations.

§73.39. One-Time Increase to Certain Annuitants.

The ERS recently proposed amendments to the following sections during the regular course of business. These amendments can be found in the Proposed Rules Section of the October 15, 1999, issue of the *Texas Register.*

§73.11. Supplemental Retirement Program.

§73.21. Reduction Factor for Age and Retirement Option.

As a result of the rule review and the requirements of Senate Bill 1130, 76th Texas Legislature, the ERS proposes amendments to the following sections. In addition, a new §73.42, concerning Partial Lump Sum Option for Death Benefit Plan Beneficiaries is proposed. The amendments and the new rule will appear in a latter issue of the *Texas Register*.

§73.1. Deadline for Selecting Retirement Option.

§73.29. Spousal Consent or Acknowledgment Requirements .

§73.41. Privatization or Other Reduction in Workforce Temporary Service Retirement Option.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207 or you may e-mail Ms. Jones at pjones@ers.state.tx.us.

TRD-9906835
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: October 13, 1999

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Texas Military Facilities Commission

Title 37, Part 12

In accordance with the Appropriations Act, §167, the Texas Military Facilities Commission submits the following proposed review.

For review in November - December 1999, this office will review Chapter 375, §375.1-375.11 and Chapter 377.

All comments and/or questions should be directed to Tina Burford at P.O. Box 5426, Austin, Texas 78763.

Chapter 375. BUILDING CONSTRUCTION ADMINISTRATION

37 TAC §375.1. General Project Responsibility

37 TAC §375.2. Project Analysis Responsibilities

37 TAC §375.3. Construction Project Responsibilities

37 TAC §375.4. Qualification of Architect/Engineer (A/E) for Professional Services

37 TAC §375.5. Selection of Architect/Engineer for Professional Services

37 TAC §375.6. Contracts with Architects/Engineers

37 TAC §375.7. Qualifications of Contractor To Bid Construction Projects

37 TAC §375.8. Bidding Procedures

37 TAC §375.9. Contract Award

37 TAC §375.10. Construction Contract Administration

37 TAC §375.11. State of Texas Uniform General Conditions (UGC)

Chapter 377. PREVAILING WAGE RATE DETERMINATION

37 TAC §377.1. Prevailing Wage Rates

37 TAC §377.2. Data Gathering Procedures

37 TAC §377.3. Ascertaining Prevailing Wage Rates

37 TAC §377.4. Use of Determination

TRD-9906805
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Filed: October 12,1999

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) proposes the review of Chapter 37, concerning Financial Assurance. This review is in accordance with Texas Government Code, §2001.039, implementing Senate Bill (SB) 178, 76th Legislature, 1999.

Chapter 37 concerns Financial Assurance. The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities. Chapter 37 does not currently contain a Subchapter H or Subchapter I, nor does the commission propose to add these subchapters as part of this rulemaking.

SB 178, 76th Legislature, 1999, requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 37 and determined that the reasons for adopting those rules continue to exist. The rules in Chapter 37 are still necessary in that they implement critical provisions of Texas Water Code, §26.352 and §27.073 and Texas Health and Safety Code, §§341.035, 341.0355, 361.085, and 371.026, which provide authority for the commission to require demonstrations of financial assurance. The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Chapter 37 provides rules necessary to carry out the statutory mandates to regulate financial assurance.

Comments on the commission's review of the rules may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or comments may be faxed to (512) 239-4808. All comments should reference Rule Log Number 98051-037-AD. Comments must be received by 5:00 p.m., November 22, 1999. For further information, please contact Michelle Lingo, Attorney, Environmental Policy, Analysis, and Assessment, (512) 239-6757.

TRD-9906670
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: October 7, 1999

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas ("Commission") proposes, pursuant to Tex. Gov't Code, §2001.039, the review of §3.26, regarding separating devices, tanks, and surface commingling of oil; §3.28, regarding requirements to ascertain and report potential and deliverability of gas wells; §3.52, regarding oil well allowable production; and §3.53, regarding annual well tests and well status reports. As part of this review process but in a separate rulemaking, the Commission proposes amendments to §§3.26, 3.28, 3.52, and 3.53. The proposal regarding the amendments was filed with the *Texas Register* concurrently with this notice of review. The Commission proposes the review and readoption of those sections, as amended.

The Commission has determined that the reasons for adopting these rules, with the proposed changes, continue to exist.

Comments may be submitted to Mark H. Tittel, Hearings Examiner, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711, or via electronic mail to Mark.Tittel@rrc.state.tx.us. Comments will be accepted until 5:00 p.m. on the thirtieth day following publication of this notice in the *Texas Register*. For more information, call Mark Tittel at (512) 463-6923.

Issued in Austin, Texas on October 5, 1999.

Filed with the Office of the Secretary of State on October 5, 1999.

TRD-9906619
Mary Ross McDonald
General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: October 5, 1999

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Adopted Rule Review

Texas Commission on Law Enforcement Officer Standards and Education

Title 37, Part 7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) re-adopts §§211.16, 211.18, 211.20, 211.25, 211.30 and 211.31 of Title 37, Texas Administrative Code, Part VII, Chapter 211. The review and considerations are being conducted in

accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature. The sections are being re-adopted without changes to the proposed text published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6529). Each rule; §§ 211.16, 211.18, 211.20, 211.25, 211.30 and 211.31 was reviewed and the Commission has no immediate plans to change.

No comments were received regarding the re-adoption of these sections.

The re-adoption was made under Texas Government Code Annotated, Chapter 415,§415.010, which authorizes the Commission to promulgate rules for the administration of Chapter 415.

TRD-9906785

Edward T. Laine

Chief, Professional Standards and Administration Operations

Texas Commission on Law Enforcement Officer Standards and Education

Filed: October 11, 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.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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.

Advisory Commission on State Emergency Communications

Proposed Distribution Percentages for Wireless Service Fee Revenue

Pursuant to 1 TAC §252.6 (concerning Wireless Service Fee Proportional Distribution) and based upon feedback from wireless revenue recipients, the following changes have been incorporated into the proposed distribution schedule. This distribution table will be presented to the commission for adoption at its October 26, 1999, public meeting.

Comments may be directed to Brian P. Millington at 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, phone (512) 305-6911, fax (512) 305-6937, email: brian.millington@acsec.state.tx.us.

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TRD-9906792
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Filed: October 11, 1999

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Office of the Attorney General

Texas Clean Air Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Health and Safety Code or the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas vs. Kenneth Victor Hopkins, Individually, and Vic Hopkins Body Shop, Incorporated d/b/a Vic Hopkins Paint and Body, Incorporated, Cause No. 99-05163, in the 126th District Court of Travis County, Texas

Nature of Defendant's Operations: Defendant is an automotive paint and body shop that is owned and operated by Vic Hopkins Body Shop, Incorporated, d/b/a Vic Hopkins Paint and Body, Inc. ("Defendant") in Seagoville, Dallas County, Texas. The Defendant has been operating the subject automotive paint and body shop in violation of the States' clean air provisions. The State seeks administrative and civil penalties, injunctive relief, attorney's fees and costs of suit.

Proposed Agreed Judgment: The judgment permanently enjoins Defendant from performing spray operations at the body shop unless all operations are in compliance with all applicable statutes, rules, and regulations. Defendant shall pay $1,050.00 in administrative and civil penalties, $1,800.00 in attorney fees, and $150.00 in court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9906804
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: October 12, 1999

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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 October 1, 1999, through October 8, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Henry R. Stevenson, Jr.; Location: The project is located at the Bonner turnaround approximately 6,200 feet southwest of the intersection of State Highway 105 and Interstate Highway 10 on the north side of Interstate Highway 10 at 1200 West Freeway, near Vidor, Orange County, Texas; CCC Project No.: 99-0364-F1; Description of Proposed Action: The applicant is seeking after-the-fact authorization to retain fill placed in 1.58 acres of wetlands without a permit and authorization to place new fill in an additional 2.21 acres of wetlands, for a total 3.79 acres of filled wetlands, to construct a mobile home retail sales facility. The proposed mitigation area is located approximately 4,000 feet due north of the proposed project area; Type of Application: U.S.A.C.E. permit application #21790 under §404 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). 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-9906813
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: October 13, 1999

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Texas Education Agency

Request for Proposals Concerning Application Development and Integration Services for the Public Access Initiative

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-00-004 from non profit organizations, institutions of higher education, private companies, and individuals. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The Public Access Initiative (PAI) is a set of programs and projects designed to meet TEA's Long- Range Plan for Technology. When implemented, the PAI Data Central Project will provide school districts and campuses, Education Service Centers, state officials, and other public education stakeholders across the state with access to timely information for educational planning and decision making. This information, currently collected through several separate TEA business applications, will be merged and integrated in order to support comparative and longitudinal analysis. The PAI Data Central Project being outsourced through this RFP consists of creating a data warehouse, three data marts, an education related Internet portal, and a Longitudinal Student Performance Record extract.

The contractor will perform application development, system integration, project management, and all other services necessary to meet the requirements contained in the RFP.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than February 16, 2000, and an ending date of no later than August 31, 2001.

Project Amount. This project is funded 34% from federal funds ($510,000) which are dedicated to the Financial Data Mart subproject only.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The criteria that will be used to evaluate proposals, in the order of importance, are: understanding of TEA PAI requirements and technical approach; proposed project implementation plan and procedures; staffing and personnel qualifications; and company experience/past project performance (including references.)

A proposer and/or its subcontractors must meet the following minimum qualifications to be considered:

(1) must have successfully completed either one data warehousing project in the past year with a contract value of no less than $4,000,000, or multiple data warehousing projects in the past five years with an aggregated contract value of not less than $10,000,000 where successful completion means that work performed under the contract resulted in a data warehouse system used by the contracting entity in a production system environment;

(2) must have successfully completed one data warehousing project in the last three years in which the resulting system supports at least 100 concurrent queries against a database that is a minimum of one terabyte in size (including indexes and all detail, aggregate and summary data) where successful completion means that work performed under the contract resulted in a data warehouse system used by the contracting entity in a production system environment;

(3) must have successfully completed one complex software development and/or systems integration project in the past three years under a fixed-scope/fixed price contract (i.e. "time and materials" contracts do not qualify), with a contract value of not less than $2,000,000 where successful completion means that work performed under the contract resulted in an application system used by the contracting agency in a production system environment; and

(4) must be willing and able to post a contractor's performance bond written by a firm acceptable to TEA of 100% of the award price upon award of the contract, which will be returned only upon successful completion of the contract.

The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP # 701-00-004 may be obtained from the following web site: http://pai.tea.state.tx.us/PAI/PAI/HTM/vendor.htm or by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Belinda Dyer, Public Access Initiative Division, Texas Education Agency, (512) 475-3451 or e-mail bdyer@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Monday, November 29, 1999, to be considered.

TRD-9906810
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: October 13, 1999

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

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In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9906797
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 12, 1999

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Notice of Amendment Adding the Substance Ketamine to Schedule III of the Texas Controlled Substances Act

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TRD-9906799
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: October 12, 1999

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Notice of Emergency Cease and Desist and Impoundment Order on Freese and Nichols Incorporated

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Freese and Nichols Incorporated (licensee-L04301) of Fort Worth to immediately cease and desist use of any licensable amount of radioactive material. The order also requires the licensee to immediately transfer, for storage or disposal, the radioactive material it owns or possesses to a company authorized to possess the radioactive material. The bureau determined that continued unauthorized possession and/or use of the radioactive material without a valid license constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the licensee has either properly transferred or disposed of the radioactive material, and has provided the bureau with documentation on the actions taken, or has obtained a radioactive material license authorizing possession, storage and/or use of the radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9906821
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 13, 1999

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Notice of Emergency Cease and Desist and Impoundment Order on Mosby Clinic

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Mosby Clinic (licensee-L03486) of Houston to immediately cease and desist use of any licensable amount of radioactive material. The order also requires the licensee to immediately transfer, for storage or disposal, the radioactive material it owns or possesses to a company authorized to possess the radioactive material. The bureau determined that continued unauthorized possession and/or use of the radioactive material without a valid license constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the licensee has either properly transferred or disposed of the radioactive material, and has provided the bureau with documentation on the actions taken, or has obtained a radioactive material license authorizing possession, storage and/or use of the radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9906819
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 13, 1999

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Notice of Emergency Cease and Desist Order on Culberson Hospital District

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Culberson Hospital District (registrant-R00339) of Van Horn to cease and desist performing abdomen (KUB) x-ray procedures with the Continental x-ray unit (Model Number 6626204; Serial Number 943218) until the exposure at skin entrance meets the Texas radiation requirements. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9906818
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 13, 1999

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Harris Methodist Hospital

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Harris Methodist Hospital-HEB (licensee-L02303) of Bedford. A total penalty of $8,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code §289.252.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9906820
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 13, 1999

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Notice of Request for Proposals for the Community Hospital Capital Improvement Program

Purpose

The Texas Department of Health (department), Bureau of State Health Data and Policy Analysis, is requesting proposals from small urban hospitals for grants for capital improvements. The grants are designed to increase the capacity of these hospitals as vital links in the health care safety net by providing them with funds to make innovative capital improvements directed toward increasing availability of services in their communities.

Eligible Applicants

Eligible applicants include a public or private nonprofit community hospital licensed for 125 beds or fewer located in an urban area. An urban area is defined as a county that has a population in the most recent decennial United States census over 150,000. A hospital applying for a grant must be licensed as a general hospital under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.

Limitations

Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and

all offers received in response to the request for proposal (RFP) and to cancel the RFP if it is deemed in the best interest of the department.

To Obtain RFP

The RFP document may be obtained from Peggy Belcher, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, Telephone (512) 458-7261. No copies of the RFP will be released prior to November 15, 1999.

Deadlines

Applicants will be given a minimum of 60 calendar days to file proposals after the RFP is published. Proposals must be received by the department on or before the closing date specified in the RFP.

TRD-9906822
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 13, 1999

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Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following certificates of registration: Luke Underhill, D.D.S., Corpus Christi, R17837, September 29, 1999; Sportsmed Rehabilitation Clinic, Bedford, R18005, September 29, 1999; Mobile Diagnostic Services, Brownsville, R21540, September 29, 1999; Houston Pain Management and Rehabilitation, Houston, R23035, September 29, 1999; Southwest Chiropractic and Rehabilitation Center, Houston, R23072, September 29, 1999; Grapevine Chiropractic, Grapevine, R23717, September 29, 1999; Michael B. Hayes, D.C., Irving, R23734, September 29, 1999; Dependable X-ray, Inc., Antioch, Illinois, R16392, September 29, 1999.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9906817
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 13, 1999

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Texas Department of Housing and Community Affairs

Announcement of Public Hearings Schedule for the Texas Bootstrap Loan Program - Draft for Public Comment

The Texas Department of Housing and Community Affairs (TDHCA) announces the public hearing schedule for the *Texas Bootstrap Loan Program - Draft for Public Comment*. The 30-day comment period begins on October 22, 1999 and ends at 12:00 p.m. November 21, 1999. The Texas Bootstrap Loan Program was developed as a result of Senate Bill 1287, passed by the 76th Texas Legislature.

Public comment hearings concerning the *Texas Bootstrap Loan Program - Draft for Public Comment* will take place the following times and locations:

AUSTIN October 25, 1999 at 3:00 p.m., Texas Department of Housing and Community Affairs, 507 Sabine, Suite #400

LAREDO October 26, 1999 at 2:00 p.m., Webb County Courthouse, 1000 Houston - Commissioners Courtroom

HARLINGEN October 27, 1999 at 10:00 a.m., City of Harlingen, 118 East Tyler - Town Hall Room

EL PASO November 8, 1999 at 1:00 p.m., El Paso County Courthouse, 500 East San Antonio - Commissioners Courtroom

LUBBOCK November 9, 1999 at 12:00 noon, Mahon Public Library, 1306 9th Street - Community Room

LUFKIN November 12, 1999 at 2:00 p.m., City of Lufkin, 300 East Shepherd - City Council Chambers

Copies of the *Texas Bootstrap Loan Program - Draft for Public Comments* will be available on October 22, 1999. To order, please contact the Texas Department of Housing & Community Affairs, Office of Colonia Initiatives, P.O. Box 13941, Austin, Texas 78711-3941, Phone: 1-800-462-4251, Fax: (512) 475-2365, or email at jpalacio@tdhca.state.tx.us.

Both the public hearing schedule and the *Texas Bootstrap Loan Program - Draft for Public Comment* will be available on TDHCA's website at www.tdhca.state.tx.us.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, office of Colonia Initiatives, P.O. Box 13941, Austin, Texas 78711-3941. For more information, please contact the Office of Colonia Initiatives at 1-800-462-4251.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, at least two days before the public hearing so that appropriate arrangements can be made.

TRD-9906808
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 13, 1999

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Public Comment Period and Public Hearing Schedule for the 2000 State of Texas Consolidated Plan One- Year Action Plan Draft for Public Comment

The Texas Department of Housing and Community Affairs (TDHCA) announces the scheduling of public comment hearings concerning the *2000 State of Texas Consolidated Plan One - Year Action Plan Draft for Public Comment* (The Plan). The Plan is submitted in compliance with 24 CFR 91.320 "Action Plans."

The Plan describes the federal resources expected to be available for the following programs: the Community Development Block Grant Program (CDBG), the HOME Investment Partnerships Program (HOME), the Emergency Shelter Grants Program (ESG), and the Housing Opportunities for Persons with AIDS Program (HOPWA). The Plan describes the State's method for distributing these funds to local governments and nonprofits.

Public comment hearings concerning the *2000 State of Texas Consolidated Plan One - Year Action Plan Draft for Public Comment* will take place at the following times and locations:

FORT WORTH November 15, 1999, 2:00p.m., Ft. Worth City Council Chambers, 1000 Throckmorton, 2nd Fl., (817) 871-6123;

CORPUS CHRISTI November 16, 1999, 10:30a.m., Corpus Christi Library, 805 Comanche, (361) 880-7070;

AUSTIN November 18, 1999, 3:00p.m., Texas Department of Housing and Community Affairs Board Room, 507 Sabine, Suite 400, (512) 475-4595.

The public comment period for the *2000 State of Texas Consolidated Plan One - Year Action Plan Draft for Public Comment* begins on November 1, 1999 and will continue through December 3, 1999. The Plan is free to nonprofit corporations, but there will be a ten dollar ($10.00) charge for for-profit corporations. To order, please contact the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin TX, 78711-3941, Phone: (512) 475-4595, Fax: (512) 475-3746, or email at clandry@.tdhca.state.tx.us.

Both the public hearing schedule and the *2000 State of Texas Consolidated Plan One - Year Action Plan Draft for Public Comment* will be available on TDHCA's website at www.tdhca.state.tx.us.

Copies of the *2000 State of Texas Consolidated Plan One - Year Action Plan Draft for Public Comment* will be available for review October 25, 1999, at the following locations: **ABILENE** Abilene Public Library, 915/677-2474; **ALPINE** Sul Ross State University, 915/837-8124; **AMARILLO** Amarillo Public Library, 806/378-3054; **ARLINGTON** University of Texas at Arlington, 817/273-3000; **AUSTIN** Legislative Reference Library, 512/463-1252, Texas State Library, 512/463-5455, University of Texas at Austin, 512/495-4515, University of Texas at Austin Tarlton Law Library, 512/471-7726; **BEAUMONT** Beaumont Public Library, 409/838-6606, Lamar University, 409/880-8118; **BROWNSVILLE** University of Texas at Brownsville, 210/544-8220; **CANYON** West Texas A&M University, 806/651-2205; **COLLEGE STATION** Texas A&M University, 409/845-8111; **COMMERCE** Texas A&M University - Commerce, 903/886-5716; **CORPUS CHRISTI** Corpus Christi Public Library, 361/880-7000; Texas A&M University - Corpus Christi, 361/994-2623; **DALLAS** Dallas Public Library, 214/670-1400, Southern Methodist University, 214-768-2331; **DENTON** Texas Woman's University, 940/898-2665, University of North Texas, 940/565-2870; **EDINBURG** University of Texas - Pan American, 956/381-3306; **EL PASO** El Paso Public Library, 915/543-5413, University of Texas at El Paso, 915/747-5683; **FORT WORTH** Fort Worth Public Library, 817/871-7706, Texas Christian University, 817/921-7669; **HOUSTON** Houston Public Library, 713/247-2700, Rice University, 713/527-4022, Texas Southern University, 713/527-7147, University of Houston, 713/743-9800, University of Houston - Clear Lake, 281/283-3930; **HUNTSVILLE** Sam Houston State University, 409/294-1613; **KINGSVILLE** Texas A&M University - Kingsville, 361/595-3416; **LAREDO** Texas A&M International University, 956/326-2400; **LUBBOCK** Texas Tech University, 806-742-2261; **NACOGDOCHES** Stephen F. Austin State University, 409/468-4101; **ODESSA** Ector County Library , 915/332-6502, University of Texas of the Permian Basin, 915/552-2371; **PRAIRIE VIEW** Prairie View A&M University, 409/857-2012; **RICHARDSON** University of Texas at Dallas, 972/883-2950; **SAN ANGELO** Angelo State University, 915/942-2222; **SAN ANTONIO** Saint Mary's University, 210/436-3441, San Antonio Central Library, 210/207-2500, Trinity University, 210/736-8121, University of Texas at San Antonio, 210/691-4570; **SAN MARCOS** Southwest Texas State University, 512/245-2133; **STEPHENVILLE** Tarleton State University, 817/968-9246; **TYLER** University of Texas at Tyler, 903/566-7340; **VICTORIA** University of Houston at Victoria, 361/572-6421: **WACO** Baylor University, 254/710-1268; **WICHITA FALLS** Midwestern State University, 940/689-4165 **OUT-OF-STATE**Library of Congress, 202/707-5243.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, at least two days before the public hearing so that appropriate arrangements can be made.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin TX 78711-3941. For more information, please contact the Housing Resource Center at (512) 475-4595.

TRD-9906833
Daisy A. Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: October 13, 1999

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Request for Proposal For Master Servicer and/or Subservicer

I. SUMMARY.

The Texas Department of Housing and Community Affairs (TDHCA) has issued a third Request for Proposal (RFP) for Master Servicer and/or Subservicer. TDHCA anticipates the need for Master Servicer and/or Subservicer relating to its Single Family Mortgage Revenue Bond Programs. The Master Servicer and/or Subservicer must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

Proposals must be received at the TDHCA no later than, 12:00 p.m., on November 12, 1999. For a copy of the RFP contact Tim Almquist at 512-475-3356.

TRD-9906802
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 12, 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 NATIONAL TITLE INSURANCE OF NEW YORK, INC., a foreign title company. The home office is in New York, New York.

Application for admission to the State of Texas by PENN-STAR INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Hatboro, Pennsylvania.

Application for incorporation to the State of Texas by LIBERTY LLOYDS OF TEXAS INSURANCE COMPANY, a domestic lloyds company. The home office is in Dallas, Texas.

Application for incorporation to the State of Texas by ASI LLOYDS, a domestic lloyds company. The home office is in Dallas, Texas.

Application to change the name of NYLCARE HEALTH PLANS OF THE SOUTHWEST, INC. to HMO BLUE OF NORTH TEXAS,

INC., a domestic health maintenance organization. The home office is in Richardson, Texas.

Application to change the name of NYLCARE HEALTH PLANS OF THE GULF COAST, INC. to HMO BLUE OF CENTRAL AND SOUTH TEXAS, INC., a domestic health maintenance organization. The home office is in Richardson, Texas.

Application to change the name of THE LUMBERMENS MUTUAL CASUALTY COMPANY to KEMPER EMPLOYERS INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Long Grove, Illinois.

Application to change the name of FINANCIAL BENEFIT LIFE INSURANCE COMPANY to AMERICAN SAVERS LIFE INSURANCE COMPANY, a foreign life company. The home office is in Topeka, Kansas.

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-9906826
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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Notices

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Southern Insurance Company proposing to use rates that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(g). They are proposing a rate of +32% above the benchmark for only Property Damage Coverage, in all class 2's, under Territory 37; and various percentages from -20% below the benchmark to +11% above the benchmark by coverage, class, and territory in personal automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Chief Actuary for P&C, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9906727
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 7, 1999

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On July 12, 1999, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan of Association, Plan of Operation.

For copies of Commissioner's order number 99-0977 and the Texas Automobile Insurance Association Plan of Operation amendments, contact Sylvia Gutierrez at (512) 463-6327.

TRD-9906807
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 12, 1999

♦ ♦ ♦

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Hanover Insurance Company proposing to use rates that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(g). They are proposing a rate for all territories of -40% below the benchmark by coverage (BI, PD, CSL, PIP, UIM, Med Pay, Comp, & Coll) for only Ambulance Class; and -40% below the benchmark (only PIP) and -60% below the benchmark by coverage (BI, PD, CSL, UIM, Med Pay, Comp & Coll) for only Fire Departments Class; and +30% above the benchmark by coverage (BI, PD, CSL, PIP, UIM, Med Pay, Comp & Coll) for all other classes for their initial Commercial Auto Emergency Services Insurance Program.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Chief Actuary for P&C, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9906829
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Massachusetts Bay Insurance Company proposing to use rates that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(g). They are proposing a rate for all territories of -30% below the benchmark by coverage (BI, PD, CSL, PIP, UIM, Med Pay, Comp, & Coll) for only Ambulance Class; and -30% below the benchmark (only PIP) and -60% below the benchmark by coverage (BI, PD, CSL, UIM, Med Pay, Comp & Coll) for only Fire Departments Class; and +25% above the benchmark by coverage (BI, PD, CSL, PIP, UIM, Med Pay, Comp & Coll) for all other classes for their initial Commercial Auto Emergency Services Insurance Program.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Chief Actuary for P&C, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9906828
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American International Insurance Company proposing to use rates that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(g). They are proposing various rates by coverage ranging from +37% to +65% above the benchmark for Bodily Injury, +31% to +60% above the benchmark for Property Damage, +26% to +57% above the benchmark for Medical Payments, +30% to +58% above the benchmark for PIP, +60% above the benchmark for UMBI/PD, +2% to +14% above the benchmark for Comprehensive, and +47% to +62% above the benchmark for Collision by class and territory for personal automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Chief Actuary for P&C, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9906827
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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Notices of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2425, on November 16, 1999 at 9:00 a.m. in Room 102 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstrom Insurance Association's (Association) filing of proposed adjustments to the limits of liability for the Association's policies of windstorm and hail insurance.

This notice is made pursuant to the Texas Insurance Code, Art. 21.49 §8D (g) which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the Association's proposed adjustments to the limits of liability for its policies of windstrom and hail insurance. This proceeding is exempt from the contested case procedures in Article 1.33B of the Texas Insurance Code. For additional information interested parties may contact Phil Presley, Chief Actuary for Property and Casualty Insurance Lines, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701 or call at (512) 475-3017.

TRD-9906806
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 12, 1999

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The Commissioner of Insurance, at a public hearing under Docket Number 2426 scheduled for November 23, 1999 at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rule 74, including Section E.3., drug and alcohol driving awareness training credits, and also Rules 77 and 79. The amendment's purpose is to implement the provisions of the Insurance Code, Article 5.03-4 adopted by the 76th Legislature in House Bill 3757. Staff's petition (Reference Number A-1099-17-I), was filed on October 13, 1999.

Staff proposes to amend three portions of Manual Rule 74, Private Passenger Auto Classifications, as set forth in the following narrative. Directly following the rule's caption, the following words should be deleted: "Applicable to Liability and Collision Insurance." This deletion is needed because some portions of the rule (both current and proposed) also apply to Medical Payments and Personal Injury Protection coverage. The parenthetical phrase directly following the above recommended deletion should be amended to read as follows, "(Unless otherwise specified, this rule does not apply to risks rated in accordance with the miscellaneous types rule.)" (Emphasis is used only to show proposed additional language.) This additional wording is needed because proposed Section E.3. will apply to miscellaneous type vehicles.

The paragraph following the caption of Rule 74.E., driver credits, currently reads, "This rule does not apply to an auto that is subject to experience rating or is a miscellaneous type vehicle." The following sentence will need to be added to that paragraph: "However, Subsection 3, drug and alcohol driving awareness training credits, applies to a miscellaneous type vehicle."

Staff proposes that Rule 74.E.3. be amended in several ways, as mandated by statute, but some of the current wording of Section E.3. is to be retained, such as the amount of the credit (5%). One of the required changes is to delete references to Texas A&M University, Safety Education Program and to restrict the credit to persons who complete programs that are regulated and approved by the Texas Education Agency (TEA) under the Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29c). The current duration of three years for the 5% credit is to be removed, as the new statutory discount is unlimited in duration. If a covered person is convicted of DWI or a similar offense, then nobody under the policy (unless the convicted person is excluded from the policy) will be eligible for the credit for seven years from the conviction date, but will then become eligible, regardless of when the program was completed. All those who had completed the program would then resume receiving the discount.

Staff proposes that Rule 77, Miscellaneous Type Vehicles, and Rule 79, Motorcycle Operator Credits, be amended so as to make it more obvious that revised Rule 74.E.3. will apply to miscellaneous type vehicles (which include motorcycles, motor scooters, etc.). The amendment to Rule 77 would consist of adding a second paragraph under the rule's caption, which new paragraph would read as follows: "Rule 74.E.3., drug and alcohol driving awareness training credits, applies to a miscellaneous type vehicle." The amendment to Rule 79 would consist of adding a first paragraph following the explanatory note that follows the rule's caption, which new paragraph would read as follows: "Rule 74.E.3., drug and alcohol driving awareness training credits, applies to motorcycles or similar vehicles described in this rule."

The State Board of Insurance in Order Number 60509, issued October 12, 1993, effective December 1, 1993, established a mandatory 5% credit for personal automobile coverage for each qualified person completing a drug and alcohol driving awareness course meeting certain criteria set forth in Manual Rule 74.E.3. One requirement was that the Texas Commission on Alcohol and Drug Abuse (TCADA) approve the course. The Commissioner of Insurance in Order Number 96-1369, issued November 22, 1996, effective March 1,

1997, amended that rule to require that such a course be approved by Texas A&M University, Safety Education Program, rather than TCADA. That order resulted from TCADA's advice that such a change was needed, primarily because of a lack of funding for TCADA's continued operations of this program.

The 76th Texas Legislature, through the enactment of House Bill 3757, added Article 5.03-4 to the Insurance Code. Article 5.03-4, effective September 1, 1999 requires the Commissioner to adopt a rule requiring a 5% premium discount applicable to an auto afforded personal auto coverage for the driver's completion of a drug and alcohol driving awareness program that has been approved by TEA under the Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29c), provided all requirements of both statutes are met. This statutory requirement applies to a policy "delivered, issued for delivery, or renewed on or after January 1, 2000."

The same statute (Insurance Code, Article 5.03-4) also provides that a policy "delivered, issued for delivery, or renewed before January 1, 2000, is governed by the law as it existed immediately before the effective date of this Act." A conflict exists between this provision and the one concerning a policy "delivered, issued for delivery, or renewed on or after January 1, 2000." For example, an insurance company often issues and delivers a renewal policy in December even though the actual renewal occurs in the following January, when the existing policy expires. Another example of the conflict occurs with the issuance of a policy in December 1999, with delivery occurring in January 2000. The wording in these statutory provisions regarding dates makes it impossible to comply with both provisions under various circumstances. To minimize problems associated with the implementation of this mandatory 5% credit, Staff recommends the interpretation set forth below.

Under Staff's proposal, for a policy that becomes effective prior to January 1, 2000, the current provisions of Rule 74.E.3. will apply. However, when such a policy terminates on or after January 1, 2000, the credit will no longer apply for the completion of a program that does not meet the requirements of Article 5.03-4, regardless of when the training occurred. The Insurance Code, Article 5.03-4(d) provides in part:

A person is not eligible for, and an insurer may not offer, a premium discount applicable to a personal motor vehicle insurance policy for completion of a drug and alcohol driving awareness program that does not use the applicable uniform curriculum developed under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes).

Staff has requested that its proposed amendments be adopted to become effective January 1, 2000, and applicable to policies that become effective on or after such date.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Reference Number A-1099-17-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Associate Commissioner, Property & Casualty Program, Automobile and Homeowners Division, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9906831
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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The Commissioner of Insurance, at a public hearing under Docket Number 2427 scheduled for November 23, 1999 at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rules 134 and 141, and the Texas Standard Provisions for Automobile Insurance Policies (the Standard Provisions), auto rental liability policies, by adding a new Amendatory Endorsement RC 001. The amendment's purpose is to implement the provisions of the Insurance Code, Article 21.09, Section 2, adopted by the 76th Legislature in Senate Bill 957. Staff's petition (Reference Number A-1099-18-I), was filed on October 13, 1999.

Staff proposes to amend Manual Rule 134 by condensing and clarifying it in a manner that will conform to new statutory wording. Section A would be preceded by an introductory sentence on applicability, including a reference to Rule 141 for provisions governing the sale of automobile rental liability coverage to renters or prospective renters. Section A would be shortened to one sentence, reading, "For automobiles leased or rented with drivers refer to the truckers rule or the public automobile classification rule."

Rule 141.A.1. currently sets forth the types of vehicles that are eligible for coverage under auto rental liability policies, and Staff proposes revision of the list of such vehicle types and adding certain vehicle equipment, as required by new statutory wording. The revised listing is considerably more inclusive than the current one, as the new listing includes motorcycles, motor homes, trailers weighing 10,000 pounds or less, and trucks weighing 26,000 pounds or less, as well as cartop carriers, tow bars, and tow dollies designed for use with a vehicle.

Staff proposes to amend the Manual and the Standard Provisions by adding a new Amendatory Endorsement RC 001, which would amend the Texas Automobile Rental Liability Policy and the Texas Automobile Rental Liability Excess Policy. This new endorsement would amend the definition of "Auto" to include the types of vehicles and vehicle equipment required by new statutory wording.

Effective May 30, 1998, the Commissioner of Insurance through Order Number 98-0513 adopted policy forms, rules, and rule amendments concerning automobile rental liability insurance pursuant to the Insurance Code, Article 21.07, Section 21. That section of Article 21.07 is repealed and replaced with Article 21.09, Section 2 by the 76th Legislature in Senate Bill 957, which requires the Texas Department of Insurance to issue an appropriate license under new Article 21.09, Section 2, not later than January 1, 2000, to a person currently holding an agent license under current Article 21.07, Section 21. Upon the issuance of that new license, the license holder becomes subject to Article 21.09. Staff requests that its proposals for Manual rules be adopted to become effective January 1, 2000.

Staff is not proposing any amendments to the rates for coverage at this time.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual and the Standard Provisions is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Reference Number A-1099-18-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Associate Commissioner, Property & Casualty Program, Automobile and Homeowners Division, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9906832
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 13, 1999

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Texas Lottery Commission

Notice of Cancellation of Public Hearings

The Texas Lottery Commission has cancelled the public hearings to receive comments regarding the proposed amendments to 16 TAC §401.305, relating to the Lotto Texas On-line game at the following locations:

(1)Dallas, Texas, Wednesday, October 20, 1999, 3:00 p.m., Holiday Inn/Market Center, 1955 Market Center Blvd.

(2)El Paso, Texas, Thursday, October 21, 1999, 10:00 a.m. Marriott, 1600 Airway Blvd.

(3)Abilene, Texas, Tuesday, October 26, 1999, 11:00 a.m., Clarion Hotel and Conference Center, 5403 South 1st St.

(4)Houston, Texas, Wednesday, October 27, 1999, 10:00 a.m., Radisson Hotel and Conference Center, 9100 Gulf Freeway.

(5)San Antonio, Texas, Thursday, October 28, 1999, 10:00 a.m., Marriott River Walk, 711 East Riverwalk.

TRD-9906728
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 7, 1999

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Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1)COMPANY: Toby Hawkins dba H and H Tire dba Hawkins Tire; DOCKET NUMBER: 1999-0921-MSW-E; TNRCC ID NUMBER: 26789; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: scrap tire transporter business and unauthorized tire disposal; RULES VIOLATED: 30 TAC §330.806(d)(2), (3), and (4), and §330.810 by failing to register a scrap tire storage facility with more than 500 scrap tires on the ground, to sort, mark, classify, and arrange in an organized manner all good used tires to be offered for sale to consumers, and to implement appropriate measures to control vectors at a frequency of at least once every two weeks; and 30 TAC §330.804(d) by failing to ensure that vehicles used for the collection and transportation of used or scrap tires have identification affixed on both sides and the rear of the vehicle; PENALTY: $4,200; STAFF ATTORNEY: Tracy Harrison Gross, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2)COMPANY: Saleh Shuwib dba Auto Merchants; DOCKET NUMBER: 1998-1411-AIR-E; TNRCC ID NUMBER: CP-0290-Q; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: used car lot; RULES VIOLATED: 30 TAC §114.20(b) and (c)(1), and Texas Health and Safety Code (THSC), §382.085(b) by selling, offering for sale, leasing, or offering for lease, a motor vehicle without the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate control system or device; PENALTY: $625; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Lloyd Walters; DOCKET NUMBER: 1998-0726-MLM-E; TNRCC ID NUMBER: 455100013; LOCATION: Nome,

Jefferson County, Texas; TYPE OF FACILITY: residence; RULES VIOLATED: 30 TAC §111.201 and §101.4 by participating in the unauthorized outdoor burning of used tires and other solid waste, resulting in nuisance conditions; 30 TAC §330.4(b) and §330.831(b)(1) by allowing the unauthorized disposal of municipal solid waste without a permit and storage of whole, used, or scrap tires without obtaining registration from the commission; and 30 TAC §330.5(d) and the Code, §26.121(a) by discharging municipal solid waste into or adjacent to any water in the state; PENALTY: $6,875; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(4)COMPANY: Jim Omer, Zak Omer, Basel Saad, and Khaled Saad dba Zak's Muffler and Inspection; DOCKET NUMBER: 1998-0769-AIR-E; TNRCC ID NUMBER: DB-4695-V; LOCATION: 1004 East Irving Boulevard, Irving, Dallas County, Texas; TYPE OF FACILITY: vehicle inspection station; RULES VIOLATED: 30 TAC §114.50(e)(1) by issuing two motor vehicle inspection certificates without conducting all required emission tests; PENALTY: $1,250; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9906815

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: October 13, 1999

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Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 21, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 21, 1999**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Americalf, Inc.; DOCKET NUMBER: 1998-1397-AGR-E; IDENTIFIER: Enforcement Identification (ID) Number 13072; LOCATION: Lingleville, Erath County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: 30 TAC §321.33(d)(2) and (g), by failing to obtain a permit to operate a beef cattle feedlot; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2)COMPANY: BP Amoco Oil Company; DOCKET NUMBER: 1999-0636-IWD-E; IDENTIFIER: Permit Number 00443 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number TX0003522; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: Permit Number 00443, TPDES Permit Number TX0003522, and the Code, §26.121, by failing to comply with the permit limitations for oil and grease; and 30 TAC §305.125(5) and (9)(A), by failing to test for oil and grease and by failing to submit written notification of becoming aware of a noncompliance; PENALTY: $3,625; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3)COMPANY: Bill Jenkins dba BYJ Cattle Company; DOCKET NUMBER: 1999-0497-AGR- E; IDENTIFIER: Enforcement ID Number 13270; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: 30 TAC §321.35(a), by failing to apply for and receive a registration or apply for an individual permit; and 30 TAC §321.31(a), by failing to retain and utilize or dispose of waste and/or wastewater from his feedlot; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: City of China; DOCKET NUMBER: 1999-0033-MWD-E; IDENTIFIER: Permit Number 12104-001; LOCATION: China, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 12104-001, by failing to come into compliance with permit limits and meet the minimum permit-specified limitations for chlorine residual; 30 TAC §319.11(b), by failing to provide pH meter with adequate functions to complete two-point calibration; 30 TAC §305.125(11) and (17), by failing to maintain a calibration log for the facility's pH meter and perform a manganese correction during effluent measurement for chlorine residual; 30 TAC §317.2(a)(7), by failing to install a backflow prevention device on the potable water source; and 30 TAC §312.145, by failing to properly complete a sludge manifest form; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898- 3838.

(5)COMPANY: City of Del Rio; DOCKET NUMBER: 1999-0619-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 207-A; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.281(b) and §330.283(b), by failing to demonstrate continuous financial assurance for closure and post-closure care; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-0492; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(6)COMPANY: Farmers Dairies, Ltd.; DOCKET NUMBER: 1999-0417-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0710168; LOCATION: El Paso, El Paso County, Texas; TYPE

OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1), (f)(1)(A), and the THSC, §341.033(a), by failing to employ a certified water works operator and to maintain a minimum chlorine residual of 0.2 milligrams per liter (mgl); PENALTY: $1,063; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(7)COMPANY: Frontier Park, Inc.; DOCKET NUMBER: 1999-0499-MWD-E; IDENTIFIER: Permit Number 11328-001; LOCATION: Hemphill, Sabine County, Texas; TYPE OF FACILITY: marina; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by failing to renew their permit and to prevent the unauthorized discharge of wastewater; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Greg Conley, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8)COMPANY: John J. Hebert Distributor, Inc. and Mr. Jim Matlock and Mrs. Carol Matlock; DOCKET NUMBER: 1999-0683-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility ID Number 0045944; LOCATION: Moss Hill, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.241 and the Act, §382.085(b), by failing to install a Stage II vapor recovery system (VRS); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Trina K. Lewison, (713) 767-3607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9)COMPANY: Hood County Utilities, Inc.; DOCKET NUMBER: 1998-1487-MWD-E; IDENTIFIER: Permit Number 13022-001; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 13022-001 and the Code, §26.121, by failing to meet the average total suspended solids effluent limitations and the minimum dissolved oxygen level; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(10)COMPANY: Lee Stafford dba Lubbock Waste Tire Recycling Used and Scrap Tire Transporter, Processor and Storage Site; DOCKET NUMBER: 1999-0666-MSW-E; IDENTIFIER: MSW Registration Numbers 26920, 79540, and 44154; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: used and scrap tire transporter; RULE VIOLATED: 30 TAC §330.805(4) and (5), by failing to provide notice of change of location for business records and provide new registration applications reflecting a change of management and operational practices; 30 TAC §330.804(d), by failing to properly identify a vehicle used to transport scrap tires or scrap tire pieces; 30 TAC §330.809(b)(4), by failing to operate the storage site according to the approved registration application; 30 TAC §330.811(b)(1) and (d), by failing to maintain a scrap tire pile below the maximum allowable 8,000 square feet and maintain a tire pile set back at least 20 feet from the east property line; and 30 TAC §330.832(e) and (g), by failing to maintain a closure cost estimate and financial assurance; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Tim Haase, (512) 239-6007; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414- 3520, (806) 796-7092.

(11)COMPANY: Jose Olguin dba Cuernavaca Landscaping; DOCKET NUMBER: 1999-0654- AIR-E; IDENTIFIER: Air Account Number TH-0712-P; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §330.5(a) and the Code, §26.121, by conducting outdoor burning that was not authorized and allowing the disposal of municipal solid waste; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(12)COMPANY: Patterson Truck Line, Inc. dba Patterson Tubular Services, Inc.; DOCKET NUMBER: 1999-0573-AIR-E; IDENTIFIER: Air Account Number HG-1972-I; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: tubular service; RULE VIOLATED: 30 TAC §116.115(b) and (c), and the Act, §382.085(b), by failing to maintain operation logs to indicate the hours of operation, records to indicate compliance, and daily records consisting of the number of gallons of solvent and external coating used per day; and 30 TAC §122.121, §122.130(b)(1) and (2), and the Act, §382.085(b) and §382.054, by failing to submit an abbreviated initial and a full Title V application and by operating without a Title V permit; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Ro Bali, (713) 767-3750; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13)COMPANY: Port of Houston Authority; DOCKET NUMBER: 1998-1304-MWD-E; IDENTIFIER: Permit Number 12375-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 12375-001 and the Code, §26.121, by failing to comply with the five-day carbonaceous biochemical oxygen demand, total suspended solids, chlorine residual permit limits, and five-day carbonaceous biochemical oxygen demand, chlorine residual, dissolved oxygen and flow permit limits; 30 TAC §305.125(5) and (9), by failing to adequately maintain the handrails and walkways and report effluent violations deviating greater than 40% from the permitted effluent limitation; and 30 TAC §305.126(b), by failing to notify the TNRCC and amend the permit, if necessary, prior to treating shrimp processing wastewater; PENALTY: $16,875; ENFORCEMENT COORDINATOR: Stacy Pentecost, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14)COMPANY: City of Portland; DOCKET NUMBER: 1998-1517-PWS-E; IDENTIFIER: PWS Number 2050005; LOCATION: near Portland, San Patricio County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f), by failing to maintain a chloramine residual of 0.5 mgl; 30 TAC §290.43(e), by failing to enclose the ground storage tank with an intruder-resistant fence with lockable gates; 30 TAC §290.43(c) and §290.46(m) and (p), by failing to prevent ponding on the roof of the ground storage tank, having the proper slope, and failing to provide proper maintenance to the storage tank; and 30 TAC §290.44(h), by failing to establish a cross-connection control program that includes an annual inspection and testing by a certified backflow prevention device tester; PENALTY: $3,675; ENFORCEMENT COORDINATOR: Clint Pruett, (512) 239-2042; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15)COMPANY: River Front Superette, Inc.; DOCKET NUMBER: 1999-0023-PST-E; IDENTIFIER: PST Facility ID Number 0055230; LOCATION: Progreso, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.54(d)(1)(B), by failing to permanently remove or bring back into service three underground storage tanks (USTs); and 30 TAC §334.22(a) and the Code, §26.358, by failing to pay annual UST facility fees; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Mohammed Issa, (512) 239-1445; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16)COMPANY: City of Rockport; DOCKET NUMBER: 1999-0659-MWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0022152; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: The Code, §26.121, and NPDES Permit Number TX0022152, by failing to comply with permit limits for total residual chlorine; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Lynda Clayton, (512) 239-5917; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17)COMPANY: Ruhee Enterprises, Incorporated; DOCKET NUMBER: 1998-0616-PST-E; IDENTIFIER: PST Facility ID Number 0036586; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and the Act, §382.085(b), by failing to successfully perform annual pressure decay testing; 30 TAC §115.246(1), (3), (4), (5), and (6), and the Act, §382.085(b), by failing to maintain a copy of the applicable California Air Resource Board executive order, maintain a record of any maintenance conducted at the facility relating to Stage II, provide training documentation for the Stage II facility representative, maintain a record of the results of initial testing conducted at the facility, and maintain a record of the daily inspections conducted at the facility; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to provide a release detection method capable of detecting a release from any portion of the UST system; and 30 TAC §334.51(b)(2)(C) and the Code, §26.3475, by failing to install overfill prevention equipment; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Trina K. Lewison, (713) 767-3607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18)COMPANY: Santa Fe Interests, Inc.; DOCKET NUMBER: 1999-0681-PST-E; IDENTIFIER: PST Facility ID Number 0016539; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(2) and the Act, §382.085(b), by failing to ensure that at least one facility representative received Stage II VRS employee training; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19)COMPANY: Sunbelt Fresh Water Supply District; DOCKET NUMBER: 1998-0463-MLM- E; IDENTIFIER: PWS Numbers 1010117, 1010022, 1010292, 1010758, 1010419, and 1010188 and Permit Numbers 10518-001, 10236-001, 10812-001, 11670-001, 11231-001, and 11791-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: retail public utility; RULE VIOLATED: 30 TAC §290.42(e)(4)(D), (5), and (7), by failing to repair or replace the scales for the chlorine cylinders and provide a small bottle of fresh ammonia solution that is readily accessible, provide a full-face, self-contained breathing apparatus or air respirator, and equip the chlorination room with both high-level and floor-level screened vents; 30 TAC §290.41(c)(1)(F) and (3)(I), (J), and (K), by failing to locate the ground water sources at least 150 feet from a septic tank drainfield, fine grade the well site, obtain a sanitary easement, repair the concrete sealing blocks surrounding the wells, and provide a screened casing vent on the well; 30 TAC §290.46(m), (t), and (y), by failing to properly maintain the water system facility, maintain all water system facilities and related appurtenances in a watertight condition, and install all electrical wiring in a securely mounted conduit; 30 TAC §290.45(b)(1)(C)(i), (ii), (iii), and (iv), by failing to meet minimum water system capacity requirements for service pumps, total storage, pressure tank, and/or well capacity; 30 TAC §290.43(c)(4) and (d)(3), by failing to equip the ground storage tank with a water level indicator and equip a pressure tank with some sanitary means of determining the air-to-water ratio; Permit Numbers 10518-001, 10236-001, 11670-001, 11231-001, and the Code, §26.121, by failing to maintain compliance with the permitted effluent limits; Permit Numbers 10518-001, 10236-001, 10812- 001, 11670-001, and 30 TAC §305.126, by failing to properly operate the facility and all its systems of collection, treatment, and disposal; Permit Numbers 10518-001, 10236-001, 30 TAC §305.126, and the Code, §26.121, by failing to obtain authorization to commence construction when the daily average flow reached 90% for three consecutive months at the Northline Terrace and Oakwilde wastewater treatment plants (WWTP); 30 TAC §317.7(c), by failing to repair exposed electrical wiring; and Permit Number 10812-001, 30 TAC §305.126, and the Code, §26.121, by failing to initiate engineering and facility planning upon reaching 75% of permitted daily average flow for three consecutive months at the High Meadows WWTP; PENALTY: $59,685; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20)COMPANY: Vancouver Management, Inc.; DOCKET NUMBER: 1999-0596-MWD-E; IDENTIFIER: Permit Number 11051-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11051-001 and the Code, §26.121, by failing to maintain compliance with permitted effluent limitations, meet effluent limits for dissolved oxygen and chlorine, and clean up and report an unauthorized discharge of wastewater; 30 TAC §305.125(5), by failing to perform process control testing, properly maintain the wastewater treatment facility, and provide adequate equipment for measurement of flows; 30 TAC §317.4(b)(4) and §305.125(5), by failing to appropriately dispose of bar screenings; and 30 TAC §317.4(8) and §317.7(e), by failing to maintain the chlorine contact unit and chlorine housing, provide scales for the determination of the amount of chlorine available, provide records for the backflow prevention device, and provide warning signs at the facility for the public; PENALTY: $11,375; ENFORCEMENT COORDINATOR: Paula Wimberley, (713) 767-3592; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9906798
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: October 12, 1999

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The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, l999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, l999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Alpha Omega Recycling, Incorporated; DOCKET NUMBER: 1999-0922-IHW- E; TNRCC IDENTIFICATION (ID) NUMBER: HW50203-001; LOCATION: 315 Whatley Road, Longview, Gregg County, Texas; TYPE OF FACILITY: nonferrous metal smelting and refining operation; RULES VIOLATED: TNRCC Permit Number HW50203-001, Provision Number I.C.1 by failing to stay within the permitted capacity limits of 534 55-gallon drums in Permit Unit Number One and 216 55-gallon drums in Permit Unit Number Two; 30 TAC §335.69(a)(2) and (3) by failing to clearly mark each container with the words "hazardous waste" and the date accumulation began; 30 TAC §335.431(c) by failing to demonstrate that storage for greater than one year was solely for the purpose of accumulating quantities sufficient to treat and dispose; 30 TAC §335.9(a)(2) and by failing to submit the annual waste summary report; 30 TAC §335.152(a)(7) by failing to transfer waste from leaking containers to containers in good condition and by failing to keep containers closed during storage except when adding or removing waste; 30 TAC §335.6 by failing to notify the TNRCC of the following waste management units: a roll-off container for scrap metal, a roll-off container for filters, and a dumpster for plant trash and by failing to deactivate their old six-digit waste codes; and 30 TAC §335.323 and §335.324 by failing to pay hazardous waste facility and generator fees; PENALTY:$26,000; STAFF ATTORNEY: Tracy Gross, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(2)COMPANY: Batesville Water Supply; DOCKET NUMBER: 1997-1000-PWS-E; TNRCC PUBLIC WATER SUPPLY (PWS) ID NUMBER: 2540005; LOCATION: Batesville, Zavala County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(D) by failing to comply with the minimum water capacity requirements; 30 TAC §290.46(f)(1)(A), (u), (j), (e)(1), (p)(1), (w), and (i) by failing to maintain a chlorine-free residual of 0.2 milligrams per liter, maintain a minimum pressure of 20 pounds per square inch, conduct customer service inspections, have at least a grade C water works operator operate the system, conduct annual storage tank inspections and retain inspection records, post a legible sign at the facility which shall be in plain view of the public and provides the name of the water supply and an emergency telephone number where a responsible official of the water supply can be contacted, and maintain plumbing regulations on file at the facility; 30 TAC §290.106(a)(2) by failing to collect a sufficient number of bacteriological test samples; 30 TAC §290.42(e)(5) by failing to provide self-contained breathing apparatus outside the facility's chlorinator room; and 30 TAC §291.76, §290.51, and the Code, §13.541 and §341.041 by failing to pay water regulatory assessment fees and public health service fees; PENALTY: $6,450; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(3)COMPANY: Wayne Booher dba Border Tank and Oil; DOCKET NUMBER: 1998-1025- IHW-E; TNRCC ID NUMBER: 12470; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: tank scrap and reuse; RULES VIOLATED: 30 TAC §335.62, incorporating 40 Code of Federal Regulations (CFR), §262.11 by failing to conduct hazardous waste determination and waste classification for three industrial solid waste streams generated and stored on site; 30 TAC §335.6(c) by failing to update the facility's notice of registration (NOR); and 30 TAC §335.4 and the Code, §26.121 by failing to contain unauthorized discharges in the form of sand blast media; PENALTY: $5,100; STAFF ATTORNEY: Cecily Small Gooch, Litigation Division, MC 175, (817) 469-6750; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925- 5633, (915) 778-9634.

(4)COMPANY: City of Cedar Park; DOCKET NUMBER: 1998-1078-MWD-E; TNRCC ID NUMBER: 12308-001; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: wastewater lift station; RULES VIOLATED: the Code, §26.121(a)(1) and Water Quality Permit Number 12308-001 by discharging 150,000 gallons of sewage into a tributary of Spanish Oak Creek; and 30 TAC §305.125(9)(a) and Water Quality Permit Number 12308-001 by failing to provide to the TNRCC Austin Regional Office a 24-hour verbal notification that a discharge had occurred at the lift station; PENALTY: $22,500; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758- 5336, (512) 339-2929.

(5)COMPANY: The City of Crowell and Foard County; DOCKET NUMBER: 1998-0666- MSW-E; TNRCC ID NUMBER: 1401; LOCATION: Crowell, Foard County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §330.1(b) and §330.113 by failing to maintain records to demonstrate compliance with the operational requirements of the Resource Conservation and Recovery Act (RCRA), Subtitle D, 40 CFR Part 258 and by failing to submit a modification application to incorporate the applicable RCRA standards; 30 TAC §§330.5, 330.117(a), (b), and (c), and 330.138 by accepting for disposal or disposing of whole and scrap tires, failing to provide an attendant to monitor incoming waste, failing to post signs to indicate where to unload the waste, and allowing the current working face trench to invade the intermediate and final cover of a previously filled trench; 30 TAC §330.9 by failing to provide financial assurance required for the facility; 30 TAC §330.115 by failing to make fire extinguishers and a soil stockpile available; 30 TAC §330.116 by failing to provide artificial barriers or natural barriers to prevent unauthorized access from side entry roads; 30 TAC §330.120 by failing to pick up windblown litter scattered throughout the facility on at least a weekly basis; 30 TAC §330.121(b) by allowing waste to be placed in the buffer zone of the facility; 30 TAC §330.122 by failing to install the required landfill markers and benchmarks; 30 TAC §§330.133, 330.126, 330.132, and 330.134 by failing to provide the cover log, daily cover, intermediate cover, and final cover and by failing to prevent vectors on the working face and ponding of water; and 30 TAC §330.130 by failing to monitor landfill gases; PENALTY: $21,875; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6)COMPANY: City of Harlingen; DOCKET NUMBER: 1998-1073-MWD-E; TNRCC ID NUMBER: 10490-003; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §325.3(a) by failing to employ a collection system supervisor that holds a valid TNRCC certificate of

competency; and the Code, §26.121 by failing to comply with permit limits from outfall 001 and input 201; PENALTY: $41,250; STAFF ATTORNEY: John Wright, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7)COMPANY: K-Farming Enterprises, Incorporated; DOCKET NUMBER: 1999-0359-PWS-E; TNRCC ID NUMBER: 0550016; LOCATION: Van Horn, Culberson County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(a) and (e) by failing to submit water samples for routine bacteriological analysis and by failing to post the required public notice of the failure to sample; PENALTY: $2,188; STAFF ATTORNEY: John Wright, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(8)COMPANY: The City of Kirbyville; DOCKET NUMBER: 1999-0357-PWS-E; TNRCC PWS ID NUMBER: 1210002; LOCATION: Kirbyville, Jasper County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.43(c)(1)(7) and (8) by failing to maintain the interior and exterior coatings of the 0.075- and 0.125-million gallon steel ground storage tanks in accordance with current American Water Works Association (AWWA) standards, equip the 0.075- million gallon ground storage tank with a properly constructed roof vent, and provide the 0.075- and 0.200-million gallon ground storage tanks with dedicated drains; and Texas Health and Safety Code (THSC), §341.036(g) by failing to properly cover and prevent the entrance of dust and insects into the 0.075-million gallon ground storage tank through the open rivet holes around the top of the tank; 30 TAC §290.46(t) by failing to maintain the service pump at the Elizabeth Street plant in a watertight condition; 30 TAC §290.44(d)(6) and (h)(1), and §290.46(j)(3) by failing to ensure that no water connection from the facility to any establishment where an actual or potential contamination or system hazard exists without an air gap separation, conduct and keep on file for commission review customer service inspection certifications of existing service connections that may be considered water system hazards, and provide all dead end mains with acceptable flush valves and discharge piping; 30 TAC §290.42(e)(2)(5) by failing to maintain a full-face self-contained breathing apparatus located outside the chlorinator room in an accessible location and by failing to chlorinate the waters from the Santa Fe well and the Post Office well prior to storage; 30 TAC §290.45(b)(1)(D)(iii) by failing to provide a service pump capacity of 2.0 gallons per minute per connection or a total capacity of at least 1,000 gallons per minute and be able to meet peak hourly demands with the largest pump out of service; 30 TAC §290.41(c)(1)(A) and (F) by failing to provide a separation distance of 50 feet between each potable well and adjacent sanitary sewer mains and by failing to secure and record sanitary control easements covering the portion of land within 150 feet of the well from all such property owners; 30 TAC §290.46(x) by failing to plug or maintain the abandoned old Santa Fe well; and 30 TAC §290.41(c)(1)(F) and (3)(J), (L), and (N) by failing to repair or replace the cracked concrete sealing block surrounding the Santa Fe well, provide each well with a flow measuring device located to facilitate daily reading, and provide the Santa Fe well with a well blow-off line that is not subject to submergence; PENALTY: $3,250; STAFF ATTORNEY: Tracy L. Gross, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(9)COMPANY: Quala Systems, Incorporated; DOCKET NUMBER: 1997-1188-IHW-E; TNRCC ID NUMBERS: 83778, 83828, and 83712; LOCATION: Clute, Brazoria County, Texas; Houston, Harris County, Texas; and Channelview, Harris County, Texas; TYPE OF FACILITIES: truck tank washing; RULES VIOLATED: for the Houston facility: 30 TAC §335.6(c) by failing to update the NOR regarding the current facility contact person for hazardous waste issues and by failing to have the correct waste codes or any codes for waste streams at the facility; 30 TAC §335.431 and 40 CFR §268.7(a)(1) and (7), by failing to retain on-site a copy of all required documentation for each solid waste managed at the facility, include land-ban documentation on two shipments of hazardous waste from the facility, and include manifest numbers on the land-ban documentation on three shipments of hazardous waste from the facility; 30 TAC §335.13(b) by failing to submit monthly out-of-state shipment summaries; 30 TAC §335.10(b)(5), (8), (12), and (22) by failing to include the facility's solid waste registration number, the first transporter's state registration number, the second transporter's state registration number, and the waste classification codes assigned by the facility to waste streams on manifests used to ship hazardous and class 1 wastes off-site; 30 TAC §335.69(a)(1)(A) and (4), 40 CFR §§265.37(a)(1), 265.53(b), and 265.174, by failing to familiarize local authorities with the nature of the facility's hazardous waste management activities, provide local authorities with a copy of the facility's contingency plan, inspect at least weekly areas at the facility where containers are stored, and look for leaks and for deterioration; for the Channelview facility: 30 TAC §335.9(a)(1)(A) by failing to maintain adequate documentation of each waste stream; 30 TAC §335.503(a)(4)(D) by failing to demonstrate that a waste stream was properly classified as a class 2 waste; 30 TAC §335.13(i) and (k) by failing to retain the original white copies of the manifests or file an extension report to the TNRCC; 30 TAC §335.10(b)(5), (8), (12), and (22) by failing to ensure that all manifests used to ship waste off-site include the state generator's identification number, the state transporter's identification number or both transporters' identification numbers, where applicable, and the waste classification codes assigned to waste streams by the generator; 30 TAC §335.431(c) and 40 CFR §268.7(a)(1) and (7), by failing to retain the land-ban documentation for off-site hazardous waste shipments; and 30 TAC§335.69(a)(1)(A) and (4), and 40 CFR §265.16(b), by failing to provide documentation showing that the hazardous wastes stored in containers at the facility were inspected at least weekly for leaks and deterioration, provide documentation demonstrating that attempts to reach agreements with emergency response contractors and equipment suppliers had been made, and provide training to a new employee to be able to respond effectively to hazardous waste emergencies; for the Clute facility: 30 TAC §335.9(a)(2) by having multiple errors and omissions in 1996 and 1997 annual waste summaries; 30 TAC §335.6(c) by failing to update and make several corrections to the NOR regarding waste management activities; 30 TAC§§335.62, 335.504, 335.431, 40 CFR§262.11, and §268.7(a), by failing to conduct hazardous waste determinations for 21 waste streams and by misclassifying a corrosive waste; 30 TAC §335.69(a)(1)(A) and (B), §335.112(a)(8) and (9), 40 CFR§§262.34(a)(1)(i) and (ii), 265.192, 265.193, and 265.174, by storing hazardous waste sludge in a tank (sump) that has not been certified, inspected, tested, and does not have secondary containment and by failing to conduct 17 weekly inspections on the container storage areas and waste management unit; 30 TAC §335.10(b)(22) and (5) by recording incorrect information on eight manifests or by failing to completely record all required information; 30 TAC §335.13(d) by failing to submit monthly waste shipment summaries for at least eight months; and 30 TAC §335.474 by failing to have a waste minimization/source reduction plan of any type; and 30 TAC §335.9(a)(1)(G) by failing to have the satellite accumulation area marked or documented with a map or written description; PENALTY: $87,490; STAFF ATTORNEY: Tracy Gross, Litigation Division, MC

175, (512) 239-1736; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10)Rafiqmohammad Dhuka and Royal Price Corp. dba Rocking H Grocery and Feed Incorporated; DOCKET NUMBER: 1999-0627-PST-E; TNRCC ID NUMBER: 25015; LOCATION: Del Valle, Travis County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.10(b)(l)(B) by failing to maintain legible copies of all required records pertaining to an UST system in a secure location on the premises of the facility; 30 TAC §334.50(a)(l)(A) by failing to have a release detection method capable of detecting a release from any portion of the UST system; and 30 TAC §334.7(d)(3) by failing to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence and by failing to amend the registration form indicating the current owner and current UST system status; PENALTY: $4,500; STAFF ATTORNEY: Nathan Block, Litigation Division, MC 175, (512) 239-4706; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(11)COMPANY: Ha Van Nguyen dba Windy Hills Estates and Burnet Hills Mobile Home Parks; DOCKET NUMBER: 1998-1167-PWS-E; TNRCC ID NUMBERS: 0270090 and 0270042; LOCATION: Burnet, Burnet County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.42(i) by failing to use a disinfectant approved by the American National Standards Institute/National Sanitation Foundation in the public water supply at Windy Hills and Burnet Hills; 30 TAC §290.46 (i), (j), and (p) by failing to adopt an adequate plumbing ordinance or regulation at Windy Hills and Burnet Hills, complete a customer service inspection certification prior to providing continuous water service to new construction on any existing service at Windy Hills and Burnet Hills, and make available for commission staff review the results of ground storage tank inspections for Windy Hills and Burnet Hills; 30 TAC §290.44(a) by failing to install the water distribution line in accordance with AWWA standards with reference to materials to be used and construction procedures to be followed and by failing to install the water distribution line in accordance with American Society for Testing and Materials; 30 TAC §290.43(c)(6) by failing to maintain the ground storage tank at Windy Hills tight against leakage; 30 TAC §290.45(b)(1)(B)(i) and (F)(iii) by failing to provide a well production capacity of 0.6 gallons per minute per connection and a service pump capacity of 2.0 gallons per minute at Burnet Hills as required for a mobile home park with fewer than 100 connections utilizing ground storage; and 30 TAC §291.76 by failing to pay water regulatory assessment fees; PENALTY: $3,000; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(12)COMPANY: Aslam Virani dba Walker Food Store; DOCKET NUMBER: 1998-0670-PST- E; TNRCC ID NUMBER: 0021258; LOCATION: Bacliff, Galveston County, Texas; TYPE OF FACILITY: UST; RULES VIOLATED: 30 TAC §115.246(4) and (6), §115.244(1), and THSC, 382.085(b) by failing to maintain documentation at the station certifying proof of attendance and completion of Stage II vapor recovery training and by falsifying daily inspection records; PENALTY: $3,000; STAFF ATTORNEY: John Sumner, Litigation Division, MC 175, (512) 239- 0497; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13)COMPANY: Mr. Leslie Andrew Wardlaw; DOCKET NUMBER: 1998-0498-OSI-E; TNRCC ON-SITE SEWAGE FACILITY (OSSF) CERTIFICATION NUMBER: 3404; LOCATION: 2105 Scott Lane, Austin, Travis County, Texas; TYPE OF FACILITY: OSSF installer; RULES VIOLATED: 30 TAC §285.58(a)(6) and (10) and THSC, §366.004, by abandoning without just cause an OSSF during the installation, construction, alteration, extension, or repair before or after the final inspection and by failing to install, construct, alter, extend, or repair the OSSF to meet the minimum criteria; PENALTY: $500; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-9906816
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: October 13, 1999

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North Texas Workforce Development Board

Request for Quotes - Welfare-to-Work Services Consultant

The North Texas Workforce Development Board is requesting quotes from interested parties to perform consultant services, which will provide the Board with information to assist them in determining which Welfare-to-Work projects are best suited for this WDA.

The North Texas Workforce Development Board administers Welfare-to-Work (WtW) funds for the eleven counties of the North Texas Workforce Area, which include: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young.

Survey/study of the area should be performed within a 30 day timeframe; additional days may be negotiated if needed.

Please submit quotes along with organizational legal status and capability information, and scope of work activity by 5:00 p.m., **November 5, 1999** to: North Texas Workforce Development Board, 4309 Jacksboro Highway, Suite 106, Wichita Falls, Texas 76302, Attn: Barbara A. Young. For further information call (940) 767-1432, fax (940) 322-2683.

TRD-9906809
Mona Williams Statser
Executive Director
North Texas Workforce Development Board
Filed: October 13, 1999

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Texas Department of Protective and Regulatory Services

Invitation for Bid for Consulting Services for Foster Care Rate-setting Methodology Revision

In accordance with provisions of Chapter 2254, Subchapter B, of the Texas Government Code, the Texas Department of Protective and Regulatory Services (PRS) invites bids for consulting services for review of PRS's foster care rate-setting methodology and revision as necessary to provide appropriate levels of service to children in PRS's conservatorship. This review is being undertaken in accordance with PRS's Rider 21, Article II, of the General Appropriations Act for the 2000-01 biennium.

Description of Services: This project involves a critical review of the existing rate-setting methodology, extensive collaboration with key stakeholders, and development of recommended revisions in the methodology. The project encompasses four distinct Deliverables

focused on (1) research and assessment of current methodologies, (2) development of rate-setting methodology options, (3) recommended cost report revisions, and (4) presentation of findings to a workgroup.

Terms: The effective period for any contract awarded under this Solicitation will be December 08, 1999 through August 31, 2000, with an option to extend the contract into SFY 2001. The awarding of any contract under this Solicitation is contingent upon PRS's receipt of a Finding of Fact from the Office of the Governor.

Selection and Evaluation: An Evaluation Committee composed of PRS staff members will review, evaluate, rank, and score all responses that meet screening requirements according to the following criteria and point breakout: (a) Service Description – 40 points, (b) Previous Relevant Experience – 30 points; (c) Pricing – 20 points; and (d) Budget Narrative – 10 points.

Reports Due: Reports will be due upon completion of each of the four specified Deliverables. Report due dates for Deliverables will be determined by the bidder as part of the bidder's proposed service description and work plan.

Closing Date: The deadline for receipt of responses under this Solicitation is 3 p.m., CDT, Monday, November 22, 1999. Responses may be mailed, shipped by carrier, or hand-delivered so they arrive in the office of Wayne Kellberg, Purchasing Manager, PRS, 8100 Cameron Road, Suite 150 (M.C. Y-937), Austin, Texas 78754 by 3 p.m., CDT, on Monday, November 22, 1999. Responses or modifications to responses received after this deadline will not be considered.

Contact Persons: To obtain a copy of the complete *Solicitation for Foster Care Rate-setting Methodology Revision*, please contact: Wayne Kellberg, Purchasing Manager, PRS, 8100 Cameron Road, Suite 150 (M.C. Y-937), Austin, Texas 78754. For questions related to this Solicitation, please contact: David G. Heine, Manager, Rates/ Caseloads, TDPRS Office of Finance; phone: (512) 438-3293; fax: (512) 438-4853; e-mail: heinedg@tdprs.state.tx.us

TRD-9906823
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: October 13, 1999

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Request for Proposals for Healthy Families Administrative Services

The Texas Department of Protective and Regulatory Services (PRS) Division of Prevention and Early Intervention Services (previously known as Community Initiatives for Program Development) announces a Request for Proposals (RPF) for a contractor to provide administrative services to current PRS-funded Healthy Families service providers. **The RFP will be released on or about October 19, 1999.**

Brief Description of Services: The services to be purchased are provided to the state's Healthy Families service providers and encompass the following: technical assistance, including the development of various provider resource materials; a variety of types of training sessions; assistance in working toward self-sufficiency, including accessing grant funding; and program evaluation and contractor self-assessment.

The overall goal of this technical assistance and support to the Healthy Families providers will be to strengthen the statewide program and enhance the services received by families.

Eligible Applicants: Eligible offerors include private non-profit and for-profit corporations, cities, counties, state agencies/entities, partnerships and individuals. Charitable community or religious organizations, as well as Historically Underutilized Businesses, are encouraged to submit proposals. Current PRS-funded Healthy Families service providers are not eligible to apply for this contract.

Limitations: Only one contract will be awarded under this RFP. Funding of the selected proposal will be dependent upon available federal and/or state appropriations. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due November 29, 1999, at 4:00 p.m. The effective dates of a contract awarded under this RFP will be January 1, 2000, through August 31, 1999, with a maximum amount of $150,000 being available to fund the contract during this fiscal period. If the contract is renewed for the following fiscal year, a maximum amount of $225,000 will be available.

Contact Person: Potential offerors may obtain a copy of the RFP beginning October 19, 1999. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Judy Mayfield, Mail Code E-541, c/o Linda Fleming; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438-2031. Issued in Austin, Texas on October 12, 1999.

TRD-9906800
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: October 12, 1999

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Public Utility Commission of Texas

Notice of Application for Approval of Proposed Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a proposed merger on September 1, 1999, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.154 and §39.158(a) (Vernon 1999).

Docket Style and Number: Joint Application of Illinova Corporation and Dynegy, Inc. for Approval of Merger. Docket Number 21388.

The Application: Illinova Corporation and Dynegy, Inc. (Applicants) request approval of their proposed merger, pursuant to PURA §39.154 and §39.158(a). As a result of the proposed merger, the Applicants will retain their historical assets while becoming subsidiaries of a newly-created holding company. The Applicants assert that the merged entity will own and operate 605.5 megawatts of generation capacity within the Electric Reliability Council of Texas. The Applicants will close the merger on December 31, 1999.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906721
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: October 7, 1999

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Notices of Applications for Certificates of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 5, 1999, for a certificate of operating authority (COA), pursuant to §§54.102 - 54.111 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of SBC Advanced Solutions, Inc. for a Certificate of Operating Authority, Docket Number 21479 before the Public Utility Commission of Texas.

Applicant intends to provide Digital Subscriber Line, Frame Relay, Call Relay, ATM, VPOP/DAS and other packetized technology services.

Applicant's requested COA geographic area includes all areas served by incumbent local exchange companies within 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 October 27, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906720
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 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 October 8, 1999, for a certificate of operating authority (COA), pursuant to §§54.102 - 54.111 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Global/*Net* Corporation for a Certificate of Operating Authority, Docket Number 21495 before the Public Utility Commission of Texas.

Applicant intends to provide local telecommunications services including basic residential services, residential custom calling and CLASS features, and highspeed data transmission/transfer.

Applicant's requested COA geographic area includes the cities of Stafford, Sugar Land, Missouri, and Richmond/Rosenberg within 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 October 27, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906795
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 1999

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Notice of Application for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(E)

Notice is given to the public of an application filed with the Public Utility Commission of Texas, on October 6, 1999, for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Project Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. (COA Number 50018) for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Project Number 21488.

The Application: Under 47 U.S.C. §214(e), a common carrier designated as an ETC in accordance with that subsection shall be eligible to receive federal universal service support under 47 U.S.C. §254. Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) seeks designation for GTE Southwest, Inc.'s Seymour exchange. Santa Rosa holds Certificate of Operating Authority Number 50018.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by November 1, 1999. Requests for further information should be mailed to 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 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477.

TRD-9906777
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 1999

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Notice of Application for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 6, 1999, for designation as an eligible telecommunications provider pursuant to P.U.C. Substantive Rule §26.417.

Project Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. (COA Number 50018) for Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Project Number 21489.

The Application: Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) filed an application for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417. Santa Rosa is requesting ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund (TUSF) under the Texas High Cost Universal Service Plan (THCUSP). Santa Rosa seeks ETP designation for GTE Southwest Inc.'s Seymour exchange under Certificate of Operating Authority Number 50018.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by November 1, 1999. Requests for further information should be mailed to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact

the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477.

TRD-9906778
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 1999

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 5, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Convergent Communications Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21394 before the Public Utility Commission of Texas.

Applicant intends to provide resold services of incumbent local exchange carriers including local exchange services, switched local exchange service, non-switched local services, Centrex services, digital subscriber line, ISDN, and frame relay services.

Applicant's requested SPCOA geographic area includes all areas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., United Telephone Company of Texas, Inc., and Central Telephone Company of Texas, doing business as Sprint, within 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 October 27, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906719
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 1999

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Public Notices of Amendments to Interconnection Agreements

On October 5, 1999, Southwestern Bell Telephone Company and Cypress Telecommunications, 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21484. 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 10 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 21484. 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 November 4, 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 P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21484.

TRD-9906726
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 1999

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On October 7, 1999, Southwestern Bell Telephone Company and ATS Telecommunications Systems, Inc. doing business as ATS, 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21492. 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 10 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 21492. 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 November 8, 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 P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21492.

TRD-9906796
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 1999

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Public Notices of Interconnection Agreements

On October 5, 1999, Southwestern Bell Telephone Company and SBC Advanced Solutions, Inc., collectively referred to as applicants, filed a joint application for approval of 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21481. 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 10 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 21481. 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 November 4, 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 P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21481.

TRD-9906724
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 1999

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On October 5, 1999, Southwestern Bell Telephone Company and Scholl Interest, Inc. doing business as Commserv, collectively referred to as applicants, filed a joint application for approval of 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, Chapters 52 and 60 (Vernon 1998) (PURA). The

joint application has been designated Docket Number 21483. 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 10 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 21483. 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 November 4, 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 P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21483.

TRD-9906725
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 1999

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Public Notice of Workshop an Anti-Slamming Rulemaking and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding anti-slamming rulemaking on Monday, November 15, 1999, at 9:00 a.m., in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21419, *Amendments to Substantive Rule §26.130, Selection of Telecommunications Utilities (SB86 and SB560, PURA §§55.301 - 55.308)*, has been established for this proceeding.

The purpose of this workshop is to solicit input from interested parties that will assist in a rulemaking necessary to implement the provisions of Senate Bill 86, 76th Legislature, Regular Session, chapter 1579, 1999, Texas Session Law Service 5421, 5430 (Vernon) (to be codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§55.301 - 55.308) and Senate Bill 560, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210, 4221, (Vernon) (to be codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§55.301 - 55.308, *Selection of Telecommunications Utilities*.) These provisions: (1) eliminate the distinction between carrier- initiated and customer-initiated changes, (2) eliminate the information package mailing (negative option) as a verification method, (3) absolve the customer of any liability for charges incurred during the first 30 days after an unauthorized carrier change, (4) prohibit deceptive or fraudulent practice, and (5) require consistency with applicable federal laws and rules. The rulemaking will also address the related issue of preferred carrier freezes. The commission requests interested persons file comments to the following questions:

1. Should there be a fee to obtain a preferred carrier freeze?

2. Should all telecommunications utilities (as defined by PURA) be allowed to market preferred carrier freezes to their current customers?

3. Should there be a standardized preferred carrier freeze form?

4. Do verification rules apply to customer-initiated requests for preferred carrier freezes? If so, who performs the verification? If not, would this system be susceptible to fraud?

5. Should the facilities-based local exchange company (LEC) verify all preferred carrier freeze requests regardless of who initiated the request?

6. How should claims of facilities-based LEC anti-competitive behavior surrounding preferred carrier freezes be handled and addressed?

7. Is the LEC practice of marketing preferred carrier freezes inherently anti-competitive? If so, is it only for a specific period of time and how should this be addressed?

8. Is this practice equally anti-competitive if performed by competitive providers?

9. If preferred carrier freezes are not marketed, how would customers know about this protection so they can initiate a request?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by November 8, 1999. All responses should reference Project Number 21419.

Questions concerning the workshop or this notice should be referred to Jo Alene Kirkel, Director of Enforcement, Office of Customer Protection, (512) 936-7144. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906723
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Filed: October 7, 1999

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Public Notice of Workshop on Provisions of PURA Affecting Chapter 39, subchapter H, Certification and Registration, and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss a rulemaking to implement Public Utility Regulatory Act (PURA) §§39.351, 39.352, 39.353, 39.354, 39.3545, and 39.356 relating to registration of power generation companies, certification of retail electric providers, registration of aggregators, including municipal and political subdivision aggregators, and the revocation of such certification or registration. The workshop will be held on Wednesday, December 15, 1999, beginning at 9:30 a.m. in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Project Number 21082, *Certification of Retail Electric Providers and Registration of Power Generation Companies and Aggregators*, has been established for this proceeding. Through this workshop, the commission will gather information from interested persons and discuss possible rule language concerning the above-stated provisions of PURA, effective September 1, 1999, that affect the registration or certification of power generators, retail electric providers, and aggregators.

Before the workshop commences, the commission requests interested persons file comments addressing staff questions in this project. These questions will be available in Central Records under Project Number 21082, or from the commission's Web site, no later than Friday, October 22, 1999. On the Web site, located at *www.puc.state.tx.us* the questions will be linked to Project Number 21082 from the Electric Restructuring page.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326 until November 16, 1999. All comments should reference Project Number 21082.

On or before December 8, 1999, the commission will file an agenda for the workshop, which will be available in Central Records and on the commission's Web site under Project Number 21082. Copies of the agenda will also be available at the workshop. A staff strawman draft rule will be made available in Central Records and on the Web site under Project Number 21082 in advance of the workshop.

Questions concerning Project Number 21082 may be referred to Jan Bargen, Office of Policy Development, (512) 936-7242. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906803
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1999

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Request for Comments on Goal for Renewable Energy Form

The Public Utility Commission of Texas (commission) proposes a new form, *Certification Form for Renewable Energy Power Generators,* to be used by power generators to fulfill the statutory requirements the Public Utility Regulatory Act (PURA) §39.904 relating to Goal for Renewable Energy and §39.101(b)(3) regarding customer safeguards as amended by Senate Bill 7 (SB 7), 76th Legislature, Regular Session, Chapter 405, 1999, Texas Session Law Service 2543, 2561, and 2598 (Vernon) (to be codifed as an amendment to PURA, Texas Utilities Code Annotated §39.101(b)(3) and §39.904). Project Number 20944 is assigned to this proceeding. At the October 6, 1999, Open Meeting, the commission approved publication of proposed new rule §25.173 relating to Goal for Renewable Energy. The proposed new rule may be found in the *Texas Register,* or in the commission's Central Records under Project Number 20944, or through the commission's web page at www.puc.state.tx.us. The proposed form will be used in implementing the new rule.

Copies of the proposed form are available in the commission's Central Records Division, Room G-113, under Project Number 20944. Written comments (16 copies) on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 within 14 days after publication of this notice. Reply comments may be submitted within 28 days after publication. All comments should refer to Project Number 20944.

Any questions pertaining to the proposed form should be directed to Gillan Taddune at (512) 936-7156. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906748
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 1999

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Texas Woman's University

Request for Consultant Proposals Concerning Distance Education

Eligible Proposers. Texas Woman's University (TWU) is requesting proposals under (RFP) #731-00-001 filed under the provision of Government Code, Chapter 2254; from qualified Proposers concerning Distance Education at TWU. The eligible proposers must have considerable knowledge of State fiscal regulation, networks for distance education, budget building and cost analysis for distance education, infrastructure and support issues, professional development, planning, and regional issues and trends in distance education.

Description. TWU seeks to hire a consultant to make a detailed assessment of the University's distance education planning and activities. In particular, the University needs a specific detailed analysis of the fiscal aspects of distance education including the business plan, cost benefit analyses, and budgeting processes, including faculty salaries and compensation.

The report will require a thorough analysis of the broad-range issues relating to internal and external support and infrastructure. Internally, this will require an assessment of technical and support staff, the pedagogical and technical professional development of faculty and staff, software and hardware purchase and maintenance, and personnel needs. Externally , this assessment will require specific information regarding telecommunication providers, software providers, and other parties with whom the University is working or may likely work. It will be necessary to assess a variety of student-related issues such as access to the University's technological infrastructure, support for distance learners, and policies and procedures.

The University will also require an assessment of its organizational structure, professional and administrative support roles, and leadership for promoting and implementing distance education activities. The assessment must include the University's plan of action for distance education and the appropriateness of current procedures, policies, and strategies to support the proposed plan. This review must analyze the University's primary current and potential constituents and the University's major competitors in trying to serve these targeted groups.

Dates of Project. The Consultant assessment of the University's distance education planning and actives will be conducted during the months November, and December with a report due by February 14, 2000.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out the requirements contained in this RFP. TWU will base its selection on demonstrated competence and qualifications of the proposer. The selection criteria and the review process are specified in the RFP. Texas Woman's University reserves the right to select from the highest ranking proposals, which will be the ones that address all requirements in the RFP.

Requesting the Proposal. A complete copy of RFP#731-00-001 may be obtained by writing the: Texas Womans University Purchasing Department, P.O. Box 425619, TWU Station, Denton Texas 76204-5619.

Further Information. For clarifying information about this RFP, contact Leslie M. Thompson, Associate Vice President for Research Office, telephone # 940-898-3415.

Deadline for Receipt of Proposals. Proposals must be received in the TWU Purchasing Office by 3PM (central Standard Time), November 15, 1999, to be considered.

TRD-9906793
Dr. Brenda Floyd
V.P. Finance and Administration
Texas Woman's University
Filed: October 11, 1999

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Texas Water Development Board

Request for Applications for Planning and Project Grants under the FEMA Flood Mitigation Assistance (FMA) Program

The Texas Water Development Board (Board) requests the submission of applications leading to the possible award of grants to develop flood mitigation plans and implement flood mitigation projects for areas in Texas from communities with the legal authority to plan for and mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the State may submit applications for Flood Mitigation Assistance planning and project grants. The available allocated amounts for Federal Fiscal Year 2000 is $97,000 for Planning Grants and $1,153,100 for Project Grants. These grants all require a 25% local match, of which not more than one-half (12.5%) may be in the form of in-kind services.

The purpose of the FMA program is to provide Planning and Project grants to develop or update Flood Mitigation Plans and for implementing flood mitigation projects. The overall goal of the program is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other NFIP-insurable structures. Specific goals include reducing the number of repetitively or substantially damaged structures and associated claims under the NFIP and encouraging long-term comprehensive mitigation planning.

Planning Grants are awarded to eligible communities to develop the Flood Mitigation Plan for their planning area. Among the requirements for Project Grant applications is this FEMA approved Flood Mitigation Plan. A copy of the approved Plan must be submitted as an attachment to the applicant's submittal. Information contained within the NFIP Community Rating System (CRS) for the applying community may suffice as a Flood Mitigation Plan, however, approval of this information as a Flood Mitigation Plan is made by FEMA. In addition, applicants must supply a map of the geographical planning area and/or the area considered for the flood mitigation project. Deadline for submitting applications for the planning and/or project grant funds is 5:00 P.M., November 30, 1999. Eight double-sided copies of completed Planning and/or Project Grant applications, including the required attachments and Federal forms, must be filed with the Executive Administrator prior to the respective deadline dates.

Applications will be evaluated according to rules provided in 31 TAC Chapter 368. Potential applicants should contact the Board to obtain these rules (which include eligibility requirements), as well as applications for planning and project grants, and the instruction sheets for completing the application, directing requests to Ms. Phyllis Thomas at (512) 463-7926, or Mr. Gilbert Ward at (512) 463-6418, by e-mail to phyllis@twdb.state.tx.us, or by going to the board's web site at www.twdb.state.tx.us under the heading, "What's New".

Completed applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 447, 1700 North Congress Avenue, Austin, Texas; or by mail to the attention of Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-9906814
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: October 13, 1999

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

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