TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 11 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

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.

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 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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.

Texas Administrative Code

The *Texas Administrative Code* (*TAC*) is the official 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*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

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 *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: **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 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. 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

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of $2.00 per page (VISA, MasterCard). (512) 463-5561.

Public Utility Commission of Texas

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Texas Education Agency

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Transportation

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Texas Workers' Compensation Commission

Comptroller of Public Accounts

Texas Juvenile Probation Commission

Texas Department of Human Services

Withdrawn Sections

Texas Commission on Fire Protection

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 II. Texas Historical Commission

Chapter 26. Practice and Procedure

- **13 TAC §§26.1, 26.3-26.6, 26.11-26.13**

The Texas Historical Commission adopts amendments to §§26.1, 26.3-26.5, and 26.11-26.13, and new §26.6, with changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6783). Changes made to the proposed rules are in response to public comments received, and are described in the summary of public comments and responses section of this preamble. Other changes were made for clarification and consistency.

The amendments to §§26.1, 26.3-26.5, and 26.11-26.13, concerning Object, Compliance with Rules and Regulations, Amending of Rules, Definitions, Location and Discovery of Cultural Resources and Landmarks, Designation Procedure, and Designation of Private Property, and the creation of a new §26.6, concerning Antiquities Advisory Board, were needed to clarify and streamline rules related to changes made to the Antiquities Code of Texas by the 74th Texas Legislature. The changes include amendments, and the creation of new rules which reflect the elimination of the Texas Antiquities Committee, and the transfer of their authority under the Antiquities Code of Texas, to the Texas Historical Commission.

These proposed rules establish an Antiquities Advisory Board that will assist the Texas Historical Commission (committee) in the administration of the Antiquities Code of Texas. They also clarify new limitations (created by the 74th Texas Legislature) on the ability of private citizens to nominate for official State Archeological Landmark designation, historic buildings and archeological sites which belong to political subdivisions of the State.

Only three sets of comments were received on the proposed rule changes. A private preservation consultant, and the Texas Department of Transportation suggested amendments to the published version of the rules, and a letter of from a State Legislator, complimented the staff on the proposed rules. The committee felt that several of the suggested amendments were valuable, and integrated those suggestions into the adopted version of the rules. The comments and responses are as follows:

COMMENT: The commenter argued that the 74th Legislature modified the Antiquities Code of Texas so that it is now clear that compliance related to prior notice of projects that could alter, damage or destroy archeological sites is mandatory and not subject to the alternative interpretations by private citizens or political subdivisions of the State. In this regard, the commenter felt that the proposed wording of §26.11(1) that, "agencies should notify" the committee in advance of proposed development projects, should be changed to say that, "agencies shall notify" the committee. The commenter felt that this language more accurately conformed with the State statute and Legislative intent. The commenter also argued that the rules should provide definitions of the terms "contract archeologist" and "recorded archeological site," and that a professional museum curator should be included as a member of the Antiquities Advisory Board, due to curatorial compliance regulations that will go into effect in the year 2000.

RESPONSE: The Historical Commission (committee) agrees with the first three points, and agrees to study the last point. The committee has therefore, revised §26.11(1) and replaced the word "should" with the word "shall," and has added definitions to §26.5 for the terms referenced. As for the argument for adding a curator to the Antiquities Advisory Board, the committee agrees the a curator would be a valuable addition to the board, but the committee believes that some qualified state agency archeologists could assist the committee related to curatorial matters under the Antiquities Code. Additionally, the committee believes that membership in the new board should be limited during the initial years to help expedite matters. The committee did, however, agreed, to monitor the performance of the advisory board, and the membership of the board might be expanded to include a curator at a later date, if deemed appropriate.

COMMENT: The commenter suggested that changes be made in the make-up of the Antiquities Advisory Board so that more archeologists employed by state agencies would serve on the board, and would there by provide more state agencies with broader representation on the board. It was argued this make-up of the board would more closely mirror the make-up of the former Texas Antiquities Committee, which the board is more or less replacing.

RESPONSE: The Historical Commission (committee) disagrees. The committee did not include those proposed changes in the amended version of the rules because they felt that the single state agency archeologist position would afford the few state agencies that have staff archeologists fair representation. It was felt that the yearly rotating appointment between the agencies that have staff archeologists would insure regular representation of those agencies, without expanding the size of the board to too large of a group. The committee did, however, agreed, to monitor the performance of the advisory board, and the membership of the board might be expanded to include other state agency archeologists at a later date, if deemed appropriate.

The amendments and new section are adopted pursuant to the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, House Bill 2056, 70th Legislature, 1987, and by Senate Bill 365, 74th Legislature, 1995), §191.052, which provides the Texas Historical Commission with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

Cross Reference-Title 9, Natural Resources Code.

§26.1. Object. The Texas Historical Commission, hereafter referred to as the committee, is specifically empowered to adopt reasonable rules and regulations concerning salvage and other study of State Archeological Landmarks as well as having other powers specifically outlined in the Antiquities Code of Texas.

§26.3. Compliance with Rules and Regulations. If the permittee fails to comply with any of the rules and regulations of the committee or any of the terms of the specific permit involved, or fails to properly conduct or complete the project, or fails to act in the best interest of the state, or fails to meet terms and conditions of defaulted permits, the committee may immediately cancel the

permit and notify the permittee of such cancellation by registered letter, mailed to the first address furnished to the committee by the permittee. Upon notification of cancellation, when determined to be appropriate, the permittee shall, in the case of ongoing projects, cease work immediately, remove all personnel and equipment, and vacate the area or site within 24 hours. Upon cancellation of a permit, the permittee forfeits all rights to the specimens and data recovered. A permit which has been canceled can be reinstated by the committee if good cause is shown within 30 days.

§26.4. Amending of Rules. The rules and regulations of the committee may be amended with the approval of a majority of the committee members.

§26.5. Definitions. The following words and terms, when used in this chapter and the Antiquities Code of Texas, shall have the following meanings, unless the context clearly states otherwise.

Antiquities Advisory Board–A seven-member board that assists the Texas Historical Commission in reviewing matters related to the Antiquities Code of Texas.

Archeological Site–Any place containing evidence of human activity, including but not limited to the following:

(A) (No change.)

(B) Non-habitation sites. Non habitation sites result from use during specialized activities and may include standing structures. Descriptions of each kind of site are given.

(i)-(iv) (No change.)

(v) Cemeteries and burials, marked and unmarked, are special locales set aside for burial purposes. Cemeteries contain the remains of more than one person placed in a regular or patterned order. Burials, in contrast, may contain the remains of one or more individuals located in a common grave in a locale not formerly or subsequently used as a cemetery. The site area encompasses the human remains present and also gravestones, markers, containers, coverings, garments, vessels, tools, and other goods which may be present. Cemeteries and burials that are publicly owned and are of prehistoric origin (i.e., dating prior to A.D. 1500), or classified as historic, are protected under the Antiquities Code. Cemeteries are considered historic if interments within the cemetery occurred at least 75 years ago. Individual burials within a cemetery are not considered historic unless the interments occurred at least 50 years ago.

(vi)-(x) (No change.)

Commission–The Texas Historical Commission and its staff.

Committee, or Antiquities Committee, or Texas Antiquities Committee–As redefined by the 74th Texas Legislature within §191.003 of the Antiquities Code, the committee means the Texas Historical Commission and/or staff members of the Texas Historical Commission as represented through the Department of Antiquities Protection, Division of Architecture, or the National Register Department.

Contract Archeologist–A professional archeologist who performs or directs archeological investigations under contract.

Designated historic district–Areas of archeological or historical significance indicated by listing on, or determined eligible for inclusion in, the National Register of Historic Places, designated as State Archeological Landmarks, or considered eligible for designation as State Archeological Landmarks, or have been identified by State agencies, or political subdivisions of the State as historically sensitive sites, districts, or areas. This includes designations by local landmarks commissions, boards, or other public authority, and/or through local preservation ordinances.

Public agency or agencies–Any State agency or political subdivision of the State.

Recorded archeological site–Sites which are recorded, listed, or registered with an institution, agency, or university, such as the Texas Archeological Research Laboratory of the University of Texas at Austin.

§26.6. Antiquities Advisory Board. As provided for by the 74th Texas Legislature, within §442.005(r) of the Administrative Code of Texas (relating to the statutes of the Texas Historical Commission), the committee is authorized to create an Antiquities Advisory Board (hereafter referred to as the board). The board will be chaired by the Governor-appointed professional archeologist member of the Texas Historical Commission, and will make recommendations to the committee on issues related to the Antiquities Code of Texas. The Vice Chair will be elected each year by the board from within their membership. The board will also be composed of the following six membership positions: the representative of the Texas Archeological Society, the president of the Council of Texas Archeologists, a state agency archeologist, a contract archeologist, the Governor-appointed professional architect member of the Texas Historical Commission, and the Governor-appointed professional historian member of the Texas Historical Commission. The contract archeologist, will be appointed by the committee, and will serve one three year term that expires on February 1. The board will provide nominations to the committee for the selection of the contract archeologist position. The state agency archeologist will serve a one year term that expires February 1, and the appointment must rotate between the state agencies that have staff archeologists. If the Governor does not appoint a professional archeologist, architect, and historian to the Texas Historical Commission, the committee will appoint such individuals to the board and they will serve for a term of two years or until replaced by a Governor-appointee(s) . Specific duties of the board include providing recommendations on proposed State Archeological Landmark designations, and in resolving disputes regarding the issuance of Texas Antiquities Permits. The board shall convene immediately prior to each quarterly meeting of the committee unless otherwise requested by the board chair, and board meetings shall conform to the Texas Open Meetings Act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The recommendations of the board will be brought to the committee by the board chair and/or one of the other committee members who serves on the board and whose area of expertise is related to the subject under consideration.

§26.11. Location and Discovery of Cultural Resources and Landmarks. The Texas Natural Resource Code of 1977, Title 9, Heritage, Chapter 191, Antiquities Code of Texas, §191.002 (relating to Declaration of Public Policy), declares that it is the public policy and in the interest of the State of Texas to locate archeological sites and other cultural resources, in, on, or under any land within the jurisdiction of the State of Texas. The Antiquities Code, §191.051 (relating to Powers and Duties In General) directs the committee to provide for the discovery and/or scientific investigation of publicly owned cultural resources. The Antiquities Code of Texas, §191.174 (relating to Assistance from State Agencies, Political Subdivisions, and Law Enforcement Officers), further directs the committee, state agencies, political subdivisions of the state, and law enforcement agencies to work together to locate and protect cultural resources when deemed prudent, necessary, and/or in the best interest of the State. To achieve these mandates, the committee reviews construction plans for projects on public lands prior to development to determine the project's potential impact to cultural resources, and invokes its power to issue and supervise survey level antiquities permit investigations in accordance with the Antiquities Code, §191.054 (relating to Permit for Survey and Discovery, Excavation, Restoration, Demolition, or Study and Supervision). These mandates and the re-

view of construction plans may be accomplished in the following manner.

(1) Project notification. As provided for in §191.0525 of the Antiquities Code (relating to Notice Required), public agencies shall notify the committee before ground breaking on public land, and in advance of proposed public development projects that could take, alter, damage, destroy, salvage, or excavate archeological sites, designated historic district, or other cultural resources and/or landmarks on non-federal public land in Texas. The notification should contain a brief written scope of work and a copy of the appropriate topographical quadrangle map with clearly marked project boundaries.

(2) Project review. As provided for in §191.0525 of the Antiquities Code (relating to Notice Required), the committee will respond within 30 days, unless otherwise provided for within §191.0525, of receipt of the review request. The committee shall review submitted documentation and notify the public agency of the possible need for survey level investigations to locate cultural resources situated in the proposed development tract. If the committee does not respond within 30 days, the public agency may proceed without further notice to the committee. Expedited reviews (24 hours) will be accommodated on a case by case basis in emergency situations.

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

§26.12. Designation Procedure.

(a) Nomination. Any group or individual, public or private, and public agencies may submit a property in public ownership to the committee for consideration. The nomination must be submitted to the committee on an approved Application for Nomination Form, available from the Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276, at least 30 days in advance of the scheduled committee meeting date.

(1) Any third-party private individual or a private group that desires to nominate a building or site owned by a political subdivision as a State Archeological Landmark must complete and return to the committee an Application for Nomination Form, and must give notice of the nomination at the individual's or group's own expense, in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(A) be printed in 12-point boldface type;

(B) include the exact location of the building or site; and

(C) include the name of the group or individual nominating the building or site.

(D) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the committee with a Application for Nomination Form. The committee will not consider a site owned by a political subdivision for designation as a State Archeological Landmark unless the notice and affidavit required by this section are attached to an Application for Nomination Form.

(2) If the committee's staff wishes to nominate a historic building, or site for State Archeological Landmark designation, they must give the public agency that owns the property a written notification that a nomination will be presented to the committee. This notification must be received by the public agency a minimum of 15 day prior to the regularly scheduled public meeting of the committee at which the nomination is scheduled to be presented. The committee's staff must also send the public agency complete site information on the proposed nomination.

(b)-(j) (No change.)

§26.13. Designation of Private Property. Cultural resources of national, state, or local significance in private ownership may be nominated by individuals or institutions holding title to the property on which the resources are located. Nominations must be made on a committee approved Application for Nomination Form. By submitting an Application for Nomination Form, the owner agrees that if the property in question is designated as a State Archeological Landmark, he or she will file a notice of the designation with the deeds clerk of the county where the property is located, and pay any filing fees required. After filing of the designation form, the committee may provide the owner of the landmark with one cast aluminum marker. The owner will be responsible for prompt and permanent placement of the marker or markers on the site in such a way as not to damage the resource. A site or structure on privately owned property which is designated as a State Archeological Landmark is afforded the same protection under the Code as resources on public property.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514749 Curtis Tunnell
Executive Director
Texas Historical Commission

Effective date: December 5, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5711

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 67. State Adoption and Distribution of Instructional Materials

The Texas Education Agency (TEA) adopts the repeal of §§67.1, 67.4, 67. 7, 67.10, 67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39, 67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63, 67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87, 67.90, 67.101, 67.104, 67.107, 67.110, 67.113, 67.121, and 67. 124, concerning state review, adoption, and distribution of instructional materials, without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8132). The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The repeals will allow the State Board of Education to adopt new rules regarding instructional materials that comply with Senate Bill 1. A new Chapter 67 is adopted in a separate submission.

Under Senate Bill 1, a rule adopted by the State Board of Education normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The State Board of Education, by an affirmative vote of at least two-thirds of the board members, adopts an earlier effective date of January 1, 1996. The earlier date is necessary to ensure that new rules are in effect to continue activities to be conducted under the call of Proclamation 1994 of the State Board of Education.

No comments were received regarding adoption of the repeals.

Subchapter A. General Provisions

• 19 TAC §§67.1, 67.4, 67.7, 67.10

The repeals are adopted under Senate Bill 1, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514841 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 1, 1996

Proposal publication date: October 6, 1995

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

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Subchapter B. State Adoption, Acquisition, and Custody of Instructional Materials

- **19 TAC §§67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39, 67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63, 67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87, 67.90**

The repeals are adopted under Senate Bill 1, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514842 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 1, 1996

Proposal publication date: October 6, 1995

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

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Subchapter C. Local Operations

- **19 TAC §§67.101, 67.104, 67.107, 67.110, 67.113**

The repeals are adopted under Senate Bill 1, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514843 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 1, 1996

Proposal publication date: October 6, 1995

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

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Subchapter D. Special Instructional Materials

- **19 TAC §67.121, §67.124**

The repeals are adopted under Senate Bill 1, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514844 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 1, 1996

Proposal publication date: October 6, 1995

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

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Chapter 67. State Adoption and Distribution of Instructional Materials Adopted under Proclamation 1994

The Texas Education Agency (TEA) adopts new §§67.1, 67.4, 67.7, 67.10, 67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39, 67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63, 67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87, 67.90, 67.101, 67.104, 67.107, 67.110, 67.113, 67.121, and 67.124, concerning state review, adoption, and distribution of instructional materials adopted under Proclamation 1994, without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8134). The new rules are adopted as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The rules will help ensure that students have access to quality instructional materials. Current Chapter 67 is adopted for repeal in a separate submission.

Senate Bill 1 specifies new requirements concerning the process for state review, adoption, and distribution of instructional materials. New rules implementing the statutory provisions are currently being developed and will be proposed in a future issue of the *Texas Register*. Section 69 of the conforming amendments to Senate Bill 1, however, recognizes that activities initiated under Proclamation 1994 must continue under the old statutes and agency rules. New Chapter 67 maintains established requirements for instructional materials related to content, manufacturing standards, the state adoption process, and local operations.

The adopted new rules contain three substantive changes to current Chapter 67. The first change adds a new subsection (a) to §67.1 to clarify that the rules in Chapter 67 will expire on May 1, 1997.

The second change is contained in §67.107. In the past, school districts have indicated a need for greater flexibility in the local selection process for state-adopted instructional materials. The change to §67.107 would allow each local board of trustees to determine appropriate local policy for selecting instructional materials. Composition and appointment of local committees is no longer specified in the rule.

The third change adds new subsection (e) to §67.113. The state currently specifies freight carriers that will deliver shipments of instructional materials to schools. The new subsection (e) allows approved textbook depositories to contract directly with freight carriers to deliver state-ordered instructional materials, since approved depositories have expertise and staff available to negotiate the most appropriate and cost-efficient contracts with carriers.

In addition, the name "Texas Education Agency" is substituted for "Central Education Agency" throughout the rules to comply with Senate Bill 1.

Under Senate Bill 1, a rule adopted by the State Board of Education normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The State Board of Education, by an affirmative vote of at least two-thirds of the board members, adopts an earlier effective date of January 1, 1996. The earlier date is necessary to ensure that new rules are in effect to continue activities to be conducted under the call of Proclamation 1994 of the State Board of Education.

No comments were received regarding adoption of the new sections.

Subchapter A. General Provisions

- **19 TAC §§67.1, 67.4, 67.7, 67.10**

The new sections are adopted under the Texas Education Code, §12.16, as continued by §69 of the conforming amendments to Senate Bill 1, which authorizes the State Board of Education to proceed with the adoption of textbooks, whose adoption is in progress, under the Texas Education Code, Chapter 12, as that chapter existed on January 1, 1995.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514845 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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Subchapter B. State Adoption, Acquisition, and Custody of Instructional Materials

- **19 TAC §§67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39, 67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63, 67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87, 67.90**

The new sections are adopted under the Texas Education Code, §12.16, as continued by §69 of the conforming amendments to Senate Bill 1, which authorizes the State Board of Education to proceed with the adoption of textbooks, whose adoption is in progress, under the Texas Education Code, Chapter 12, as that chapter existed on January 1, 1995.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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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Subchapter C. Local Operations

- **19 TAC §§67.101, 67.104, 67.107, 67.110, 67.113**

The new sections are adopted under the Texas Education Code, §12.16, as continued by §69 of the conforming amendments to Senate Bill 1, which authorizes the State Board of Education to proceed with the adoption of textbooks, whose adoption is in progress, under the Texas Education Code, Chapter 12, as that chapter existed on January 1, 1995.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Education Agency

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

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Subchapter D. Special Instructional Materials

- **19 TAC §67.121, §67.124**

The new sections are adopted under the Texas Education Code, §12.16, as continued by §69 of the conforming amendments to Senate Bill 1, which authorizes the State Board of Education to proceed with the adoption of textbooks, whose adoption is in progress, under the Texas Education Code, Chapter 12, as that chapter existed on January 1, 1995.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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 101. Assessment

- **19 TAC §§101.1-101.6**

The Texas Education Agency (TEA) adopts the repeal of §§101.1-101.6, concerning student assessment, without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8144). The rules establish requirements for assessment, including definitions and procedures related to: the purposes of assessment, exit level requirements, testing appropriate students; security and confidentiality, reporting results, and district achievement testing.

The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The repeals will allow the State Board of Education to adopt new rules regarding student testing that comply with Senate Bill 1. A new Chapter 101 is adopted in a separate submission.

Under Senate Bill 1, a rule adopted by the State Board of Education normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The State Board of Education, by an affirmative vote of at least two-thirds of the board members, adopts an earlier effective date of January 1, 1996. The earlier date is necessary to allow new rules to be adopted that comply with the requirements of Senate Bill 1 regarding testing and to ensure consistency in the administration of state-developed criterion-referenced tests scheduled for spring 1996. A January 1, 1996, effective date will permit test administration materials to be developed that reflect the new rules and will provide adequate time for local district personnel involved in all phases of the assessment to be trained on the new procedures before the administration of the spring 1996 tests.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Senate Bill 1, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement Senate Bill 1, §7.102.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514849 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

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Proposal publication date: October 6, 1995

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

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The Texas Education Agency (TEA) adopts new §§101.1-101.6, concerning student assessment, with changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8144).

The new rules are adopted as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The rules implement the requirements of Senate Bill 1 that pertain to topics associated with student assessment, such as development and administration of tests, testing requirements for graduation, testing accommodations and exemptions, and test security and confidentiality. Other topics include reporting of test results and administering and reporting group-administered achievement tests. Current Chapter 101 is adopted for repeal in a separate submission.

Under the new rules: students will be assessed in the foundation curriculum with tests that reflect the essential skills and knowledge; high school students will have two paths for fulfilling testing requirements for graduation; private schools will no longer be precluded from administering the tests; the public will have access to the state-developed tests; and each student will be tested unless the measure is deemed inappropriate for the student.

The following changes to the proposed rule text were made in response to public comment. New subsection (j) was added to §101.1 to clarify that a private school administering tests under the Texas Education Code, Chapter 39, Subchapter B, must pro-

vide to the commissioner of education the information described in the Texas Education Code, §39.051(b). New subsection (k) was added to §101.1 to clarify requirements concerning the use of end-of-course tests.

Language was added to §101.2(b) to clarify that a student using either the exit level or end-of-course tests to fulfill the testing requirements for graduation must be tested by either a Texas public school district or Texas education service center. New subsection (c) was added to §101.2 to clarify that an exempt special education student who successfully completes the requirements of his or her individual educational plan shall receive a high school diploma.

Language was added to §101.3(b) to clarify that testing accommodations may be permitted for alternative assessments, as well as criterion-referenced tests. Language was added to §101.3(f) to clarify that any combination of using the Spanish version criterion-referenced test and exempting for limited English proficiency shall not total more than three years.

Under Senate Bill 1, a rule adopted by the State Board of Education normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The State Board of Education, by an affirmative vote of at least two-thirds of the board members, adopts an earlier effective date of January 1, 1996. The earlier date is necessary to comply with the requirements of Senate Bill 1 regarding testing and to ensure consistency in the administration of state-developed criterion-referenced tests scheduled for spring 1996. A January 1, 1996, effective date will permit test administration materials to be developed that reflect the new rules and will provide adequate time for local district personnel involved in all phases of the assessment to be trained on the new procedures before the administration of the spring 1996 tests.

The following comments were received regarding adoption of the new rules.

Comment. Concerning §101.3(d), Pampa ISD requested that if guidelines for alternative assessment are developed, these guidelines should be communicated to districts. In addition, the district posed a specific question regarding testing exempted students.

Agency Response. As soon as a system for alternative assessment for exempt students has been proposed, developed, and reported to the legislature no later than December 1, 1996, policies will be developed and communicated to districts. Procedures for testing exempted students are addressed in the appropriate test administration materials.

Comment. Advocacy, Incorporated, recommended adding a statement to §101.2 to clarify that a special education student who completes the requirements of his/her individual education plan will receive a high school diploma.

Agency Response. The agency agreed to make these changes.

Comment. Inclusion Works! also requested an addition to §101.2 similar to that recommended by Advocacy, Incorporated. In addition, this organization recommended changing §101.3(b), since alternative assessments will eventually be developed for use in the school accountability system.

Agency Response. The agency agreed to make these changes.

Comment. San Antonio ISD questioned whether a student who had been dismissed from special education could continue to be exempted from the tests if deemed appropriate by the admission, review, and dismissal committee.

Agency Response. The agency agreed to make this clarification to §101.3(c) .

Comment. Killeen ISD expressed concern that the statement from the previous assessment rule that precluded a school district from adopting policies that would allow a student to fail a course solely on the basis of failure on the state end-of-course tests was not included in the proposed Chapter 101.

Agency Response. This statement is inserted as §101.1(k).

Comment. Concerning §101.3, Spring Branch ISD suggested that subsection (f) be clarified to preclude no more than a total of three years of exemptions for a limited English proficient student. Several other issues related to exemptions for limited English proficiency were raised.

Agency Response. The agency agreed to add the suggested language to §101. 3(f).

Comment. An individual from Houston ISD proposed revisions to §101.3 that would eliminate exemptions from the Texas Assessment of Academic Skills (TAAS) tests for students with limited English proficiency and would require that they be tested with either the English or Spanish versions of the tests. A student's scores could be disaggregated as determined by the student's language proficiency assessment committee (LPAC). Since no exemptions would exist, alternative assessments would not be necessary.

Agency Response. The agency has not agreed to make these changes. The Texas Education Code (TEC), §39.027, permits exemptions for limited English proficient students and provides for an alternative assessment system for exempt students.

Comment. The Texas Association of School Administrators (TASA) has indicated the need for clarification on assessment issues related to testing home school students, testing requirements for private schools choosing to administer the TAAS and end-of-course tests, the possible role of public schools in testing private school students, exit level notification of testing requirements, documentation of testing modifications, procedures for LPACs, requirements for releasing tests, and provisions for providing norm-referenced test data to TEA.

Agency Response. The agency agreed to add §101.1(j), which mirrors the TEC by requiring private schools who test to report performance data and other information to TEA. Other issues raised by TASA will be addressed in one of the following ways: in the agency's contract with private schools who administer the test(s), in procedures currently under development for testing private school students, in appropriate test administration materials, or in guidelines for LPACs to be developed by the agency. Answers to TASA's questions about why tests are released and norm-referenced test data must be reported are found in requirements of TEC, §39.023(d) and §39.032(b), respectively.

Comment. Plano ISD expressed concern about the provision for a recent immigrant to receive a one-time deferral from the exit level test, with "recent immigrant" being defined as an individual entering the United States no more than 12 months before the administration of the exit level test from which the postponement is sought. Plano ISD recommended that this time period be extended to 24 months.

Agency Response. The agency has not agreed to make this change. In order to provide exit level students who are recent immigrants with as many opportunities as possible to pass all sections of the exit level TAAS test, students need to begin taking the test no more than one year after their arrival in the United States.

Comment. Concerns were raised by several individuals representing private and home school organizations who met with agency staff to discuss issues related to testing private/home schoolers about whether a private or home school student may use the score obtained from the exit level TAAS test or end-of-course tests given at a private or home school to meet the testing requirements for graduation if that student later enters a Texas public school.

Agency Response. The agency agreed to add language to §101.2(b) that states that if a student plans to use the exit level or end-of-course test results to meet the Texas public school testing requirements for graduation, the student must be tested either by a Texas public school district or an education service center.

The new sections are adopted under the Texas Education Code, §§39.022, 39. 023, 39.027, 39.029, and 39.032, which authorizes the State Board of Education to create and implement a statewide student assessment program.

§101.1. Development and Administration of Tests.

(a) The State Board of Education (SBOE) shall adopt a plan for assessment that complies with the requirements of the Texas Education Code (TEC), Chapter 39, Subchapter B. The adopted plan shall remain in effect until legislation mandates its revision.

(b) For each criterion-referenced test developed under the TEC, Chapter 39, Subchapter B, SBOE shall approve the essential skills and knowledge on which the instrument is based and shall establish the standards for student performance.

(c) The commissioner of education shall ensure that each criterion-referenced test developed under the TEC, Chapter 39, Subchapter B, meets accepted standards for educational testing.

(d) Prior to inclusion on a criterion-referenced test developed under the TEC, Chapter 39, Subchapter B, each test item shall be reviewed under secure conditions according to accepted standards for educational testing.

(e) The commissioner of education shall specify a schedule for testing and field testing that supports reliable and valid assessments.

(f) The commissioner of education may provide alternate dates for the administration of the exit level and end-of-course tests to students who are migratory children, as defined in the TEC, §39.029, and who are out of the state.

(g) A public or private school administering the tests required by the TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials. Each school shall maintain test security and confidentiality as delineated in the TEC, §39.030. Each public school shall assist with field testing and other activities necessary to implement the requirements of the TEC, Chapter 39, Subchapter B.

(h) The superintendent of each public school district or chief administrative officer of each private school administering the tests shall be responsible for all testing activities, including the following:

(1) scheduling testing;

(2) maintaining security; and

(3) administering the tests to each eligible student.

(i) A private school administering tests adopted under the TEC, Chapter 39, Subchapter B, shall reimburse the Texas Education Agency (TEA) for each test administered. The per-student cost may not exceed the cost of administering the same test to a student enrolled in a public school district.

(j) A private school administering tests under the TEC, Chapter 39, Subchapter B, shall provide to the commissioner of education the information described in the TEC, §39.051(b).

(k) A school district may adopt policies regarding the local use of an end-of-course test. However, during the benchmark year and the subsequent school year, a school district shall not adopt policies that would allow a student to fail a course solely on the basis of failure on the state end-of-course test.

§101.2. Testing Requirements for Graduation.

(a) The superintendent of each school district shall be responsible for the following:

(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh grade year of the essential skills and knowledge to be measured on the exit level and end-of-course tests administered under the Texas Education Code (TEC), Chapter 39, Subchapter B;

(2) notifying each 7th-12th grade student new to the district of the testing requirements for graduation, including the essential skills and knowledge to be measured; and

(3) notifying each student required to take the exit level or end-of-course tests and out-of-school individuals of the dates, times, and locations of testing.

(b) To be eligible to receive a high school diploma, a nonexempt student must demonstrate satisfactory performance, as determined by the State Board of Education (SBOE), on either the exit level or end-of-course tests specified in the TEC, §39.025. A student using either the exit level or end-of-course tests to fulfill the testing requirements for graduation must be tested by either a Texas public school district or Texas education service center.

(c) An exempt special education student who successfully completes the requirements of his or her individual educational plan (IEP) shall receive a high school diploma.

(d) According to procedures specified in the appropriate test administration materials, an eligible student or out-of-school individual may retest each time the exit level or end-of-course tests are administered.

(e) On the exit level or end-of-course tests, a student shall not be required to demonstrate performance at a standard higher than the one in effect when he or she was first eligible to take the test.

(f) A foreign exchange student who has waived in writing his or her intention to receive a Texas public high school diploma may be excused from the exit level testing requirement as specified in the TEC, Chapter 39, Subchapter B.

§101.3. Testing Accommodations and Exemptions.

(a) Each nonexempt student shall take the criterion-referenced tests administered under the Texas Education Code (TEC), Chapter 39, Subchapter B.

(b) Testing accommodations on the criterion-referenced tests and alternative assessments administered under the TEC, Chapter 39, Subchapter B, are permitted unless they would make a particular test invalid as a measure for school accountability. The decision to make a testing accommodation shall take into consideration the needs of the student and the accommodation in classroom instruction the student routinely receives. Permissible testing accommodations shall be described in the appropriate test administration materials.

(c) A student participating in a special education program under the TEC, Chapter 29, Subchapter A, shall take the criterion-referenced test unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individual educational plan (IEP). Each exemption or testing accommodation shall be documented in the student's IEP.

(d) Each exempted special education student shall participate in an appropriate alternative assessment, as determined by the student's ARD committee.

(e) A student of limited English proficiency, as defined by the TEC, Chapter 29, Subchapter B, shall take the criterion-referenced test unless the student's language proficiency assessment committee (LPAC) determines that it is an inappropriate measure of the student's academic progress based on the student's limited language proficiency.

(f) The LPAC shall select one of the options outlined in paragraphs (1)-(3) of this subsection for each limited English proficient (LEP) student. The criteria for this determination shall be documented in the student's permanent record file and shall conform with required procedures for identification of a limited English proficient student. Any combination of the options outlined in paragraphs (1) and (2) of this subsection shall not exceed three consecutive years. Any combination of using the Spanish version criterion-referenced test and exempting for limited English proficiency shall not total more than three years. A school district shall make a reasonable effort to determine a student's previous exemption and testing history. For students who have been enrolled continuously in school beginning at least in the first grade, the LPAC is discouraged from selecting a combination of the options outlined in paragraphs (1) and (2) of this subsection for more than two years.

(1) The LEP student may be exempted from the criterion-referenced test.

(2) The LEP student may be administered the Spanish version criterion-referenced test.

(3) The LEP student may be administered the English version criterion-referenced test.

(g) Each exempted student of limited English proficiency shall participate in an appropriate alternative assessment, as determined by the student's LPAC.

(h) No student shall be exempted from an exit level or end-of-course test based on limited English proficiency. However, a student who is a recent immigrant with limited English proficiency may postpone only one time the initial administration of the exit level test. The term "recent immigrant" is defined as an immigrant entering the United States no more than 12 months before the administration of the exit level test from which the postponement is sought.

§101.4. Test Security and Confidentiality.

(a) Violation of security or confidential integrity of any test required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall be prohibited.

(b) A person who engages in conduct prohibited by this section may be subject to sanction of credentials.

(c) Procedures for maintaining the security and confidential integrity of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidential integrity of a test is defined as any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include the following acts and omissions:

(1) duplicating secure examination materials;

(2) disclosing the contents of any portion of a secure test;

(3) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(4) changing or altering a response or answer of an examinee to a secure test item or prompt;

(5) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(6) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(5) of this subsection; or

(7) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(6) of this subsection.

(d) The superintendent of each public school district or chief administrative officer of a private school shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B. The superintendent or chief administrative officer shall be responsible for notifying the Texas Education Agency (TEA) in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. Failure to report can subject the person responsible to sanction of credentials.

(e) At the end of each school year, TEA shall release all test items used to compute a student's score, answer keys, and written composition scoring guides for tests administered under the TEC, Chapter 39, Subchapter B. After a period of five years, each test item that has been field-tested but not used on a test will be released.

§101.5. Reporting of Test Results.

(a) The superintendent of a public school district shall report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.

(b) A public school district or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students and his or her parent or guardian of test results, observing confidentiality requirements in the TEC, §39.030.

(c) All test results shall be included in each student's academic achievement record and on the official transcript and shall be furnished for each student transferring to another public school district or private school.

§101.6. Administering and Reporting of Group-Administered Achievement Tests.

(a) An assessment instrument required under the Texas Education Code (TEC), §39.032, is defined as a nationally normed achievement test that is group administered and reported publicly in the aggregate. A test given for a special purpose, such as program placement or individual evaluation, is not included in this definition.

(b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the district for verification. The district shall have 90 days to verify the accuracy of the data and report the results to TEA. Data shall include the name, level, and form of the test, the year in which the test was normed, and the mean normal curve equivalent aggregated for each subject area by grade, campus, and district. State norms shall be provided if available.

(c) A company or organization that reports results using national norms that do not comply with the TEC, §39.032(c), is liable for damages as stated in the TEC, §39.032(d).

(d) To maintain the security and confidential integrity of group-administered achievement tests, school districts shall follow the procedures for test security and confidentiality delineated in §101.4 of this title (relating to Test Security and Confidentiality).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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 157. Hearings and Appeals

Subchapter A. Hearings Concerning Students with Disabilities under the Individuals with Disabilities Education Act

• 19 TAC §§157.1-157.9

The Texas Education Agency (TEA) adopts the repeal of §§157.1-157.9, concerning hearings related to students with disabilities under the Individuals with Disabilities Education Act (IDEA), without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8149). The rules establish requirements for such hearings, including definitions and procedures related to: applicability, requesting a hearing, hearing officers, hearing rights, prehearings, hearings, and student status during proceedings.

The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The review process will result in a clearer, more concise statement of the rules related to hearings and appeals.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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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Subchapter C. Hearings Held under the Texas Driver and Traffic Safety Education Act

• 19 TAC §157.26

The Texas Education Agency (TEA) adopts the repeal of §157.26, concerning hearings held under the Texas Driver and Traffic Safety Education Act, without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8149). The rule establishes hearing rules for commercial driver training schools and driver training instructors regulated under the Texas Driver and Traffic Safety Education Act.

The repeal is necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The repeal will allow the State Board of Education to adopt new rules that implement new legislative provisions concerning such hearings. New §157.31 is adopted in a separate submission.

Under Senate Bill 1, a rule adopted by the State Board of Education normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The State Board of Education, by an affirmative vote of at least two-thirds of the board members, adopts an earlier effective date of December 15, 1995. Because the State Board of Education is proposing an earlier effective date of December 15, 1995, for new §157.31, the earlier effective date adopted for the repeal of current §157.26 must be the same to avoid regulatory overlap.

The repeal is adopted under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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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• 19 TAC §157.31

The Texas Education Agency (TEA) adopts new §157.31, concerning hearings held under the Texas Driver and Traffic Safety Education Act, without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8149).

The new rule is adopted as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. The rule establishes hearing rules for commercial driver training schools and driver training instructors regulated under the Texas Driver and Traffic Safety Education Act. It also implements changes in law adopted under Senate Bill 964, 74th Texas Legislature, 1995. The rule will help promote timely and efficient resolution of driver training school and driver training instructor license appeals. The repeal of current §157.26, which pertains to such hearings, is adopted in a separate submission.

Under Senate Bill 1, a rule adopted by the State Board of Education normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The State Board of Education, by an affirmative vote of at least two-thirds of the board members, adopts an earlier effective date of December 15, 1995. The earlier effective date is necessary to implement Senate Bill 964, which has an effective date of September 1, 1995.

The USA Training Company, Inc., suggested stylistic changes to §157.31(h) (1) and (5), concerning service of documents. The suggestions, which would not have changed the operation or effect of either provision, were rejected as purely stylistic.

The new section is adopted under Texas Civil Statutes. Article 4413(29c), §4(a), which authorize the State Board of Education to adopt rules necessary to carry out the Texas Driver and Traffic Safety Education Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Subchapter D. Independent Hearing Examiners

• 19 TAC §157.41

The Texas Education Agency (TEA) adopts new §157.41, concerning certification criteria for independent hearing examiners, with changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8151). The rule is necessary to certify examiners who will hear cases involving the adopted termination of teachers by a school district. The rule provides that hearings will be conducted at the district or the education service center. Thus, district employees will no longer be required to travel to Austin to attend employee hearings as witnesses or representatives.

The following two changes to the proposed rule text were made in response to public comment. The change to §157.41(e) reduces the experience required in contested evidentiary proceedings from 20% to 10% of the examiner's practice. This change also clarifies requirements concerning the nature of the examiner's involvement in such proceedings.

The change to subsection (i), which is relettered subsection (j), revises requirements concerning cases in which insufficient numbers of examiners are certified for a geographic region of the state. Rather than provisionally certifying an examiner, the commissioner of education may assign a certified hearing examiner whose office is within reasonable proximity to the school district.

An editorial change was made to §157.41(f) to clarify the rule text. New §157.41(i) provides for a voluntary evaluation of the system to allow the State Board of Education to consider the propriety of its criteria as applied to hearing examiners and as evidenced in the hearings process. The change to subsection (j), which is relettered subsection (k), clarifies that each examiner seeking recertification must reapply on a date specified by the commissioner of education. Finally, an editorial change was made to this section, substituting the word "region" for "area."

The following comments were received regarding adoption of the new rule.

Comment. The commentator requested more flexibility in the requirements specified in §157.41(e) regarding contested case experience and requested that the provision regarding insufficient examiners in an area be amended to allow districts to request a certified examiner from another area.

Comment. The commentator requested that the provision regarding insufficient examiners in a region specify that subsections (b) and (d) of the proposed rule be mandatory for provisionally certified examiners.

Comment. The commentator requested more flexibility in the experience criteria, suggesting a three-year experience criteria as opposed to five years. The commentator also requested that, to avoid training provided by a special interest group to a restricted class of participants, the continuing legal education requirement be limited to courses open to any member of the State Bar of Texas.

Comment. The commentator requested that the experience requirement be lessened for individuals who currently serve as hearing examiners.

The following organizations commented regarding adoption of the new rule: Texas Association of School Boards; Association of Texas Professional Educators; and Texas Classroom Teachers Association. One individual also commented on the new rule.

In response to public comment, the experience requirement has been modified from 20% participation in contested evidentiary proceedings to 10%. A decrease in the number of years of licensure and experience was not recommended because the quality of the examiners' corps will be decreased when less experienced attorneys are used. Special provisions for current hearing examiners were not adopted as it was an inappropriate singling out of a limited class of applicants.

The provision dealing with insufficient examiners in an area was revised in response to concerns of the State Board of Education Committee on Personnel and public comment. Instead of provisionally certifying examiners, certified independent examiners from another area will be assigned, based upon reasonable proximity, as determined by the commissioner. The continuing legal education requirement is not recommended for change because there is no evidence that such training is offered by interest groups and, if offered, would engender bias and a lack of impartiality in an examiner.

The new section is adopted under the Texas Education Code, §21.252, which authorizes the State Board of Education to adopt criteria for the certification of independent hearing examiners in consultation with the State Office of Administrative Hearings.

§157.41. Certification Criteria for Independent Hearing Examiners.

(a) License required. An individual who is certified as an independent hearing examiner, hereafter referred to as a "certified examiner," must be licensed to practice law in the State of Texas.

(b) Representations prohibited. A certified examiner, and the law firm with which the examiner is associated, must not serve as an agent or representative of:

(1) a school district;

(2) a teacher in any dispute with a school district; or

(3) an organization of school employees, school administrators, or school boards.

(c) Moral character. A certified examiner must:

(1) possess good moral character; and

(2) not have been convicted, given probation (whether through deferred adjudication or otherwise), or fined for:

(A) a felony;

(B) a crime of moral turpitude; or

(C) a crime that directly relates to the duties of an independent hearing examiner in a public school setting.

(d) Status as a licensed attorney. A certified examiner must:

(1) currently be a member in good standing of the State Bar of Texas;

(2) within the last five years, not have had the examiner's bar license:

(A) reprimanded, either privately or publicly;

(B) suspended, either probated or otherwise; or

(C) revoked;

(3) have been licensed to practice law in the State of Texas or any other state for at least five years prior to application; and

(4) have engaged in the actual practice of law on a full-time basis, as defined by the Texas Board of Legal Specialization, for at least five years.

(e) Experience. During the three years immediately preceding certification, a certified examiner must have devoted a minimum of 50% of the examiner's time practicing law in some combination of the following areas, with a total of at least one-tenth or 10% of the examiner's practice involving substantial responsibility for taking part in a contested evidentiary proceeding convened pursuant to law in which the examiner personally propounded and/or defended against questions put to a witness under oath:

(1) civil litigation;

(2) administrative law;

(3) school law; or

(4) labor law.

(f) Continuing education. During each year of certification, a certified examiner must receive credit for ten hours of continuing legal education in the area of school law during the period January 1 to December 31 of each year of certification.

(g) Sworn application. In order to be certified as an independent hearing examiner, an applicant must submit a sworn application to the commissioner of education. The application shall contain the following acknowledgments, waivers, and releases.

(1) The applicant agrees to authorize appropriate institutions to furnish relevant documents and information necessary in the investigation of the application, including information regarding grievances maintained by the State Bar of Texas.

(2) If selected as a certified examiner, the applicant has the continuing duty to disclose grievance matters under subsection (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as a certified examiner.

(3) If selected as a certified examiner, the applicant has the continuing duty to disclose criminal matters under subsection (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as a certified examiner.

(h) Assurances as to position requirements. In the sworn application, the applicant must:

(1) demonstrate that the applicant currently maintains an office or offices within the State of Texas;

(2) designate the office locations from which the applicant will accept appointments;

(3) demonstrate that the applicant provides telephone messaging and facsimile services during regular business hours;

(4) demonstrate that the applicant possesses a personal computer capable of producing text in the format specified by the commissioner;

(5) agree to attend meetings of independent hearing examiners in Austin, Texas, at the examiner's expense; and

(6) agree to comply with all reporting and procedural requirements established by the commissioner.

(i) The commissioner may solicit voluntary evaluations from parties to a case regarding their observations of the independent hearings process.

(j) Insufficient examiners in a region. In the event that insufficient numbers of examiners are certified for any geographic region of the state, the commissioner may assign a certified hearing examiner whose office is within reasonable proximity to the school district.

(k) Annual recertification. Certification expires on December 31 of each calendar year. All examiners seeking recertification shall reapply on a date specified by the commissioner.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514854 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: December 15, 1995

Proposal publication date: October 6, 1995

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

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Chapter 169. Relationship with University Interscholastic League

• 19 TAC §169.1

The Texas Education Agency (TEA) adopts the repeal of §169.1, concerning the University Interscholastic League (UIL), without changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8152). The rule requires the UIL to submit all rules and procedures to the State Board of Education for approval, disapproval, or modification. The repeal is necessary to comply with Senate Bill 1, 74th Texas Legislature, 1995, which mandates a sunset review process for specified TEA rules and, at the same time, eliminates State Board of Education rulemaking authority in this area. Senate Bill 1, §33.083, however, continues to require the UIL to submit all rules and procedures to the State Board of Education.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514855 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: September 1, 1996

Proposal publication date: October 6, 1995

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

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TITLE 22. EXAMINING BOARDS

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 571. Licensing

Examinations

• 22 TAC §571.18

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.18, concerning Provisional License, with changes to the proposed text as published in the June 27, 1995, issue of the *Texas Register* (20 TexReg 4617).

The adopted amendment removes the reference to the §1.5 standard deviation, since the Professional Examination Service no longer uses this in calculating passing scores on the national examinations. They require that candidates either be a graduate of an American Veterinary Medical Association (AVMA) accredited College of Veterinary Medicine or have an Educational Commission For Veterinary Graduates (ECFVG) Certificate. The rule also removes a specific fee amount to avoid rule revision each time fees change. Changes made subsequent to the published proposed version of the rule are editorial in nature, and have no impact on those applicants seeking to comply with this rule.

The agency did not receive any written comments concerning the amendment to this rule.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The amendment affects the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, §10(b), which provide the Board with the authority to grant an inactive licenses.

§571.18. Provisional Licensure.

(a) A provisional license is not available to individuals who have failed the Texas State Board Examination prior to making application for a provisional license. The Board will grant a provisional license to a person who provides:

(1) (No change.)

(2) proof of having passed the National Board and Clinical Competency Test with a minimum passing score of 75%;

(3)-(5) (No change.)

(6) possess an Educational Commission for Foreign Veterinary Graduates Certificate if not a graduate of an AVMA accredited College of Veterinary Medicine.

(b) (No change.)

(c) At the time application is made for a provisional license, the applicant must complete an application form furnished by the Board and submit supporting documentation as required including but not limited to:

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

(6) An application fee in an amount set by the Board.

(d)-(g) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514742 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: December 5, 1995

Proposal publication date: June 27, 1995

For further information, please call: (512) 305-7555

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

The following adopted new and amended sections submitted by the Texas Department of Insurance will be serialized beginning in the November 24, 1995 issue of the *Texas Register*. The effective date of these adoptions is December 6, 1995.

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter X. Preferred Provider Plans

• 28 TAC §§3.3701-3.3706

Chapter 11. HMO's

Subchapter A. General Provisions

• 28 TAC §11.1, §11.2

Subchapter C. Applications for Certificate of Authority

• 28 TAC §11.204

Subchapter D. Regulatory Requirements for an HMO Subsequent to Issuance of a Certificate of Authority

• 28 TAC §11.301

Subchapter L. Standard Language for Mandatory and

Other Provisions

- 28 TAC §11.1103

Subchapter P. Prohibited Practices

- 28 TAC §11.1500, §11.1501

Subchapter Q. Other Requirements

- 28 TAC §§11.1600-11.1603

Part II. Texas Workers' Compensation Commission

Chapter 114. Self-Insurance

- 28 TAC §114.15

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §114.15, without changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7453).

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §407.046 to require that hearings to determine whether a certificate of self-insurance should be revoked, be conducted by the State Office of Administrative Hearings (SOAH) rather than by commission staff. House Bill 1089, §1.57 provides that transfer of a hearing to SOAH takes effect January 1, 1996 and a hearing held before or pending on December 31, 1995 is governed by the law in effect immediately before September 1, 1995. Procedures for requesting and conducting hearings transferred to SOAH are contained in commission rules adopted as Chapter 148 of this title (relating to Hearings Conducted by the State Office of Administrative Hearings). Hearings where the first day of a hearing in which evidence is admitted occurs prior to December 31, 1995 will continue to be conducted in accordance with Chapter 145 of this title (relating to Hearings Under the Administrative Procedure Act). The amendment to §114.15 implements this requirement and clarifies that the commission may request the hearing.

Comments were solicited through the *Texas Register* and a public hearing was held on October 11, 1995 regarding this rule. No comments were received on the proposal.

The amendment is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; and the Texas Labor Code, §407.046, as amended by House Bill 1089, 74th Legislature, 1995, which provides the procedure for revocation of certificates of authority to self insure for those employers that fail to comply with requirements of the Workers' Compensation Act or Commission rules and mandates that the Commission refer all recommendations for revocation of authority to self-insure to the State Office of Administrative Hearings for a hearing on the matter; and the Texas Government Code, §2003.021(c), as added by House Bill 1089, 74th Legislature, 1995, which provides that SOAH shall conduct hearings under Title 5 of the Texas Labor Code, as provided by that title.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514697 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700

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Chapter 120. Employers

- 28 TAC §120.2, §120.3

The Texas Workers' Compensation Commission (the commission) adopts amendments to §120.2, concerning the employer's report of injury, and §120. 3, concerning the employer's supplemental report of injury, with changes to the proposed text as published in the August 18, 1995 issue of the *Texas Register* (20 TexReg 6298).

Changes in the proposed text of §120.2 are found in subsections (a), (b), (c), (d), (e), (g), and (h) of the rule. Changes in the proposed text of §120.3 are found in subsections (b), (c), (d), (e), and (f). Changes made to the proposed rule in response to public comment received in writing and at a public hearing held on October 11,. 1995, are described in the summary of comments and responses section of this preamble. Other changes were made for clarification, consistency or to correct typographical or grammatical errors, and are described as follows. The language referring to occupational diseases in 120.2(a) and (c) was unclear. Subsection (a) has been revised to include the phrase "each occupational disease of which the employer has received notice of injury or has knowledge". The first sentence of §120.2(c) has been revised to include the phrase "after the receipt of notice of injury or the acquisition of knowledge of an occupational disease". This clarifies that the duty of an employer to report is triggered by a notice of injury to the employer under Texas Labor Code, §409.001 or knowledge as defined in §120. 2. For consistency with §120.2(b) and §124.1(c), "postmark" has been changed to "mailed" and "reported via facsimile (fax)" has been added in §120.3(d). For consistency, all references to "carrier" have been changed to "insurance carrier" and references to "injured employee" have been changed to "employee" in both §120.2 and §120.3. Section 120.2(c) has been revised to change the phrase "after the employee's first day of absence" to "after the employer's absence for more than one day", to make the language consistent with statutory language. Reference to "First Report of Injury" has been changed to "first report of injury" in both §120.2 and §120.3 to avoid the inference that a specific form must always be used to report an injury.

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §409.005 to require that employers report injuries to insurance carriers and that carriers then report the injury to the commission electronically. Prior to this statutory amendment, employers were required to report injuries directly to the commission and the carrier. The amendment to the Texas Labor Code, §409.005 also requires the employer to deliver a copy of the report of injury to the injured employee and that the report include a plain language summary of the employee's rights and responsibilities. The commission is authorized to adopt rules relating to the information to be contained in the report and relating to the development and implementation of an electronic filing system. The amendments to §120.2 and §120.3 bring the rules into compliance with, and implement, the new statutory requirements. An amendment to §124.1 is simultaneously being adopted to address revisions to the procedure for carrier's report of injury resulting from the changes in the statute.

Deletion of the statutory requirement that the employer file a first report of injury with the commission was necessary to implement a system of electronic filing. Requiring electronic submission of claims data is aligned with goals and improvements of the workers' compensation system at the national level. TWCC has participated with the International Association of Industrial Accident Boards and Commissions (IAIABC) over the past year to develop national standards for reporting workers' compensation data. In conjunction with the IAIABC, several states, carriers, third party administrators, and servicing agents attend monthly technical development meetings to develop and resolve issues at the national level.

Amended §120.2 requires that an employer report injuries, deaths and occupational diseases within the statutory eight days to the employer's insurance carrier on a form prescribed by the commission. The report may be submitted to the carrier by mail, personal delivery, tele-claims, facsimile, or electronic reporting. Tele-claims reporting should be utilized only by mutual agreement between the employer and carrier to ensure that the carrier has an appropriate receiving system in place for this method of reporting. The employer is also required to provide the information listed in 120.1(a) to the injured employee together with a summary of the employee's rights and responsibilities. The text for this summary is specifically set out in the rule. Penalties for failure of the employer to file or provide the report as required are included in the rule. The employer is required to maintain a record of the date the report of injury is filed with the carrier and of the date the report and summary are provided to the employee.

Amended §120.3 provides the procedures for an employer to file supplemental reports of injury with the insurance carrier and the injured employee when the employee returns to work or experiences additional days of dis-

ability as a result of the injury. The supplemental report may be submitted to the carrier by mail, personal delivery, facsimile, or electronic reporting, and may be submitted to the employee by mail or personal delivery. The employer is also required to maintain a record of the date the supplemental report of injury is filed with the carrier and of the date the supplemental report is provided to the employee.

The statutory and rule revisions will result in faster and more efficient claims filing, as well as reduction in costs over manual paper submissions and mailings. Earlier reporting of injuries will result in system savings to all participants. Accuracy and integrity of data will be improved. Other benefits include increased timeliness of data reporting, increased efficiency in overall claim processing, improved tracking and reporting for research and analysis, fewer compliance violations, and enhanced customer service by freeing up commission staff resources.

Comments regarding the proposed amendment to §120.2 and §120.3 were received from the following groups: Hammerman & Gainer; Lockheed Martin; Travelers Insurance; Brown & Root; The Southland Corporation; Texas Association of Business & Chambers of Commerce; Texas Workers' Compensation Insurance Fund; Business Insurance Consumers Association of Texas; and, Foley's.

All commenters were in support of some provisions and opposed to other provisions of the proposed amendments.

Summaries of the comments and commission responses are as follows:

The following comments were received regarding the proposed amendment to §120.2.

COMMENT: Commenter requested that the Commission delay adoption of the proposed changes to §120.2 to allow them time to assess the impact that may result from the proposed changes.

RESPONSE: The commission disagrees. The 74th Legislative Session changed the law to require for electronic reporting from the carriers and the Commission has been working with carriers for the past year to implement electronic reporting. The rule changes are needed to implement House Bill 1089 as soon as possible in as efficient manner as possible for all concerned parties. In addition, the Texas Labor Code, and commission rules include provisions for waiver of the electronic reporting requirement.

COMMENT: Commenter expressed concern that subsection (b) defines the content of the report the employer must report to the employee, but does not specifically define the employer's report to the carrier. Commenter suggested the following language to replace the phrase "in the form, format and, manner" in subsection (b): "The report shall contain the information required by §120.1(a)(1)-(7) and shall contain the information necessary for an insurance carrier to electronically transmit a First Report of Injury record to the commission. The commission shall prescribe the content of the report through a TWCC-Advisory issued to employers."

RESPONSE: The commission agrees that the content of the first report of injury should be clarified and has revised subsection (b) as follows: "The report shall contain the information required by §120.1(a) of this title (relating to Employer's Record of Injuries), any additional information prescribed by the Commission in accordance with Texas Labor Code, §402.042(b) (11), and shall contain the information necessary for an insurance carrier to electronically transmit a first report of injury to the commission. The commission shall prescribe the form, format, and manner of the report". An advisory regarding the content of the report has already been issued by the commission.

COMMENT: Commenter objected to the requirement in subsection (c) that the employer maintain a record of the postmark date of the report of injury because the postmark date is controlled by the U.S. Post Office and not necessarily the same date as the date mailed or the date received by the carrier. Also the commenter pointed out that §120.2(b) permits the employer to file the First Report of Injury with the carrier via fax, but the fax option is not mentioned in §120.2(c). Commenter suggested that the word "postmarked" be changed to "received" and that "sent via fax" be added in the second sentence of §120.2(c). Commenter also suggested that requiring employers to maintain a record of the date the report of injury is mailed and the carriers to maintain a record of the date a report is received will provide the information necessary for compliance and audit purposes.

RESPONSE: The commission agrees. The reference to "postmarked" in §120. 2(c) has been changed to "mailed". The postmark requirement has also been deleted from Rule 124.1(b). The following language was added to §120.2(g) "If the carrier receives the report by mail, it will be presumed that the report was mailed four days prior to the date received by the carrier." This language is necessary because the requirement that carriers maintain a record of the postmarked date of the report they have received was deleted. The presumption of date mailed will aid in enforcement of the rule. The commission agrees that §120.2(b) and (c) should be consistent to avoid confusion and therefore "sent via facsimile" has been added to subsection (c).

COMMENT: Commenter felt it was unclear in subsection (d) whether the report to the carrier will be the same as the report to the employee and recommended that the reports be as nearly identical as possible to reduce work and expense to employers. Another commenter expressed concern regarding the requirement that the carrier and employee be provided with the same first report of injury information.

RESPONSE: The commission agrees that subsection (d) should be clarified. The intent of this subsection is to ensure that every injured employee receives certain information regarding the employee's claim. The language in subsection (d) has been revised to clarify that the report to the employee may contain the same information as the report to the carrier or at a minimum must contain the information that is listed in §120.1(a).

COMMENT: Commenter suggested the addition of the words "or their designated agent" when referring to the employer in subsections (d) and (e) to address the utilization of telephonic claim reporting systems. Other commenters questioned the requirement and process of providing the employee a copy of the report and summary of rights and responsibilities to the employee "at the same time" it is filed with the carrier and inquired whether the carrier could provide the report to the injured employee instead. One commenter requested the rule allow the current telephonic reporting processes to continue as long as the reports are mailed to the employee within 24 hours of the telephonic report to the carrier. Commenter also questioned whether the report must be hand delivered or whether it can be mailed to the employee. Another commenter felt it may be difficult to comply with the requirement that an employer deliver a written copy of the report to the injured employee at the time the report is made to the insurance company when the employer uses telephone reporting to the carrier. Commenter suggested recognizing telephone reporting and allowing the carrier to send a copy to the employer and injured employee following notification.

RESPONSE: The commission disagrees that the recommended changes are necessary or desirable. The employer, as principal, has the ultimate responsibility for ensuring that the report is provided to the injured employee. There is no statutory prohibition for the delegation of this ultimate employer responsibility, and the manner in which the employer fulfills this responsibility is not dictated by statute or this rule. It is clear that the employer is the responsible party under the Texas Labor Code, §409.005 and if the information is not provided, the employer may be subject to administrative penalties.

COMMENT: Commenter questioned if the employer must provide the injured employee a copy of the first report of injury and the summary of rights and responsibilities for no lost time (medical only) claims?

RESPONSE: The employer is not required to provide the employee with a copy of the report of injury and the summary of rights and responsibilities for injuries that do not meet the reporting requirements of §120.2(a). This does not preclude the employer from providing the employee with this information to help maintain a positive employer/employee relationship.

COMMENT: There were many suggested changes to the notice to employees in subsection (e). Under 1. of the "rights" section of the notice commenters generally wanted to narrow the language. Commenters recommended inclusion of defenses such as intoxication, attempt unlawfully to injure another, injury to yourself intentionally, injury during horseplay, injury by another person for personal reasons and conditions such as repetitious mental trauma, certain heart attacks, etc. One commenter felt the statement in 1. was too broad and suggested changing it to "You have a right to file a claim for benefits." Other commenters advocated adding that the injury must have occurred in the "course and

scope" of employment. Another suggestion was to add the word "may" to the right stated in 1. and specify that it must be for a "work-related injury".

RESPONSE: The commission agrees in part. To clarify exceptions to compensability, defenses which may be raised under Texas Labor Code, §406. 032 have been added to 1. under "rights" in the employee notice. Inclusion of physical conditions which may not be compensable have not been added because compensability is determined by a number of factors. To include such conditions would be confusing. The last sentence of 1. has been replaced with the following: "You may not receive benefits if your injury occurred while you were intoxicated, you injured yourself intentionally or while unlawfully attempting to injure someone else, you were injured by another person for personal reasons, you were injured while voluntarily participating in an off-work activity, you were injured as a result of an act of God, or your injury occurred during horseplay." "Course and scope" language has not been added because this term has legal significance which is not easily converted to plain language and not easily understood by employees. The commission agrees with the concept that the title sentence to 1. should convey the message that there are conditions under which benefits are not available and has been changed to read: "You may have the right to receive benefits."

COMMENT: Under 2. of the "rights" section of the employee notice one commenter felt the proposed language was misleading because if an exacerbation or subsequent injury occurs, life time medical benefits are not available. Commenter suggested changing the language to "You are entitled to all health care reasonably required to treat your injuries from this claim". Another commenter recommended that the word "reasonably" be added before "necessary".

RESPONSE: The commission agrees in part. A major benefit under the Texas Workers' Compensation Act is the ability to receive life time medical care for a compensable injury and the commission disagrees that the language in 2. is misleading. The commission agrees to add the statutory language "reasonable and necessary" in referring to medical care.

COMMENT: Under 3. of the "rights" section of the employee notice, two commenters suggested changes to clarify the notice. One suggestion was to add that an employee can "choose any Commission approved health care provider qualified and appropriate to treat your injury" to emphasize that there is a list of doctors an employee must choose from. Another suggestion was to reword 2. as follows: "You have the right to the initial choice of doctor".

RESPONSE: The commission agrees to clarify the section by modifying the language of 3. to read: "You have the right to the initial choice of doctor". The Texas Labor Code, does not require that a treating doctor be determined to be "qualified and appropriate" only that the doctor be listed on the commission's list of approved doctors.

COMMENT: Under 4. of the "rights section of the employee notice, a commenter suggested adding the phrase "at your own expense" to the stated right to hire an attorney.

RESPONSE: The commission disagrees. The suggested change is unnecessary. The word "hire" is clearly an indication that the employee will be responsible to pay for the costs of an attorney out of benefits.

COMMENT: Under 5. of the "rights" section of the employee notice, one commenter suggested adding the phrase "free of charge" to the stated right to receive assistance from commission staff and ombudsmen and another commenter suggested adding the telephone number for contacting an ombudsman.

RESPONSE: The commission agrees that the additional information suggested would benefit employees and has added to 5. that commission assistance is free of charge and a telephone number for contacting commission staff. In addition, the commission has added language to clarify that assistance to claimants should be from staff that are appropriate and qualified to address the claimant's questions and to clarify that ombudsman assistance is available in the event of a dispute resolution proceeding.

COMMENT: Under 6. of the "rights" section of the employee notice, a commenter stated that the concept of confidentiality and privacy were being confused and suggested the following language: "Specific information regarding your claim is considered confidential and may only be released to specific parties upon request". Another commenter suggested replacing the word "like" with "such as" to make it clear that the examples presented are not an exhaustive list.

RESPONSE: The commission agrees in part. The term "privacy" in the title to 6. has been changed to "confidentiality" which better reflects the concept as set out in the Texas Labor Code. The language suggested by the commenter is not detailed enough. The current text better conveys the concept of confidentiality to the employee. The word "like" has been replaced with "such as" for grammatical reasons.

COMMENT: One commenter felt that in general, the notice places more emphasis on rights than responsibilities and recommended that both rights and responsibilities be mentioned in the preamble to the rights section or that the items be listed in chronological sequence.

RESPONSE: The commission disagrees that these changes are necessary or beneficial. Commenter's proposed addition to the preamble to the rights statement does not add anything substantive to the notice. Grouping the rights and responsibilities is more easily understood than listing the items chronologically. This grouping does not imply any greater importance to the first group listed nor does the order items are listed within a group. The wording of 1. through 5. of the "responsibilities " section of the employee notice has been revised to make it consistent with the wording of the items listed in the "rights" section to maintain equal emphasis of both sections.

COMMENT: Two commenters expressed concern with the wording of the notice to employee contained in subsection (e) in its reference to occupational disease. Both commenters felt the language used implied that an employee must know for sure that he or she has an occupational disease before a notification of injury should be filed. Texas Labor Code, §409.001(a)(2) requires an employee to notify the employer no later than 30 days after the date the employee knew or should have known that the injury may be related to the employment. Commenters suggested changes to 1. and 2. under the "responsibilities" section of the notice to employee. One commenter recommended using the phrase "first knew you may have had a work-related illness" and the other recommended "first knew your illness might be work-related."

RESPONSE: The commission agrees that the wording in 1. and 2. of the "responsibilities" section should be clarified regarding occupational illnesses. The language in both sections of the notice has been revised to read: ". . .date you first knew your illness might be work-related. . ."

COMMENT: Under 1. of the "responsibilities" section of the notice to employee one commenter suggested adding "as soon as possible" to the responsibility to report an injury to the employer and another commenter suggested that the statement be worded in the past tense.

RESPONSE: The commission disagrees. The Texas Labor Code, specifically allows an employee 30 days to report an injury or illness to the employer. To require that the notice be given "as soon as possible" is contrary to the statute. Changing the statement in 1. to the past tense is not necessary to convey its meaning.

COMMENT: Under 2. of the "responsibilities" section of the notice to employee one commenter suggested the addition of language which would detail the procedure for filing an Employee's Notice of Injury and another commenter suggested that it be specified that completion of the claim form is in addition to timely reporting.

RESPONSE: The commission disagrees that either suggested change should be made. These changes would add detail which is not necessary to inform employees of their basic responsibilities. In addition, there is no statutory requirement that an employee report an injury on a form. As a result, the suggested change would be misleading.

COMMENT: Three commenters suggested that in 3. under the "responsibilities" section of the notice to employee, the insurance company be added as an entity which should be contacted in the event of an income change. One commenter felt it was important the insurance company be notified first, the others simply wanted both the insurance company and the commission to be notified. It was also suggested that the notification be "immediately" given, that "whether your income goes up or down" be replaced with "whenever your income goes up or down", and that an employee be advised of penalties for fraudulently obtaining benefits.

RESPONSE: The commission agrees in part. The commission agrees that modifying the insurance carrier as well as the commission would be beneficial and promote efficient claims management. The commission does not agree however, that the word "immediately" should be added or that the insurance carrier should be notified first, because there is no statutory requirement for such actions. The commission disagrees with modifying the language regarding income because the suggested language provides no change in meaning. No additions have been made to advise an employee of penalties for fraudulently obtaining benefits because this is not a "right" or "responsibility" and therefore not appropriate for inclusion in the notice. Section 3. has been revised to include notice of a change in income to both the insurance carrier and the commission.

COMMENT: Four commenters recommended rewording 4. under the "responsibilities" section of the notice to employee to clarify that the employee should make sure that the doctor understands that the injury will be covered under workers' compensation. Another commenter recommended changing the word "that" to "whether" to keep a potential claimant from taking it literally that they are being directed to tell the doctor it's a work related injury when it may not be.

RESPONSE: The commission agrees that a clarification in the language of 4. would be beneficial. The title to section 4. has been revised to read: " Tell your doctor how you were injured and if you believe it may be work-related."

COMMENT: Three commenters recommended adding to 5. under the "responsibilities" section of the notice to employee that the insurance company should be notified in addition to the commission of a change in the employee's home or work address or telephone number.

RESPONSE: The commission agrees that notification of both the insurance carrier and the commission of a change in the employee's address or telephone number will provide for more efficient claims management. The language in 5. has been revised to include notification of the insurance carrier also.

COMMENT: One commenter recommended the addition of the following as a responsibility in the notice to employee: "If you seek benefits for which you are not legally entitled, you can be criminally prosecuted resulting in significant penalties and fines and/or imprisonment. Do not accept any benefits for which you are not entitled or you will be responsible for repayment and possible fraud prosecution."

RESPONSE: The commission disagrees. The addition of the recommended section may discourage the filing of legitimate workers' compensation claims.

COMMENT: Commenter objected to the requirement that the notice to employee set out in subsection (e) be furnished to the employee in both English and Spanish and recommended that the language in (e) be changed as follows: ". . . The text for the summary shall be in a language common to the employer's employee population."

RESPONSE: The commission agrees in part. Texas Labor Code, §409.013 as added by House Bill 1089, 74th Legislature, 1995, requires that plain language information provided to the public must be available in English and in Spanish. The rule already contains a provision that the notice also be provided in any other language common to the employer's employee population. For clarification and to require the employer to provide the information in English and in the language common to the particular employee, (e) was changed to read: "in English and Spanish, or in English and any other language common to the employee."

COMMENT: One commenter was strongly in favor of the requirement in subsection (e) that the employer provide information to injured employees regarding rights and responsibilities under the law, but felt the requirement that the notice text in the rule be used without any additional words or changes was too restrictive. Commenter suggested that the rule be changed to permit employers to develop their own informal brochures for employees which may include more information than the prescribed text. If the information deviates from the rule, the commenter suggested that it be filed and approved by the commission prior to usage. Another commenter agreed that the requirement in subsection (e) was too inflexible and suggested modifying the rule to allow the notice language to be incorporated into the employer's notice.

RESPONSE: The commission agrees in part. The summary of rights and responsibilities needs to be separate from and in addition to any employer information to ensure that employees across the state are receiving, at a minimum, the prescribed information. The employer is free to provide additional information, so long as the additional information is provided separately and does not make the prescribed information misleading or interfere with its meaning. For clarification the first sentence of subsection (e) was revised to read: ". . .The employer shall also provide the employee a summary of the rights and responsibilities at the time the report required in subsection (c) of this section is filed with the insurance carrier". In addition, the following sentence was added to subsection (e) "This does not preclude the employer or carrier from providing the employee with additional information but such information must be separate from and in addition to the text contained in this subsection and may not infer that the additional information is being provided or required by the Commission."

COMMENT: Commenter suggested that the rights and responsibilities be put on the back of the TWCC-1 or the back of one sheet of paper. Commenter also suggested creating a form in triplicate (one copy to the carrier, one copy to the employee, and one copy for employer's record) for employers that do not utilize telephonic claim reporting.

RESPONSE: The commission agrees that these are good suggestions for providing the summary of rights and responsibilities in an efficient manner. These suggestions will be taken into consideration in the development of forms.

COMMENT: Commenter recommended deletion of subsection §120.2(f) because it is the role of the Texas Workers' Compensation Commission to ensure compliance with the law not to dictate the process in which an employer is to comply. Commenter also contended that the date of the report of injury will be the same date of the provision of the summary of rights and responsibilities to the employee so keeping a record of both dates serves no purpose. Commenter additionally stated the opinion that the statutory provisions of the Texas Labor Code, §409.010 and §409.005 are redundant.

RESPONSE: The commission disagrees that this section should be deleted because the record required is necessary for compliance and audit purposes and for enforcement of this rule. The rule does not dictate how an employer should keep the record, only that the information must be maintained. The commission agrees that some portions of §409.010 and §409.005 are similar, however not necessarily redundant. §409.005 is directed to the employer while §409. 010 requires action by the commission. The employer is in a position to provide the summary of rights and responsibilities at an earlier time than information from the commission. The commission publication is mailed at a later date and provides more information than is required to be provided by the employer.

COMMENT: Commenter suggested modifying subsection (h) to read as follows: "An employer who fails to file the report as required by this rule and by §409.005 of the Texas Labor Code, waives the. . ." to put the employer on notice where in the law the requirements for submission of the report are set out.

RESPONSE: The commission agrees that adding a reference to §409.005 would be helpful to employers. The following has been added to the first sentence of subsection (h): "pursuant to Texas Labor Code, §409.005, and may be subject to a penalty not to exceed $10,000 pursuant to Texas Labor Code, §415.021 for repeated violation". In addition, the same phrase has been added to §120. 3(f) for consistency. The last sentence of subsection (h) has been revised to read: "An employer who fails to file the report as required by this rule and by the Texas Labor Code, §409.005 waives the right to reimbursement of voluntary benefits even if no administrative penalty is assessed."

The following comments were received regarding the proposed amendment to §120.3.

COMMENT: Commenter suggested that the rule be consistent in its use of either "filed" or "provided" when describing delivery of the report to the employee.

RESPONSE: The commission agrees that the references should be consistent and has revised all references in §120.2 and §120.3 to "filed" when referring to the commission and the insurance carrier and to "provided" when referring to the employee.

COMMENT: Commenter expressed concern that §120.3 does not define the content of the Supplemental Report of Injury and suggested that the rule include a provision that the commission issue an advisory prescribing the content of the report. Commenter also was concerned that the reference to the TWCC-6 form had been removed from the rule in the proposal and felt this may result in compliance problems. Also, tele-claim systems are not designed to capture supplemental reports and so commenter suggested either removing the reference to tele-claims reporting or requiring the employer to submit a written report confirming the information provided via a telephone/tele-claims report in subsection (b).

RESPONSE: The commission agrees that reference to telephone and tele-claims reporting should be deleted and that the employer should file the Supplemental Report of Injury in writing. Such reference has been deleted from subsections (b) and (d). A written report is necessary to avoid miscommunication to the carrier concerning lost time and to avoid underpayment or overpayment to the injured employee. The commission disagrees that a definition of content for the Supplemental Report of Injury is necessary in this rule. The content will be determined by the commission just as the "form, format, and manner" in the rule infers. Currently the correct form is the TWCC-6, but by deleting reference to this specific form number the commission has the flexibility to modify forms as necessary without amendment of the rule. When forms are changed, TWCC has a process to notify parties of changes in sufficient time to implement the use of the forms.

COMMENT: Commenter objected to the three-day filing requirement in subsection (c) stating that it is not practical or reasonable and suggested that the filing period be changed to ten days. Commenter pointed out that this information is available from other sources and that the payment of benefits is not dependent on the Supplemental Report of Injury.

RESPONSE: The commission disagrees that the three day filing requirement should be changed. Timely reporting of return to work or additional days of disability is necessary to insure timely initiation of additional benefits or the termination of benefits. The receipt of a TWCC-6 form by the insurance carrier is often the first notice of an employee's return to work or further disability. Timeliness of this report is critical because suspension or reinstatement of income benefits are frequently based on receipt of this report.

COMMENT: Commenter contended that the penalty provision of subsection (f) is too broad and that an employer should not be fined for failure to maintain a record of the date a supplemental report of injury is filed. Commenter recommended changing subsection (f) as follows: "Failure of an employer to file the Supplemental Report of Injury as required in this section, without good cause, is a Class D administrative violation, subject to a penalty not to exceed $500.

RESPONSE: The commission disagrees that subsection (f) is too broad. The maintenance of a record of the date a supplemental report of injury is filed should be included in the requirements of this section. This record is necessary for compliance and audit purposes. A penalty is necessary to encourage and enforce maintenance of the record.

The amendments are adopted pursuant to the Texas Labor Code, §402.042(b) (11), which allows the executive director to prescribe the form, manner, and procedure for transmission of information to the commission; Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; and the Texas Labor Code, §409.005, as amended by House Bill 1089, 74th Legislature, 1995, which provides the procedure for filing a report of injury and the format to be used.

§120.2. Employer's First Report of Injury.

(a) The employer shall report to the employer's insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results in more than one day's absence from work for the injured employee. As used in this section, "knowledge" means receipt of written or verbal information regarding diagnosis of an occupational disease, or the diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

(b) The report shall contain the information required by §120.1(a) of this title (relating to Employer's Record of Injuries), any additional information prescribed by the commission in accordance with the Texas Labor Code, §402.042(b)(11), and shall contain the information necessary for an insurance carrier to electronically transmit a first report of injury to the commission. The commission shall prescribe the form, format, and manner of the report.

(c) The report shall be filed not later than the eighth day after the receipt of notice of injury or the acquisition of knowledge of an occupational disease, or the eighth day after the employee's absence for more than one day from work due to injury or death. For purposes of this section, a report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted or sent via facsimile. The employer shall maintain a record of the date the report of injury is filed with the insurance carrier.

(d) The employer shall provide a written copy of the report to the injured employee or to the employee's last known mailing address, at the time the report is filed with the insurance carrier. The written report may be the report specified in subsection (b) of this section or at a minimum shall contain the information listed in §120.1(a) of this title (relating to Employer's Record of Injuries).

(e) The employer shall also provide the employee a summary of rights and responsibilities at the time the report required in subsection (c) of this section is filed with the insurance carrier. The text for the summary shall be in English and Spanish, or in English and any other language common to the employee. This does not preclude the employer or carrier from providing the employee with additional information but such information must be separate from and in addition to the text contained in this subsection and may not infer that the additional information is being provided or required by the Commission. The following English text and the Spanish text provided by the commission must be used without any additional words or changes.
Figure 1: 28 TAC §120.2(e)

(f) The employer shall maintain a record of the date the copy of the report of injury and the summary of rights and responsibilities were provided to the employee.

(g) If a report has not been received by the insurance carrier, the employer has the burden of proving that the report was filed within the required time frame. If the carrier receives the report by mail, it will be presumed that the report was mailed four days prior to the date received by the carrier. The employer has the burden of proving that good cause exists if the employer failed to timely file or provide the report.

(h) Failure of an employer to file the report as required with the insurance carrier or to provide a copy of the report as required to the employee without good cause is subject to a penalty not to exceed $500, pursuant to Texas Labor Code, §409.005, and may be subject to a penalty not to exceed §10,000 pursuant to Texas Labor Code, §415.021 for repeated violation. An employer who fails to file the report as required by this rule and by the Texas Labor Code, §409.005 waives the right to reimbursement of voluntary benefits even if no administrative penalty is assessed.

§120.3. Employer's Supplemental Report of Injury.

(a) As used in this section, the term "employer" means the employer for whom the employee was working when injured and the filing requirements apply during the time the employee is entitled to temporary income benefits.

(b) As provided in §129.4 of this title (relating to Adjustment of Temporary Income Benefit Amount), the employer shall file the Supplemental Report of Injury, in the form, format and manner prescribed by the commission. The report may be filed in writing, by electronic data interchange, or facsimile (fax). The report shall be filed

with the employer's insurance carrier and provided to the employee within ten days after the end of each pay period in which the employee has a change in earnings as a result of the injury or within ten days after the employee resigns or is terminated.

(c) For injuries requiring a first report of injury to be filed, the employer shall file the Supplemental Report of Injury with the employer's insurance carrier and provide a copy to the employee within three days after:

(1) the employee returns to work; or

(2) the employee, after returning to work, experiences an additional day(s) of disability as a result of the injury.

(d) For purposes of this section, a report is filed with the insurance carrier when personally delivered, mailed, reported via facsimile (fax), or electronically submitted. A report is provided to the employee when personally delivered or mailed.

(e) The employer shall maintain a record of the date the supplemental report of injury is filed with the insurance carrier and provided to the employee. If a report required by this section has not been received by the insurance carrier, the employer has the burden of proving that the report was filed within the required time frame. The employer has the burden of proving that good cause exists if the employer failed to file the report.

(f) Failure to comply with the requirements of this section, without good cause, is a Class D administrative violation, subject to a penalty not to exceed $500, pursuant to Texas Labor Code, §409.005, and may be subject to a penalty not to exceed $10,000 pursuant to Texas Labor Code, §415.021 for repeated violation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514705 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: August 18, 1995

For further information, please call: (512) 440-3700

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Chapter 124. Carriers: Required Notices and Mode of Payment

• 28 TAC §124.1

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §124.1, concerning notice of injury, with changes to the proposed text published in the August 18, 1995 issue of the *Texas Register* (20 TexReg 6299).

Changes in the proposed text are found in subsections (a), (b), (d), (e), (g), and a subsection (h) has been added. Changes made to the proposed rule are in response to public comments received and are described in the summary of comments and responses section of this preamble. Other changes are made for clarification, consistency or to correct typographical or grammatical errors, and are described as follows. For clarification, the provision allowing a request for a waiver of the electronic filing requirement was moved from subsection (e) to (g) and the specific requirements for requesting a waiver were added. A penalty provision for noncompliance with the rule has been added as subsection (h). This provision will aid in enforcement of the rule.

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §409.005 to require that employers report injuries to insurance carriers and that carriers then report the injury to the commission electronically. Prior to this statutory amendment, employers were required to report injuries directly to the commission and the carrier. The commission is authorized to adopt rules relating to the information to be contained in the report and relating to the development and implementation of an electronic filing system. The amendment to §124.1 adapts the language in the rule to implement the requirement for the employer to file with the carrier and the requirement for electronic filing of reports of injury by the insurance carrier. Amendments to §120.2 and §120.3 are simultaneously being adopted to address revisions to the employer's procedures resulting from the change in the statute.

Deletion of the statutory requirement that the employer file a first report of injury with the commission was necessary to implement a system of electronic filing. Requiring electronic submission of claims data is aligned with goals and improvements of the workers' compensation system at the national level. The Texas Workers' Compensation Commission has participated with the International Association of Industrial Accident Boards and Commissions (IAIABC) over the past year to develop national standards for reporting workers' compensation data. In conjunction with the IAIABC, several states, carriers, third party administrators, and servicing agents attend monthly technical development meetings to develop and resolve issues at the national level.

Amended §124.1 defines "written notice of injury" as used in the Texas Workers' Compensation Act, §409.021 and requires an insurance carrier to maintain a record of each notice of injury and supplemental report of injury received. The carrier is also required to create a record of each notice of injury received by tele-claims or electronic submission. Upon request, the carrier is to provide the commission a business record affidavit regarding the reports and relevant dates. The amendment gives the insurance carrier the statutory seven days from the date the carrier receives the notice of injury from the employer to submit it electronically to the commission. The amendment provides that the commission shall prescribe the form, format, and manner of electronic submission and may waive the electronic filing requirement.

The statutory and rule revisions will result in faster and more efficient claims filing, as well as result in reduction in costs over manual paper submissions and mailings. Earlier reporting of injuries will result in system savings to all participants. Accuracy and integrity of data will be improved. Other benefits include increased timeliness of data reporting, increased efficiency in overall claim processing, improved tracking and reporting for research and analysis, fewer compliance violations, and enhanced customer service by freeing up commission staff resources.

Comments were received from the following groups: Hammerman & Gainer; Employers Claims Adjustment Services, Inc.; Texas Workers' Compensation Insurance Fund; and Roan & Autrey.

All commenters opposed some portions of the proposed amendment.

Summaries of the comments and commission responses are as follows:

COMMENT: Two commenters expressed concern that subsection (a)(1) and (3) do not require the notice of injury to the carrier to be in writing and questioned whether this complies with Texas Labor Code, §409.021. Another commenter recommended deletion of the word "written" from the title and from §124.1(a).

RESPONSE: Staff disagrees that subsection (a)(1) and (3) should be revised as suggested by commenters. In its amendments to Texas Labor Code, §409.005, the legislature specifically removed the requirement that a report of injury by an employer to its insurance carrier be in writing. Texas Labor Code, §409.021 was not revised however and still refers to receipt of a written notice of injury as triggering the initiation of compensation. The legislative intent appears to be to remove the requirement that the first report of injury be in writing. This rule is based upon that legislative intent. The provisions of the rule are restrictive enough to prevent such contacts as a request for preauthorization from being interpreted as notice of injury while allowing verbal notice and tele-claims reporting. The verbal reporting of an injury is an option for the employer and if this method is chosen, the date of verbal notification will begin the time periods for other actions. Subsection (a)(3) has been revised to clarify that notification outside of usual sources will be viewed as a "written notice of injury" when no first report of injury has been previously filed by the employer.

COMMENT: Commenters were concerned about the requirement in subsection (b) that a carrier maintain a record of the date of each notice of injury or supplemental report of injury. One commenter felt that this would be an enormously expensive and time consuming task as it would include every telephone call on a claim, because it is not limited to written notices, and because it is not limited to the first notice. This commenter suggested requiring the keeping of records of only the first written notice and that a "received" stamp should be sufficient for other documents. Another commenter described the requirement as burdensome and suggested deletion of the second sentence in subsection (b) and the simple date-stamping of reports received by mail.

COMMENT: Commenters objected to the provision of subsection (b) which requires carriers to keep the postmark date of every mailed notice, because it requires the retention of the envelope for every piece of paper relating to a claim until a log entry is made. Commenters feel this will delay distribution of mail to adjusters and create a burden for carrier mail clerks to distinguish what material should be kept. In addition, one commenter fears that the log of postmark dates will not be sufficient in an audit and thus both the envelopes and a log would be required. It was suggested that the first sentence of subsection (b) be deleted and that a record of first notices of injury only be required.

RESPONSE: Staff agrees in part. This section does not require a carrier to maintain a record of "every telephone call on a claim" as suggested by the commenter, but only telephone calls or other non-written communications which inform the carrier of initial lost time of more than one day. Supplement Reports of Injury are required by §120.3 to be in writing. Prompt reporting is critical to timely and accurate benefit delivery and if the information received is verbal, it should be reduced to writing to ensure that benefits are being paid timely and accurately. To clarify this, the phrase "via tele-claims reporting or electronic submission" has been added to the fourth sentence of subsection (b). The record required to be maintained by this subsection is necessary for ensuring compliance with the notice requirements and for confirming when time limits start. The requirement to keep a record log of the postmark date of mailed notices has been deleted. In addition the rule has been revised to make it clear that the carrier only needs to create and maintain a record of every " notice of injury" as defined in subsection (a) . Carrier must also keep a record of the date received. The first sentence of subsection (b) has been revised as follows: "A carrier shall create and maintain a record of the date each notice of injury as defined in subsection (a) of this section and each Supplemental Report of Injury is received and the manner of filing". In addition, a sentence has been added to subsection (b) which clarifies that the date received is the date the carrier obtains possession of the record. This addition addresses the practice of waiting to date stamp reports until the day following receipt.

COMMENT: Commenter recommended deletion of subsection (d) stating that it appears to be obsolete because employers will no longer file written notice of injuries with the commission.

RESPONSE: Staff disagrees that subsection (d) should be deleted because this subsection does not apply just to notice of injury. For instance, this subsection can apply to a medical report. The term "written notice" has been changed to "document or form" for consistency.

COMMENT: One commenter suggested changing subsection (e) to read "regardless of whether compensability is disputed" rather than "regardless of whether coverage is disputed" to clarify that the commission's statutory authority is to establish compensability not insurance coverage. Another commenter suggested the same change stating that if the carrier is disputing coverage, then this information should not be reported.

RESPONSE: Staff agrees in part. The intent of this section was to require the carrier to submit the First Report of Injury information anytime a notice of injury was received from an employee. It was not the intention to exclude a situation where coverage or compensability was disputed. This requirement will prevent claims from going unreported. The language in subsection (e) has been revised to read "regardless of whether coverage or compensability is disputed".

The amendment is adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; and the Texas Labor Code, §409.005, which provides the procedure for filing a report of injury and the format to be used.

§124.1. Written Notice of Injury.

(a) Written notice of injury, as used in The Texas Workers' Compensation Act (Act), §409.021, consists of the insurance carrier's earliest receipt of:

(1) the employer's first report of injury as described in commission §120.2 of this title (relating to Employer's Report of Injury);

(2) the notification provided by the commission under subsection (c) of this section; or

(3) if no first report of injury has previously been filed by the employer, any other notification regardless of source, which fairly informs the insurance carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury, and facts showing compensability.

(b) A carrier shall create and maintain a record of the date each notice of injury as defined in subsection (a) of this section and each Supplemental Report of Injury is received and the manner of filing. The date of receipt of a written notice of injury shall be the date the carrier obtains possession of the report. The carrier shall immediately create a record of any notice of injury received via tele-claims reporting or electronic submission. Upon request of the commission, a carrier shall provide a business record affidavit authenticating the existence or absence of a report received or electronically filed and the receipt date.

(c) The commission shall furnish written notification to the insurance carrier when a source other than the carrier reports:

(1) an injury which may cause the employee eight days or more of disability or has resulted in an impairment;

(2) a death; or

(3) an occupational disease.

(d) For purposes of this title, the carrier shall be presumed to have received notice on the date the commission received a document or form required by the Act or commission rules to be filed with the carrier and with the commission. The carrier has the burden of proving that it did not receive or timely receive the document or form.

(e) The insurance carrier shall electronically submit the first report of injury information to the commission not later than the seventh day after the carrier has received notice from the employer, regardless of whether coverage or compensability is disputed.

(f) The commission shall prescribe the form, format, and manner of any required electronic submission through instructions, specifications, and Electronic Data Interchange trading partner agreements.

(g) Written requests for a waiver of the electronic filing requirement may be submitted to the Executive Director or his/her designee for consideration. Waivers must be requested annually and include, justification for the waiver, the volume of claims and premiums, current automation capabilities, Electronic Data Interchange (EDI) programming status, and a specific target date to implement EDI. Waivers require written approval from the commission.

(h) A carrier that fails to submit electronically in accordance with subsection (e) of this section and has not obtained a waiver under subsection (g) of this section without good cause, is subject to a penalty not to exceed $500, pursuant to Texas Labor Code, §409.005, and may be subject to a penalty not to exceed $10,000, pursuant to Texas Labor Code, §415.021 for repeated violation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514706 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: August 18, 1995

For further information, please call: (512) 440-3700

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Chapter 133. General Medical Provisions

Subchapter C. Second Opinions for Spinal Surgery

• 28 TAC §133.206

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §133.206, concerning the spinal surgery second opinion process, without changes to the proposed text as published in the September 19, 1995 issue of the *Texas Register* (20 TexReg 7453).

Section 133.206 describes the process by which a carrier becomes liable for the costs of spinal surgery. The rule sets out procedures and liability for costs of a second-opinion examination and sets the fee for second opinions. The rule also sets qualifications for doctors who perform second opinions for spinal surgery and requires the commission to maintain a list of spinal surgeons and to provide sublists of five qualified doctors from which a second opinion doctor may be chosen by the injured employee and the carrier. A doctor must be on the spinal surgery list to be reimbursed by the carrier for spinal surgery. The commission's Medical Review division is given the authority to issue orders requiring timely submission of doctors' reports, to refer for administrative violation a doctor who fails to comply with the rule or an order, and to refer a doctor to the commissioners for removal from the Approved Doctor List. The rule sets out acts which may result in division action to suspend or commission action to remove a doctor from the spinal surgeon list. In addition, the rule sets out the procedure for a doctor who has been suspended to request a hearing to contest the suspension.

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended Texas Labor Code, §415.034 to require that hearings conducted pursuant to the Administrative Procedure Act (APA) be held by the State Office of Administrative Hearings. In addition, House Bill 1089 added new Texas Labor Code, §402.073 which requires the commission and the State Office of Administrative Hearings (SOAH) to cooperate in setting procedures for hearings transferred to SOAH and establishes when the administrative law judge would make a recommendation to the commission and when a final decision would be issued by the SOAH administrative law judge. House Bill 1089, §1.57 provides that transfer of jurisdiction of a hearing to SOAH takes effect January 1, 1996; a hearing held before or pending on December 31, 1995 is governed by the law in effect immediately before September 1, 1995. Procedures for requesting and conducting hearings transferred to SOAH are contained in commission rules adopted as Chapter 148 of this title (relating to Hearings Under the Administrative Procedure Act). Hearings where the first day of a hearing in which evidence is admitted occurs prior to December 31, 1995 will continue to be conducted in accordance with Chapter 145 of this title (relating to Hearings Conducted Under the State Office of Administrative Hearings).

The amendment to §133.206(c)(9) makes the APA hearing provisions of the rule consistent with the changes to Texas Labor Code, §402.073 which transfers jurisdiction to hold hearings on deletions from the spinal surgeon list to the State Office of Administrative Hearings. To accomplish this, language has been added to subsection (c)(9) of §133.206 to clarify that a hearing regarding removal of a doctor from the spinal surgeon list requested under this rule will be held by SOAH rather than commission staff for all hearings where the first day of a hearing in which evidence is admitted occurs on or after January 1, 1996. In addition, subsection (m) has been amended to change the expiration date of the rule from January 1, 1996 to January 1, 1997. This change of expiration date is adopted because the rule has proved to be an effective tool in maintaining cost effective, quality care for spinal injuries. Without this amendment, the rule will automatically expire on January 1, 1996. By changing the expiration date to January 1, 1997, the commission will be required to review and reevaluate the rule if it is to continue in effect.

Subsection (d)(5) has been added to allow the commission's Medical Review division to consider circumstances where an alternate second opinion doctor may be selected without penalty to the refusing second opinion doctor. The breadth and depth of knowledge needed to address spinal pathologies varies greatly. This rule addresses the situation where a chosen second opinion doctor is not qualified to assess a certain case and wishes to decline the selection. Previously, the declining doctor would have been subject to penalty for a refusal to accept the assignment. This amendment allows the Medical Review division to consider these circumstances, release a second opinion doctor, and select an alternate second opinion doctor without penalty to the originally selected doctor.

Previously, the process for spinal surgery second opinion did not allow timely and effective case management by the Medical Review division. Injured employees who received a nonconcurring opinion on spinal surgery from carrier selected second opinion doctors often did not schedule employee selected second opinion examinations because they did not wish to proceed with the recommendation for surgery. As a result, these cases stalled indefinitely. This amendment addresses the issue by deleting current (h)(1)(E) and (h)(4) and adding subsection (h)(7) and (8). Subsection (h)(7) requires the Medical Review division to notify the employee, treating doctor, and surgeon that there is a nonconcurring second opinion, that for the carrier to become liable for the costs of surgery the employee must receive a concurrence from a doctor on the employee's sublist, and that failure to inform the division of the employee's selected doctor within 14 days will result in the withdrawal of the recommendation for spinal surgery. Subsection (h)(8) allows the treating doctor or surgeon to resubmit a withdrawn recommendation. In addition, subsection (h)(3) clarifies the selection process for an employee-selected second opinion doctor.

The benefit to an individual who needs spinal surgery is speedier resolution, decreasing the time before surgery and recovery. In addition, there may be a savings to employers, carriers and to the workers' compensation system as a whole. No-shows at commission-scheduled second opinion appointments are currently reimbursed at $100 each; the amendment to the rule should significantly reduce the number of no-shows. Quicker resolution of the process should decrease the time required for a worker to achieve maximum medical improvement, at which point temporary income benefits cease.

Public comment was solicited through the *Texas Register* and a public hearing was held on October 11, 1995 regarding this rule. One comment was received. The comment was from Texas Workers' Compensation Insurance Fund and was in support of the proposed amendment.

A summary of the comment and commission response follows.

COMMENT: Commenter supported the amendments to §133.206 which were proposed, in particular the amendment to subsection (m) which extends the rule's expiration date. Commenter found the information presented in the staff's "Performance Report" very useful and recommended that the commission continue to collect this information. In addition, commenter provided a list of ten items she recommends be tracked to aid in evaluating the effectiveness of the rule.

RESPONSE: The commission agrees that data collection is necessary to evaluate the effectiveness of the rule and will take the commenter's suggestions for data collection into consideration.

The amendment is adopted pursuant to Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §402.072, which sets out sanctions that only the commission may impose; the Texas Labor Code, §408.026, which establishes when a carrier is liable for costs relating to spinal surgery and mandates that the commission adopt rules necessary effectuate the statute; the Texas Labor Code, §415.034, as amended by House Bill 1089, 74th Legislature, 1995, which allows a party charged with an administrative violation or the Executive Director of the commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, title 5, in accordance with the applicable substantive rules and policies

of the Texas Workers' Compensation Commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514699 Susan Cory
General Counsel
Texas Workers' Compensation Commission

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For further information, please call: (512) 440-3700

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Chapter 145. Hearings Under the Administrative Procedure Act

• 28 TAC §145.1

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §145.1, concerning scope and applicability of hearings under the Administrative Procedure Act, without changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7456).

The amendment limits the scope of the chapter 145 rules to those hearings conducted by the commission's hearing officers. Separately, the commission has adopted new rules under new Chapter 148 to specify procedures for hearings to be held by administrative law judges of the State Office of Administrative Hearings, pursuant to rocent legislation (House Bill 1089, 74th Legislature, 1995). The amendment clarifies which hearings are held by the SOAH hearing officers and which remain with the commission hearing officers.

House Bill 1089, 74th Legislature, 1995, amended the Texas Labor Code, §§402.073, 407.046(b) and (c), 411.049(b), 413.031(d) and 415.034(a) to provide that the State Office of Administrative Hearings (SOAH) would conduct certain hearings for the commission. The existing rules in Chapter 145 of this title (relating to Hearings Under the Administrative Procedure Act) will remain in effect after January 1, 1996 only for those hearings described in that chapter.

Comments were solicited through the *Texas Register* and a public hearing was held on October 11, 1995, regarding this rule. No comments on the proposal were received.

The new rule is adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §§402.073, 407.046(b) and (c), 411.049(b), 413.031(d), and 415.034(a), as amended by House Bill 1089, 74th Legislature, 1995, which transfer the specified hearing functions to the State Office of Administrative Hearings; §157 of House Bill 1089, 74th Legislature, 1995, which provides that the State Office of Administrative Hearings has jurisdiction over the transferred hearings effective January 1, 1996, but that hearings held before or pending on December 31, 1995 will be governed by the law in effect immediately before September 1, 1995; and the Texas Government Code, §2003.021(c), as added by House Bill 1089, 74th Legislature, 1995, which provides that SOAH shall conduct hearings under Title 5 of the Texas Labor Code, as provided by that title.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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TRD-9514698 Susan Cory
General Counsel
Texas Workers' Compensation Commission

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Chapter 148. Hearings Conducted by the State Office of Administrative Hearings

• 28 TAC §§148.1-148.28

The Texas Workers' Compensation Commission (the commission or TWCC) adopts new §§148.1-148.28, concerning Hearings Conducted by the State Office of Administrative Hearings (SOAH). Sections 148.4, 148.12, and 148.18 are adopted with changes to the proposed text as published in the September 19, 1995 issue of the *Texas Register* (20 TexReg 7456). Sections 148.1-148. 3, 148.5-148.11, 148.13-148.17, and 148.19-148.28 are adopted without changes and will not be republished. Changes to the proposed text made in response to public comment received at a public hearing held on October 11, 1995, and received by mail are described in the summary of comments and responses portion of this preamble. Two changes in the proposed text were made for clarification purposes. In §148.4(a) the language "make a good faith effort to" has been added. In §148.12 the language "the Senior ALJ of SOAH" was changed to read "SOAH management."

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §§402.073, 407.046(b) and (c), 411.049(b), 413.031(d) and 415.034(a) to provide that the State Office of Administrative Hearings would conduct certain hearings for the commission. To implement that legislation, these rules provide procedures for SOAH hearings to adjudicate disputes under the Texas Workers' Compensation Act (the Act) except benefit disputes, governed by Chapters 140, 142, and 143 of this title (related to Dispute Resolution-General Provisions; Benefit Contested Case Hearing; and Review by the Appeals Panel, respectively) and other hearings where the first day of a hearing in which evidence is admitted occurs prior to January 1, 1996. The existing rules in Chapter 145 of this title (relating to Hearings Under the Administrative Procedure Act) will remain in effect after January 1, 1996 only for those hearings described in that chapter.

These new rules are based on the text of the rules in Chapter 145, with modifications made either to clarify existing procedures of the commission or to ensure efficiency in hearings by administrative law judges involving specialized procedures unique to the Texas Workers' Compensation Act and the implementing rules. New §148.3 requires a person requesting a hearing to file a written request with the Chief Clerk of Proceedings, Hearings Division of the commission. The request for a hearing will be date stamped by the Chief Clerk on the date it is received by the Chief Clerk. If the person requesting a hearing sends the request to another office of the commission, including any field office, the receiving office will send it to the Chief Clerk of Proceedings if enough information is available to identify it as a request for a hearing by SOAH. For purposes of §148.3, when a person sends a request for a hearing to an office other than the TWCC Chief Clerk, the date "filed" or "received" is the date the request is received by the Chief Clerk of Proceedings of the commission as specified on the date stamp placed on the document. This will create a clear date certain for determination of timely requests for hearing and for starting the time period for commission action. New §148.4(a) is designed to allow sufficient time for pre-hearing discovery and settlement negotiations while allowing for expedited hearings upon a finding of good cause. However, the subsection contains a goal that hearings for preauthorization requests under Texas Labor Code, §413.014, be held within 30 days because of the need for an expedited decision in cases involving a proposed medical procedure for an injured worker. Due to increasing costs of travel and agency budgetary constraints, the new §148.6 eliminates the possibility of holding hearings outside of Austin, Texas but allows for receipt of testimony of witnesses by telephone. Section 148.11 on prehearing conferences, §§148.13, 148.14, and 148.27, on discovery, subpoenas and depositions, and §148.15, on ex parte communications, track the provisions of the Administrative Procedure Act (APA). Sections 148.5, 148. 9, 148.10, 148.12, 148.16, 148.17, 148.19-148.21, and 148.25, provide procedural instructions and safeguards to the parties. §148.22, and §148. 23 track the statute regarding which decisions of the SOAH hearing officer are final and which are recommendations, and provides procedural and substantive requirements such as in the APA. Section 148.24 explains the specific requirements after assessment of an administrative penalty by the hearing officer. Section 148.26 and §148.28 address the cost of transcription and preparation of the record for judicial re-

view. All of these provisions are necessary to provide efficient, fair, full, and impartial hearings and decisions. In addition, these provisions inform SOAH, TWCC, and parties to proceedings of the various requirements and safeguards with respect to requesting a hearing, conducting a hearing, and issuing a final decision. New §148.7 clarifies that a party to a hearing is entitled to the assistance of his or her counsel, if present at the hearing. New §148 8(b) should result in reduced expenses for all parties (since the decision-maker will be able to withdraw or amend the small percentage of decisions containing an obvious error, when identified in requests for hearing), without necessitating formal hearings. New §148.18(b) will allow the commission's dispute resolution officer to be called as a witness only when served with a timely subpoena. The procedural limitations, established for the appearance and testimony of a dispute resolution officer of the commission, are based upon the irrelevancy of the thought processes of an administrative decision-maker in a subsequent review of any decision (as indicated in *Smith v. Houston Chemical Services, Inc.*, 872 S.W. 2d 252, 266-267, Tex. App.-Austin, 1994, no writ) and the "mental processes" rule (as indicated in *Thomas v. Walker*, 860 S.W. 2d 579, 582, Tex. App.-Waco, 1993, no writ). New §148.21(h) is based, in part, upon the burden of proof being placed upon the parties other than the commission by the Texas Workers' Compensation Act and the implementing rules. Examples are specified in the rule. The procedural requirements established in new §148.21(j) should result in more efficient hearings since the parties will have advance knowledge of objections to any portion of the record considered or the decision rendered by the commission's dispute resolution officer. New §148.28 does not contain language similar to the Texas Labor Code, §415.035(c), because of the ruling in *Tex. Ass'n of Business v. Air Control Bd*, 852 S.W. 2d 440 (Tex. 1993).

Comments on the proposal were received from the following groups: Flahive, Ogden & Latson and the Texas Workers' Compensation Insurance Fund.

Comments expressing opposition to some of the provisions of the proposed new rules were received from Flahive, Ogden & Latson and the Texas Workers' Compensation Insurance Fund.

Summaries of the comments and the commission's responses are as follows:

The following comments were received regarding proposed new §148.4(b).

COMMENT: The commenter requested that the rule be clarified to provide that the written notice of the hearing be sent via U. S Postal Mail and by placement in the "TWCC carrier representative mailbox" at the commission. The commenter opposed the ten-day minimum advance notice period for notices of hearings and requested that a minimum 20-day advance notice be provided.

RESPONSE: The commission agrees that when a workers' compensation insurer is a party to a hearing, that insurer will be provided the notice of hearing by placement of that notice of hearing in the "TWCC carrier representative mailbox" at the commission established pursuant to Texas Labor Code, §406. 011 and §156.1 of this title (relating to Carrier's Austin Representative). Each insurance carrier representative must sign an acknowledgement of receipt or notices will be sent by U.S. Mail. The commission disagrees that §148.4(b) needs to be changed to specify the method of service to workers' compensation insurers because the rule applies to numerous types of parties to hearings, because proposed §149.4(a) of this title addresses the different types of service which may be utilized, and because §156.1 of this title and the commission's established procedures for the "TWCC carrier representative mailbox" at the commission are applicable for notices of hearing sent to insurers who are parties to hearings.

The commission disagrees that the 10-day minimum advance notice of hearing period should be revised to a 20-day period. The 10-day advance notice period is in accordance with the same minimum notice period required by the Texas Government Code, §2001.051(1). In addition, exceptional circumstances may require a hearing be held shortly after a request for hearing is received. An example has been specified in §148.4(a), i.e. whether a provider's preauthorization request for payment approval for medical services for an injured worker should be approved or denied. Finally, the commission notes that most cases will involve advance notice of such hearings being provided at least 20 days and usually even a longer period of time before the hearing beings.

The following comments were received regarding §148.14(a).

COMMENT: A commenter objected to the requirement of a "good cause" showing before "responsive evidence" would be allowed in cases involving disputes of medical issues after a medical review by a dispute resolution officer of the commission.

RESPONSE: The commission disagrees. The good cause requirement in this rule relates to whether a subpoena will be issued and is based upon the same requirement as specified in the Texas Government Code, §2001.089. The commission believes that the commenter was directing its comments to the provisions of proposed §148.18(a) of this title (relating to Parties Rights in Hearings) and has addressed those comments in relation to that rule.

The following comments were received regarding §148.18(a).

COMMENT: Two commenters objected to the provisions concerning contested case hearings before SOAH that will consider decisions of the commission's medical review division in a review of a medical service or medical fee dispute. Those provisions would allow new evidence, not considered at the review, to be admitted only if the offeror of that evidence demonstrates good cause and submits a summary of the new evidence and the facts purporting to be good cause at least seven days prior to the hearing, unless the offeror demonstrates good cause why such a summary and facts cannot be provided. One commenter objected because the provisions limit evidence in an APA hearing. The commenter suggested that decisions in medical reviews sometimes do not specify all of the evidence received from parties and are sometimes based upon a peer review or factors other than those discussed by the parties to such a review. In such cases, the commenter indicated that new evidence to respond to the basis for the decision in the medical review would be necessary. The commenter objected because a requirement to show good cause is an unnecessary burden and adversely affects the rights of all parties to present evidence. The commenter suggested that the rule would require a party to file a request for a good cause showing just to be able to present testimony at a hearing. The commenter did not object to specifying time limits for submission of new evidence and for other parties to object to such new evidence prior to a hearing. The commenter stated that a party needs to know prior to the hearing whether the new evidence will be admitted. Another commenter objected because the rule would greatly hinder a party's right to prepare cases and provided an example of when a petitioner to a medical review files documents with a dispute resolution officer that a respondent to such case has never seen. The commenter, also, objected because the procedures in §148.21(j) may result in a party not receiving a copy of the record of the medical review until as late as 15 days before the hearing In that event, the commenter suggested that a party would only have seven days to acquire "responsive evidence" and to show good cause.

RESPONSE: The commission agrees in part and disagrees in part. The commission agrees that the rule should be clarified to provide several examples of what would constitute a showing of good cause. In addition, commission agrees that the rule should be clarified to demonstrate how a party could obtain a ruling, prior to the beginning of a hearing, on whether that party has demonstrated good cause for the offer of new evidence. Therefore, the rule has been revised to add two additional sentences to address these two areas and to reduce any burden to the party offering the two, specified categories of evidence or other similar categories of new evidence where good cause is shown. The commission disagrees that a party offering new evidence should not be required to demonstrate good cause. Without a good cause requirement, a party could "hide behind the log" during a review by the commission's medical review division and not offer evidence that was available to that party and relevant to the review. If the party did not like the decision, such a party could then offer the new evidence, for the first time, at the SOAH hearing Such conduct could result in inaccurate or incorrect decisions without the benefit of crucial evidence and would cause a waste of time and money by the other parties to the review and by the commission because such decisions could not finalized at the review level. Such conduct, if repeated in numerous medical reviews, would result in medical reviews without the probability of finality. The commission notes that, at present, most decisions in its medical reviews are not appealed to a contested case hearing, in part, because

parties are expected to present available and relevant evidence during the medical review process and because the decision reflects a review of all, available evidence. In addition, the rule does not preclude testimony from witnesses to clarify their previous testimony but does require a showing of good cause before new evidence from witnesses is considered. The commission notes that the commission's dispute resolution officers have a practice of listing evidence received and considered in a medical review If a party submits evidence to the commission's Medical Review Division after the decision in the medical review is issued, then that party would have to demonstrate good cause to admit that evidence during the SOAH hearing. If the commission's dispute resolution officer inadvertently fails to specify evidence submitted prior to the issuance of the decision, that error will be either be rendered moot when the party receives the complete copy of the official record of the evidence and decision at the medical review pursuant to §148.21(j) or the party can utilize the procedures in §§148 11, 148.18(a), or 148.21(j) to ensure that any error does not adversely affect its case. The rule promotes the consideration of all relevant evidence at the first review of the dispute by the commission's dispute resolution officer and the integrity of that review

The following comments were received regarding §§148 22 and 148 23

COMMENT. A commenter requested that both rules be changed to provide that SOAH proposals for decision and final orders be sent to the parties via U S Postal Mail and by placement in the "TWCC carrier representative mailbox" at the commission. In addition, the commenter requested clarification of these rules concerning whether the commission could amend, modify, or vacate a final order or proposed order of a SOAH hearing officer and, if so, under what circumstances could such conduct occur. The commenter, also, requested clarification of the phrase "reasons of policy" if the commission's response indicated that such decisions or proposals for decision could be amended, modified, or vacated for "reasons of policy."

RESPONSE. The commission does not agree that SOAH should be required to serve its proposals for decisions and its final orders both by mail and by placement in the "TWCC carrier representative mailbox" at the commission. Such a procedure would place additional costs upon SOAH, which will be serving such documents upon the parties to hearings, and the commission could be billed for such costs by SOAH. Such additional costs would be incurred only for the potential benefit of only one party to each hearing. The commission responds to the request for clarification by noting that the Texas Labor Code, §402. 042(b)(8), provides authority for the Executive Director of the commission to "correct clerical errors in the entry of orders." In addition, Texas Government Code, §2001.058(e) and §2001.1775 (as added by Senate Bill 959, 74th Legislature, 1995) provide authority for a state agency to change a finding of fact or conclusion of law or to vacate or modify an order issued by a SOAH hearings officer "only for reasons of policy" and only before any proceedings for judicial review of a case have been instituted.

Because the commission has not had sufficient experience under the above-specified, recent provisions of the Texas Government Code, and because the implementation of those provisions may be appropriate in cases involving very specialized and varying factors, the commission has exercised its discretion in not proposing further rules at this time. Rather, the commission will gain experience in this area on a case-by-case basis as discussed in *El Paso v. Pub. Util. Com'n. of Tex.*, 883 S.W. 2d 179, 188-189 (Tex. 1994).

The new rules are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, as amended by recent legislation (House Bill 1089, 74th Legislature, 1995); and the Texas Labor Code, §§402.073, 407.046(b) and (c), 411.049(b), 413.031(d), and 415.034(a), as amended by House Bill 1089, 74th Legislature, 1995, which transfer the specified hearing functions to the State Office of Administrative Hearings, and House Bill 1089, 74th Legislature, 1995, which provides that the State Office of Administrative Hearings has jurisdiction over the transferred hearings effective January 1, 1996, but that hearings held before or pending on December 31, 1995 will be governed by the law in effect immediately before September 1, 1995.

§148.4. Notice of Hearing.

(a) General scheduling of hearings. Except as provided in subsection (c) of this section, SOAH shall schedule the date, time, and location of the hearing, and will notify the commission's Chief Clerk of Proceedings, Hearings Division, of such scheduling no later than ten days after receiving a request for hearing. Unless good cause is shown, SOAH will set a hearing to consider a proposed penalty under the Texas Labor Code, Chapter 415, Subchapter B for a date no earlier than 60 days after SOAH has received the request for a hearing. Unless good cause is shown, SOAH will make a good faith effort to set hearings involving issues of preauthorization under the Act, §413.014, for a date no more than 30 days after SOAH has received the request for a hearing. In all other cases under the Act, §413.031, SOAH will set such cases for a date within the 90-day period specified in §413.031(d).

(b) Notice of hearing. Except as provided in subsection (c) of this section, and no later than ten days before the hearings date, the commission's Chief Clerk of Proceedings, Hearings Division, shall notify the parties in writing of the date, time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing will be held; a reference to the particular sections of the statutes and any rules involved; and a short, plain statement of the matters asserted. The reference to the statutes and rules and the short, plain statement may be provided by the commission's representative, and, if so, would not be provided by the Chief Clerk of Proceedings, Hearings Division.

(c) Notice of hearing under the Act, §407.046(b). No later than 30 days before the hearing date, SOAH shall notify, in writing, a certified self-insurer and the commission's Chief Clerk of Proceedings, Hearings Division of the date, time, place, and nature of a hearing concerning the intent of the commission to revoke a certificate of self-insurance under the Act,§407.046. The notice shall contain a reference to the particular sections of the statute and any rules involved; and a short, plain statement of the matters asserted, including the grounds for the proposed revocation action.

(d) Expediting the hearing. The hearing officer may expedite any or all parts of the hearing if any party requesting it provides a verified statement of good cause, the opposing party has the opportunity to respond, and the hearing officer makes a determination of good cause. In this event, the hearings officer shall notify the commission's Chief Clerk of Proceedings of the Hearings Division who shall send all parties notice of the hearing officer's decision to expedite any or all parts of the hearing. The written notice shall be sent to all parties no later than ten days prior to the expedited hearing date and shall include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing will be held; and

(3) a reference to the particular sections of the statutes and rules involved and a short, plain statement of the matters asserted.

§148.12. Request for Alternative Dispute Resolution. A party may request alternative dispute resolution. If the request is granted, the hearing officer will notify SOAH management who will appoint another hearing officer to assist in the dispute resolution process. If the dispute resolution process is successful, then the settlement will be reduced to writing, signed by the parties and submitted to the assisting hearing officer for entry of orders. If the dispute resolution process is unsuccessful, the case shall be reset as quickly as possible for hearing by the original hearing officer.

§148.18. Parties' Rights in Hearings.

(a) Subject to the hearing officer's ruling and orders, opportunity must be given to all parties to present and respond to evidence and argument on each issue involved. If a decision of the commission's medical review division in a review of a medical service or medical fee dispute has been set for a contested case hearing, new

evidence, not considered at the review, will not be admitted unless the offeror demonstrates good cause and submits a summary of the new evidence and the facts purporting to be good cause at least seven days prior to the hearing, unless the offeror demonstrates good cause why such a summary and facts cannot be provided. Good cause includes, but is not limited to, a showing that the new evidence was not reasonably available for the review by the medical review division or that the new evidence relates to a portion of the medical review decision which was not identified as a proposed basis for that decision by any party. An offeror of proposed new evidence may request a prehearing conference, pursuant to §148.11 of this title (relating to APA Prehearing Conference), to obtain a ruling, prior to the hearing, on whether there is good cause to admit the new evidence.

(b) The parties to a hearing shall be permitted to call any witness desired, within the limits set by the hearing officer. The medical dispute resolution officer rendering a decision shall not be required to appear at the hearing or at a deposition except if a subpoena is timely issued after the requestor has demonstrated good cause why the commission's dispute resolution officer should appear.

(c) The parties to a hearing may conduct cross-examination of witnesses.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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General Counsel
Texas Workers' Compensation Commission

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Chapter 149. Memorandum of Understanding with State Office of Administrative Hearings

• 28 TAC §§149-1-149.10

The Texas Workers' Compensation Commission (the commission or TWCC) adopts new §§149.1-149.10, concerning the commission's Memorandum of Understanding with the State Office of Administrative Hearings (SOAH). Sections 149.3, 149.5-149.8, and 149.10 are adopted with changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7463). Sections 149.1, 149.2, 149.4, and 149.9 are adopted without changes to the proposed text and will not be republished. A new chapter 148 is simultaneously adopted, titled "Hearings Under the State Office of Administrative Hearings". Chapter 149, "Memorandum of Understanding With the State Office of Administrative Hearings", is required by statute and is necessary to establish the inter-agency and intra-agency procedures by which SOAH and TWCC will implement the hearings governed by Chapter 148. The provisions of Chapter 149, by providing clear delineation of each agency's responsibilities, will prevent misunderstandings which could delay hearings and decisions or cause inefficient use of agency resources. Changes to the proposed text were made for clarification purposes based on discussions with SOAH and are found in §§149.3(a), 149.5(1), 149.6(c), 149.6(i), 149.7(a), 149.8(d), 149.8(g), and 149.10(e).

A new sixth sentence has been added to §149.3(a) to provide additional notification to the State Office of Administrative Hearings (SOAH) of applicable confidentiality provisions. Because the custody of the record remains with the commission as described in §149.9 of this title (relating to Custody of the Hearing Record), §149.5(1) has been changed to require the original of a pleading, motion, or other filing be filed with the TWCC Chief Clerk with a true and correct copy filed with SOAH. These procedures have been designed to promote compliance with the provisions of Texas Government Code, Chapter 552 as interpreted in Office of the Attorney General Open Records Decision Numbers 576, dated November 28, 1990 and 617, dated August 23, 1993. Additional provisions have been added to §149.6(c) for four reasons: (1) to indicate an additional statute and additional rules which require confidentiality, (2) to clarify that listings of docketed cases may not contain the injured workers' name unless authorized by law, (3) to specify the procedures to be followed if a party requests that a hearing be open to the public, and (4) to provide examples of factors which an administrative law judge of SOAH could consider when ruling on a request for a hearing open to the public. The time limits in §149.6(i) for the setting of a hearing by SOAH (including the setting of a hearing involving issues of preauthorization for payment of medical care or services) have been clarified as time limits within the best efforts of SOAH. The goal for the SOAH issuance of final orders in such preauthorization cases has been clarified as 30 days after the record in each case has been closed in §149.7(a). Section 149.8(d) and (g) have been clarified to indicate to whom and how the SOAH proposals for decision will be sent and how the completed record in a case involving a proposal for decision will be transferred to the commission by SOAH. Section 149.10(e) has been eliminated because SOAH has indicated that it will not need commission offices for use of its administrative law judges. These clarifications have been discussed with SOAH as part of the overall memorandum of understanding.

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §§402.073, 407.046(b) and (c), 411.049(b), 413.031(d) and 415.034(a) to provide that the State Office of Administrative Hearings (SOAH) would conduct certain hearings for the commission. To implement that legislation and its requirement that SOAH and the commission adopt a memorandum of understanding by rule, these rules provide for procedures for use by SOAH and the commission for the adjudication of disputes under the Texas Workers' Compensation Act (the Act) except benefit disputes, governed by Chapters 140, 142, and 143 of this title (relating to Dispute Resolution-General Provisions; Benefit Contested Case Hearing; and Review by the Appeals Panel, respectively) and other hearings where the first day of a hearing in which evidence is admitted occurs prior to January 1, 1996. The existing rules in Chapter 145 of this title (relating to Hearings Under the Administrative Procedure Act) will remain in effect after January 1, 1996 only for those hearings described in that chapter. The procedural rules for hearings conducted by SOAH have simultaneously been adopted as new Chapter 148 of this title.

These new rules are based on the requirements of House Bill 1089, 74th Legislature, 1995, and procedures identified by the staffs of SOAH and the commission as being necessary or advisable for the efficient operation of the adjudication process by both agencies.

Section 149.3 contemplates that any request for a contested case hearing before a SOAH administrative law judge will be sent to the commission's Chief Clerk of Proceedings. The request for a hearing will be date stamped by the Chief Clerk on the date it is received by the Chief Clerk. If the person requesting a hearing sends the request to another office of the commission, including any field office, the receiving office will send it to the Chief Clerk of Proceedings if enough information is available to identify it as a request for a hearing by SOAH. For purposes of §149.3, when a person sends a request for a hearing to an office other than the TWCC Chief Clerk, the date "filed" or "received" is the date the request is received by the Chief Clerk of Proceedings of the commission as specified on the date stamp placed on the document. This will create a clear date certain for determination of timely requests for hearing and for starting the time period for commission action. The Chief Clerk will then forward the request to SOAH in the manner described in the new rule. Sections 149.4 and 149.5 clarify the content and issuance of notices of hearing and the procedure for various filings. Section 149.6(f) should result in reduced expenses for all parties (since the decision-maker will be able to withdraw or amend the small percentage of decisions containing an obvious error, when identified in requests for hearing), without necessitating formal hearings. New 149.6(g) should result in reduced expenses for all parties because any party objecting to evidence accepted during the medical review or to introduction of the decision in the medical review must give prior notice of the objection and the legal basis for the objection to all other parties. Section 149.7 and 149.8 track the statute regarding which hearing officers decisions are final and which are recommendations, and provide procedural and substantive re-

quirements in the Administrative Procedure Act. Section 149.9 clarifies custody of the hearing record. Section 149.10 clarifies the statutory provision regarding the effective date of the transfer to SOAH and which pending matters are transferred. All of these provisions are necessary to clearly inform SOAH, TWCC, and parties to proceedings of the various requirements and safeguards with respect to requesting a hearing, conducting a hearing, and issuing a final decision. Section 149.6 contains provisions for the maintenance of the confidentiality for information deemed confidential by law under the Texas Workers' Compensation Act. Section 149.10 provides a procedure which has been designed to promote an efficient transition from commission hearings officers to administrative law judges of SOAH.

Comments on the proposal were received from the following group: the Texas Workers' Compensation Insurance Fund.

The commenter did not express overall opposition or support of the proposed new rules, but requested a revision in §§149.4(a), 149.7 and 149.8.

Summaries of the comments and the commission's responses are as follows.

The following comment was received regarding proposed new §149.4(a).

COMMENT: The commenter requested that the rule be clarified to provide that the written notice of the hearing be sent via U. S. Postal Mail and by placement in the "TWCC carrier representative mailbox" at the commission.

RESPONSE: The commission agrees that, when a workers' compensation insurer is a party to a hearing, that insurer will be provided the notice of hearing by placement of that notice of hearing in the "TWCC carrier representative mailbox" at the commission, established pursuant to Texas Labor Code, §406. 011 and §156.1 of this title (relating to Carrier's Austin Representative). Each insurance carrier representative must sign acknowledgements of receipt or notices will be sent by U.S. Mail. The commission disagrees that §149.4(a) needs to be changed to specify the method of service to workers' compensation insurers because the rule applies to numerous types of parties to hearings, because the rule already addresses the different types of service which may be utilized, and because §156.1 of this title and the commission's established procedures for the "TWCC carrier representative mailbox" at the commission are applicable for notices of hearing sent to insurers who are parties to hearings.

The following comments were received regarding proposed new §149.7 and §149.8.

COMMENT: A commenter requested that both rules be changed to provide that SOAH proposals for decision and final orders be sent to the parties via U. S. Postal Mail and by placement in the "TWCC carrier representative mailbox" at the commission.

RESPONSE: The commission does not agree that SOAH should be required to serve its proposals for decisions and its final orders both by mail and by placement in the "TWCC carrier representative mailbox" at the commission. Such a procedure would place additional costs upon SOAH, which will be serving such documents upon the parties to hearings, and the commission could be billed for such costs by SOAH. Such additional costs would be incurred for the potential benefit of only one party to each hearing.

The new rules are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, as amended by recent legislation (House Bill 1089, 74th Legislature, 1995); the Texas Labor Code, §§402.073, 407.046(b) and (c), 411.049(b), 413.031(d), and 415.034(a), as amended by House Bill 1089, 74th Legislature, 1995, which transfer the specified hearing functions to the State Office of Administrative Hearings (SOAH) and which require both the commission and SOAH to adopt of memorandum of understanding by rule governing administrative procedure law hearings; and §157 of House Bill 1089, 74th Legislature, 1995, which provides that the State Office of Administrative Hearings has jurisdiction over the transferred hearings effective January 1, 1996, but that hearings held before or pending on December 31, 1995 will be governed by the law in effect immediately before September 1, 1995.

§149.3. Referral of Contested Case to SOAH.

(a) Referral of a contested case to SOAH may be made only by the commission. The referral is initiated by filing with SOAH either a Request For Setting of Hearing Form or a Request For Assignment of ALJ Form. The Request For Setting of Hearing Form shall be filed when the commission seeks to have the case set for hearing and no request for a prehearing is pending. If prehearing matters arise after the Request For Setting of Hearing Form is filed, SOAH shall assign an ALJ to resolve the matter. The Request For Assignment of ALJ Form shall be filed when a request for a prehearing conference is pending or a request for an ALJ's ruling on various matters is made prior to commencement of the hearing. The TWCC Chief Clerk will ensure that the appropriate areas are marked on these SOAH forms to provide additional notification of the confidentiality provisions as specified in §149.6(c) of this title (relating to Hearings). In addition to filing the appropriate form, a referral also consists of the following items:

(1) all pleadings in the case, including but not limited to complaints, petitions, applications, motions, or such other documents describing agency action relating to the contested case;

(2) a current service list; and

(3) notification of any statutory deadlines imposed by statute or rule involving the contested case.

(b) Not later than ten days after receiving either the Request For Setting of Hearing Form or the Request For Assignment of ALJ Form, SOAH shall assign the case a docket number and provide the docket number and a confirmation of the date, time, and place of hearing to the commission within the limitations specified in §148.4 of this title (relating to Notice of Hearing). The SOAH docket clerk will coordinate the assignment of hearing dates with the TWCC Chief Clerk so that hearings are scheduled both for the efficient use of ALJs and commission representatives in such cases. Following receipt of a Request For Assignment of ALJ Form, SOAH shall assign an ALJ and shall notify all parties and the commission in writing of the ALJ assigned to the case.

§149.5. Filing Requirements. Filing of documents shall be made in accordance with the following requirements.

(1) Any party filing any pleading (including discovery), motion, and other filing shall address the document to SOAH and shall file the original with the TWCC Chief Clerk and serve a true and correct copy with SOAH by the same method or by personal delivery and on the same date.

(2) Any SOAH ruling or prehearing order concerning a delay, continuance, or future filing shall be forwarded to the TWCC Chief Clerk on the same date and by the same method as SOAH shall forward the document to other parties except that such rulings or orders may be personally delivered to the TWCC Chief Clerk.

§149.6. Hearings.

(a) Hearings, including prehearing proceedings, on contested cases shall be conducted in accordance with the Government Code, Chapter 2001, subject to the provisions of the Act, the commission's rules of procedure, the SOAH rules of procedure and any other applicable law and accompanying regulations.

(b) In the event of any conflict between the SOAH rules of procedure and the commission's rules of procedure, the rules of the commission control, unless such rules conflict with other controlling law or regulations.

(c) SOAH shall ensure that the confidentiality provisions of the Act, §§402.082-402.091 and §411.034, and under the Texas Labor Code, §402. 091, and the Code, of Federal Regulations, Title 20, §603.6 and §603.7 (for information obtained from the Texas Employment Commission or its successor agencies) will be followed, including requests for release of documents or information made confidential

under the Act or other applicable law. Unless authorized by law, SOAH will not identify the name of a claimant for workers' compensation coverage under the Act or other information contained in or derived from the commission's claim file for such a claimant in listings of docketed cases or in other documents distributed to persons other than to the commission and the parties to a contested case involving that claimant. In addition, SOAH will conduct all hearings pursuant to the Act, §401.021, including the requirements in contested case hearings that only the parties, the parties' designated representatives and counsel, witnesses, designated court reporters and other persons as authorized by the ALJ may attend and that such hearings will be closed to the public. If a party or a member of the public files a written request with the TWCC Chief Clerk and with SOAH that a hearing be conducted as a hearing open to the public, the ALJ shall consider that request and issue a ruling prior to the opening of the hearing to the public. Any request for a hearing open to the public shall be filed with the TWCC Chief Clerk and with SOAH at least seven days prior to the first day of the hearing unless the ALJ allows a shorter filing period upon a showing of good cause. When considering a request that a hearing be open to the public, the ALJ may include considerations, including but not limited to, whether the anticipated examination questions to witnesses, the anticipated responses of witnesses, the anticipated offers of exhibits or other documents already filed or to be filed, the anticipated remarks by parties including objections and replies to offers of evidence, or any ruling by the ALJ would contain information made confidential under the Act or other applicable laws. If confidential information would be included, then the ALJ may consider whether any procedure could be devised and utilized which would allow a hearing to be open to the public without violating the confidentiality provisions of the Act, other applicable laws, other applicable regulations, and agreements required by those laws or regulations or without causing an undue burden on the commission or the parties to the hearing. While SOAH will have temporary custody of the hearing records, the Executive Director of the commission retains statutory authority as custodian of records and is ultimately responsible, as the originating agency, for the release or non-release of the information. Therefore, should any information, which may be confidential under the Act, commission rules, or other law, be requested from SOAH by any person or entity, SOAH shall follow all legal requirements necessary to ensure that the confidential information or document is not released, unless specifically required by law, and shall provide such request to the commission's executive communication division immediately upon receipt.

(d) The ALJ shall establish reasonable deadlines and procedures for the filing of affidavits, the designation of witnesses, and such other matters as are necessary or appropriate.

(e) The respondent in any proceeding may file an answer with the ALJ in accordance with the SOAH rules of procedure and §148.10 of this title (relating to Filing Instruments; Furnishing Copies).

(f) If a decision of the commission's medical review division in a review of a medical service under the Act, §413.031 has been set for a contested case hearing before SOAH and if the decision of the division is withdrawn or an amended decision is issued by the division within ten working days after the commission received the request for hearing before SOAH, then the commission shall file a request to withdraw the case from the SOAH docket. SOAH shall then issue an order dismissing the case without prejudice from the SOAH docket.

(g) If a decision of the commission's medical review division in a review of a medical service under the Act, §413.031 has been set for a contested case hearing before SOAH, then the commission's attorney, representing the commission's medical review division as a party in the contested case hearing, will file a copy of the certified record of the medical service review by the division with all other parties and with SOAH no later than 15 days before the hearing date, unless a different time period is specified by the ALJ. A certified copy of the record of the medical service review by the division, including the decision of the division, shall be admitted as evidence in the contested case, if offered, unless any objecting party ensures that all other parties and SOAH receive a written notice, at least five working days prior to the hearing date, of the objection and the legal basis for such objection. If a written notice of objection is filed, the hearing officer shall consider any request for a prehearing conference to rule on admissibility issues and any request for a continuance of the hearing, if properly filed in accordance with SOAH procedures.

(h) SOAH shall tape all hearings for which neither the commission nor a party provides court reporting services. Payment for any court reporting services shall be made in accordance with §148.20 and §148.28 of this title (relating to Recording the Hearing; and Expenses to be Paid by Party Seeking Judicial Review, respectively).

(i) SOAH shall notify the TWCC Chief Clerk of the date, time, and location of the hearing utilizing its best efforts to make such notification within ten days after receiving from the TWCC Chief Clerk a Request For Setting of Hearing form. Unless good cause is shown, SOAH will set a hearing to consider a proposed penalty under the Act, Chapter 415, Subchapter B no earlier than 60 days after SOAH has received the Request For Setting of Hearing Form. Unless good cause is shown, SOAH shall utilize its best efforts to set hearings involving issues of preauthorization under the Act, §413.014 for a date no more than 30 days after SOAH has received the Request For Setting of Hearing Form. In all other cases under the Act, §413.031, SOAH will set such cases for a date within the 90-day period specified in the Act, §413.031(d).

§149.7. Final Orders in Accordance with the Act, §§411.049, 413. 031 and 415.034.

(a) The ALJ shall prepare and issue the decision and order for contested cases under the Act, §411.049, §413.031 and §415.034. Legal citations in the proposed order shall be made in accordance with the *Texas Rules of Form*. The decision shall include findings of fact, conclusions of law, and the order(s) of the ALJ. The Government Code, §2001.058(d) does not permit the commission to attempt to influence the ALJ's findings of fact, conclusions of law, or the ALJ's application of the law to the facts in any proceedings except by proper evidence and legal argument. Unless otherwise provided by statute or rule, the ALJ shall issue a decision and order no later than the 60th day after the date the record is finally closed. In cases involving issues of preauthorization under the Act, §413.014, the ALJ shall make a good faith effort to expedite the issuance of the final order and to issue the final order no later than 30 days after the record in the case is closed.

(b) The ALJ shall serve true and correct copies of the transmitted letter and the decision and order by certified mail, return receipt requested, upon the parties and shall provide a copy of such documents to the TWCC Chief Clerk.

(c) SOAH shall place a confidentiality stamp on each page of the final order.

§149.8. Proposals for Decision in Accordance with the Act, §§402.072, 407.046, and 408.023.

(a) After holding a hearing pursuant to the Act, §§402.072, 407.046, and 408.023, the hearing officer shall prepare a proposal for decision not later than 60 days after the date of the hearing.

(b) The proposal for decision shall contain:

(1) a statement of the reasons upon which the decision is based;

(2) findings of fact based on the evidence presented and matters officially noticed;

(3) conclusions of law based upon the findings of fact and other legal requirements of the law; and

(4) the sanction or other order recommended by the hearing officer.

(c) The proposal for decision may also contain:

(1) a summary of the evidence presented by each party; and

(2) a list of all mitigating circumstances and a list of all aggravating circumstances, separately stated, which are necessary for the commissioners to have a complete understanding of the case.

(d) SOAH shall serve a copy of the transmittal letter and the proposal for decision by personal delivery or certified mail, return receipt requested, to each party or attorney of record and to the TWCC Chief Clerk.

(e) Any party may file briefs and exceptions with SOAH, no later than 15 days after receipt of the proposal for decision. All briefs and exceptions shall be served on all parties as provided in §148.10 of this title (relating to Filing Instruments: Furnishing Copies).

(f) Replies to the exceptions and briefs shall be filed with SOAH no later than ten days after the filing of the exceptions and be served on all parties as provided in subsection (e) of this section.

(g) SOAH shall forward the completed record in a case, including the proposal for decision, any amended proposal for decision, and the proposed order to the TWCC Chief Clerk utilizing its best efforts to ensure that such record is forwarded no later than ten days after the later of the deadline for the filing of any exceptions or replies has passed or the issuance of an amended proposal for decision.

(h) The commissioners shall consider the case at a posted meeting, no later than 120 days after the date SOAH provides to the TWCC Chief Clerk the proposal for decision or amended proposal for decision, if any exceptions or briefs and any replies to exceptions or briefs. Parties shall be notified of the final decision of the commissioners by certified mail, return receipt requested, or by personal delivery.

(i) SOAH shall place a confidentiality stamp on each page of the proposal for decision.

§149.10. Transition of Hearings from the Commission to SOAH.

(a) During 1995, the TWCC Chief Clerk shall provide SOAH with lists of hearings to be set after December 31, 1995. SOAH will provide the TWCC Chief Clerk with times, dates, and locations for such hearings and the TWCC Chief Clerk will send notices of hearing. The SOAH docket clerk will coordinate the assignment of hearing dates with the TWCC Chief Clerk so that hearings are scheduled both for the efficient use of ALJs and commission representatives in such cases.

(b) No hearings will be set to begin before a TWCC hearing officer after December 1, 1995 unless the circumstances require an expedited hearing including a hearing involving an issue of preauthorization under the Act, §413.014.

(c) The following hearings will be completed by a commission hearing officer:

(1) hearings where evidence was introduced on or before December 31, 1995; and

(2) hearings involving a prehearing conference which occurred on or before December 31, 1995 and which involve matters under the Act, Chapter 411.

(d) Except for hearings included in subsection (c)(2) of this section, hearings where evidence was introduced on or after January 1, 1996 will be heard by an ALJ even if prehearing or other matters were considered by a commission hearings officer prior to January 1, 1996.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514701

Susan Cory
General Counsel
Texas Workers' Compensation Commission

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Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700

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Chapter 164. Extra-Hazardous Employer Program

• 28 TAC §164.2, §164.10

The Texas Workers' Compensation Commission (the commission) adopts amendments to §164.2 and §164.10, concerning notice to "Extra-Hazardous Employers", and removal from the list of approved professional sources, without changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7466).

The amendments to §164.2 and §164.10 clarify the procedure for requesting a hearing under these rules. Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §411.049 to provide that hearings to contest identification of an employer as extra-hazardous shall be held by the State Office of Administrative Hearings (SOAH) rather than commission staff. Texas Labor Code, §402.073 was added by House Bill 1089 and provides, among other things, that hearings under the Administrative Procedure Act shall be held by the State Office of Administrative Hearings rather that commission staff. House Bill 1089, §1.57 provides that transfer of jurisdiction of hearings to SOAH takes effect January 1, 1996 and a hearing held before or pending on December 31, 1995 is governed by the law in effect immediately before September 1, 1995. Procedures for requesting and conducting hearings transferred to SOAH are contained in commission rules adopted as Chapter 148 of this title. Hearings where the first day of a hearing in which evidence is admitted occurs prior to December 31, 1995 will continue to be conducted in accordance with Chapter 145 of this title. Rule 164.2 has been amended to reflect that a hearing requested by an employer to contest designation as an "extra hazardous employer" will be conducted by SOAH in accordance with the procedural rules adopted by the commission in chapter 148. Rule 164.10 has been amended to reflect that hearings requested by a consultant to contest removal from the commission's list of approved professional sources will be conducted by SOAH in accordance with the procedural rules adopted by the commission in chapter 148 after which the SOAH administrative law judge will make a recommendation to the commission.

Comments were solicited through the *Texas Register* and a public hearing was held on October 11, 1995 regarding these rules. No comments on the proposals were received.

The amendments are adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §402.072, which provides that only the commission may impose certain sanctions; and the Texas Labor Code, §402.073, §411.049, as amended by House Bill 1089, 74th Legislature, 1995, which transfer the specified hearing functions to the State Office of Administrative Hearings; House Bill 1089, 74th Legislature, 1995, Section 1.57, which provides that the State Office of Administrative Hearings has jurisdiction over the transferred hearings effective January 1, 1996, but that hearings held before or pending on December 31, 1995 will be governed by the law in effect immediately before September 1, 1995; the Texas Government Code, §2003.021(c), as amended by House Bill 1089, 74th Legislature, 1995, which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission. §164.2. Notice to "Extra-Hazardous Employers" (a) The division shall

notify the extra-hazardous employer and the employer's workers' compensation insurance carrier, if any. The notice shall be sent to: (1) the employer by certified mail at the employer's principal place of business; and (2) the loss control department or equivalent of the employer's workers' compensation insurance carrier of record in the commission's files. (b) The notice shall be in writing and shall inform the employer of the following requirements: (1) a statement that the employer has been identified as an extra-hazardous employer; (2) a statement of the facts on which the identification of the extra-hazardous employer is based; (3) an outline of the actions the employer is required to take as an identified extra- hazardous employer; (4) the information that, if the employer's records show facts that differ from those on which the identification of extra-hazardous employer is based, the employer may request an administrative review by the division. Subjects that may be resolved by administrative review include, but are not limited to, the proper SIC Code, the highest employment within the audit period, the status of claimants as employees or leased employees/independent contractors, duplicate claims, claims not belonging to the identified employer, companies that are out of business or no longer doing business in Texas, injury claims involving seven days or less lost time, and fatalities meeting the criteria in §164.14 of this title (relating to Values and Criteria Assigned for Computation of Extra-Hazardous Employer Identification) that were not excluded prior to notification. Such review requires that the employer allow complete and open inspection of all employer records that may impact upon the determination of being designated as an extra-hazardous employer and provide records upon request. The request for administrative review must be filed with the division no later than the 10th day after the date the notice was received. The Workers' Health and Safety Division is the final arbiter of administrative reviews. If the extra-hazardous employer identification cannot be resolved administratively, the employer will be offered the opportunity to refer it to a hearing. The extra-hazardous employer status will remain in effect until notified by the division that the status has been revoked (unless the status is suspended by a request for a hearing); (5) the information that the employer has the right to contest "extra-hazardous employer" status by requesting a hearing within 20 days of notification of identification or failure to resolve the matter administratively, as provided by Chapter 145 of this title (relating to Dispute Resolution Hearings Under the Administrative Procedure Act) or as provided by Chapter 148 of this title (relating to Hearings Conducted by the State Office of Administrative Hearings) as applicable. The Workers' Health and Safety Division will offer the employer the opportunity to refer to a hearing requests for an administrative review that are not resolved through the administrative process. A request for a hearing will suspend identification as an "extra-hazardous employer" pending the outcome of the hearing; (6) the penalties for failure to take the actions required under the Extra-Hazardous Employer Program; and (7) a statement that any information or documents provided to the commission may be subject to disclosure under the Open Records Act. §164.10. Removal From the List of Approved Professional Sources. (a) A safety consultant shall remain on the list of approved professional sources until removed by the commissioners because: (1) the hazard analysis and accident prevention plan signed by the consultant is in conflict with mandatory state and/or federal safety and health standards applicable to the workplace; (2) the safety consultant knowingly gives false or misleading information in any report required under the extra-hazardous employer program; (3) the safety consultant, without good cause, fails to file or to timely file the reports required under the extra-hazardous employer program; (4) the safety consultant no longer meets the qualifications of an approved professional source under §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations); or (5) the consultant approves an accident prevention plan submitted by an employer that does not meet the criteria prescribed in §164.4(a) of this title (relating to Formulation Of Accident Prevention Plan). The consultant's signature on the Accident Prevention Plan Cover Sheet is understood to certify that the accident prevention plan has been personally reviewed by the consultant and the plan contains the prescribed components in §164.4 (a). (b) The division shall notify a consultant by certified mail, return receipt requested, of the division's intent to recommend to the commissioners that the consultant be removed from the list. Within 20 days after receiving the notice, a consultant may request a hearing as provided by §145 3 of this title (relating to Requesting a Hearing) or as provided by §148.3 of this title (relating to Requesting a Hearing) as applicable. If a request for hearing is received, the commission shall hold a hearing as provided in Chapter 145 of this title (relating to Dispute Resolution -- Hearings Under the Administrative Procedure Act) or as provided in Chapter 148 of this title (relating to Hearings conducted by the State Office of Administrative Hearings) as applicable. If no request for hearing is filed within the time allowed, the division's recommendation will be reviewed by the commissioners at a public meeting and a decision made to either delete or maintain the consultant on the list. (c) As described in the Texas Labor Code, §402.072, §145.24 of this title (relating to Special Provisions for Imposing Sanctions Pursuant to the Act, §2.09(f)), and §148.23 of this title (relating to Proposal for Decision by the Hearing Officer), only the commissioners may delete a consultant from the list The commission shall notify the consultant by issuing an order of deletion. This order will be delivered to the consultant by certified mail, return receipt requested, with a copy maintained in the consultant's file until the consultant meets reinstatement criteria as outlined in subsections (d),(e),(f), or (g) of this section. (d) A safety consultant removed from the list of approved professional sources under subsection (a)(1) or (2) of this section shall not be reinstated on the list. (e) A safety consultant removed from the list of approved professional sources under subsection (a)(3) of this section may apply for reinstatement on the list after a period of one year. (f) A safety consultant removed from the list of approved professional sources under subsection (a)(4) of this section may apply for reinstatement on the list as soon as the consultant satisfies the requirements of §164.9. (g) A safety consultant removed from the list of approved professional sources under subsection (a)(5) of this section will be reinstated on the active list upon attending an approved source update seminar conducted by the division. (h) If a consultant fails to attend an annual update seminar as prescribed in §164.9(e), the consultant will be placed on an "inactive" list by the division. Consultants on the inactive list are prohibited from conducting Extra-Hazardous Employer Program consultations. The consultant will be notified by the division using certified mail, return receipt requested. (i) A safety consultant placed on the inactive list under subsection (h) of this section will be reinstated to the active list upon attending an approved professional source update seminar conducted by the division.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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Susan Cory
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Texas Workers' Compensation Commission

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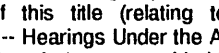
Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700



• 28 TAC §164.5, §164.15

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §164.5, concerning follow-up inspection by the division, with changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7467). The commission adopts new §164. 15 without changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7468) and it will not be republished.

The amendment to §164.5 is adopted to make the rule consistent with the recent statutory amendment to Texas Labor Code, §411.045(a). Section 411.045 requires the Workers' Health and Safety Division of the commission to conduct a follow-up inspection of an extra-hazardous employer following formulation and implementation of an accident prevention plan. The statute initially required the inspection to be conducted six months after formulation of the plan. House Bill 1089, passed by the 74th Legislature in 1995, amended Texas Labor Code, §411.045(a) to provide that the followup inspection shall be conducted not earlier than six months or later

than nine months after formulation of the plan. This rule amendment makes the same change to §164.5. The commission has deleted the phrase "or earlier when requested by the employer and with the concurrence of the professional source" from §164.5(a) as proposed. Although this option for inspection prior to six months after formulation of an accident prevention plan was contained in the previous version of the rule, the amendment to §411.045 of the Labor Code, does not appear to allow an inspection prior to six months after the formulation of the plan.

House Bill 1089 also added new §411.0415 to the Texas Labor Code, to provide an exemption for certain employers from identification as an extra-hazardous employer. This new statutory provision addresses the situation where an employer has been identified as an extra-hazardous employer based on injury frequencies which result from a fatality. If the employer can establish that the fatality occurred because of factors beyond the employer's control or was outside the course and scope of the deceased employee's job, the executive director may exclude the employer from the extra-hazardous designation based solely on the fatality. This new statute also mandates that the commission analyze and list fatalities that may not be related to the work environment and authorizes the commission to request a hearing to determine proximate cause of a fatality pursuant to the Texas Labor Code, §411.049. House Bill 1089 amended §411.049 to require that hearings under that section be held by the State Office of Administrative Hearings rather than by commission staff. New §164.15 implements these new statutory provisions by providing the procedure for the commission to request a hearing to determine proximate cause of a fatality, and for the employer to contest the identification as extra-hazardous by requesting an administrative review or by requesting a hearing. The issues which may be addressed at a hearing or administrative review are set out in the rule.

Comments were solicited through the *Texas Register* and a public hearing was held on October 11, 1995, regarding these rules. No comments on the proposals were received.

The amendment and new section are adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §402.073, which requires the Texas Workers' Compensation Commission and the State Office of Administrative Hearings to cooperate in establishing procedures for holding hearings; the Texas Labor Code, §411.045, which requires the Workers' Health and Safety Division of the commission to conduct a follow-up inspection of an extra-hazardous employer following formulation and implementation of an accident prevention plan; the Texas Labor Code, §411.0415, as added by House Bill 1089, 74th Legislature, 1995, which provides exemption from identification as extra-hazardous for certain employers and provides for hearings to determine proximate cause of a fatality if it was the basis of the designation as an extra-hazardous employer; the Texas Labor Code, §411.049(b), as amended by House Bill 1089, 74th Legislature, 1995, which mandates that hearings to contest an extra-hazardous determination be held by the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), as amended by House Bill 1089, 74th Legislature, 1995, which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

§164.5. Follow-up Inspection by the Division.

(a) Not earlier than six months or later than nine months after the formulation of the employer's accident prevention plan, the division shall conduct a follow-up inspection to ensure compliance with, and effectiveness of, the accident prevention plan at the employer's premises.

(b) The inspection shall be conducted and completed during normal work hours.

(c) The employer shall allow the division access to the employer's premises, including remote job sites, and employees during normal work hours to conduct the follow-up inspection. An employer who without good cause refuses to allow the division access to the employer's premises may be served with an order of the commission demanding such access. Failure to comply with the commission order will subject the employer to penalties and sanctions as provided in the Texas Labor Code, §415.021(b)(3).

(d) At the time of the inspection, the division may consider as evidence of compliance information which includes, but is not limited to, visual verification, written policies and procedures, attendance rosters for training programs, employee interviews, and purchase orders or receipts for equipment or services necessary to support the accident prevention plan.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514695 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700

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Chapter 170. State Risk Management

• 28 TAC §170.2

The repeal is adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; and the Texas Labor Code, §§412.001-412.008, as amended by House Bill 1089, 74th Legislature, 1995, which set out requirements for management of job related risks in state agencies, the duties of state agencies and the commission's division of risk management, duties of the state risk manager, annual reports of state agencies, the commission's rulemaking authority, the commission's report to the legislature and interagency contracts for payment of risk management costs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514704 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700

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The Texas Workers' Compensation Commission (the commission) adopts new §170.2, concerning state risk management guideline, the simultaneous repeal of current §170.2, concerning applications for exemptions, and an amendment to §170.3, concerning reports from state agencies. New §170.2 and amended §170.3 are adopted with changes to the proposed text as published in the September 19, 1995 issue of the *Texas Register* (20 TexReg 7469).

Changes made to the proposed rule are in response to public comment received, and are described in the summary of comments and responses section of this preamble. Other changes were made for consistency or to correct typographical or grammatical errors. The changes made are found in §170.2(a) (1) and (2), (b), and (c); and §170.3(b).

Previously, §170.2 provided a procedure by which an agency could claim an exemption from the requirement in the Texas Labor Code, §412.002 to implement a comprehensive risk management program. This exemption required the agency to file an application for exemption prior to August 31, 1991. No further exemptions will be granted based on the Texas Labor Code, §412.002 and as a result former §170.2 is no longer needed and therefore repealed.

House Bill 1089, 74th Legislature, 1995, added new §412.0025 to the Texas Labor Code. New §412.0025 requires each state agency subject to Chapter 412 of the Texas Labor Code, to actively manage the risks of that agency by developing, implementing, and maintaining health and safety programs and programs designed to assist employees who sustain compensable injuries to return to work. House Bill 1089 also amended the Texas Labor Code, §412.003 by adding a requirement that the commission's Risk Management division review, verify, monitor, and approve risk management programs adopted by state agencies and by adding to §412.007 the requirement that the commission include in its report to the legislature identification of each state agency that has not complied with the commission's risk management guidelines. New §170.2 implements the new statutory requirements. New §170.2 (a) requires each state agency covered by Chapter 412 of the Texas Labor Code, to develop and implement an agency risk management program which includes a safety and health program and a return to work program. The programs must comply with the guidelines contained in *Risk Management for Texas State Agencies*, published by the Risk Management Division of the Texas Workers' Compensation Commission or an appropriate nationally recognized standard such as the Occupational Safety and Health Administration standards. New §170.2 (b) and (c) provide that if a risk exposure is not covered by the guidelines then nationally recognized standards shall be followed and if the applicable guideline or standard cannot be complied with, the agency file a statement with the Risk Management division explaining the noncompliance and alternative actions to be taken. New §170.2 (d) requires the Risk Management division to review, verify, monitor, and approve state agency risk management programs and subsection (e) states the new statutory requirement that non-compliant agencies be identified in the commission's report to the legislature.

Section 170.3 details the requirements of the reports that state agencies covered by the Act are required to file with the commission's division of Risk Management each year and requires other agencies to allow the commission access to data bases relating to state property and liability and workers' compensation losses. The amendment to this rule updates statutory references and revises reporting requirements. The amount of information required from state agencies is reduced by the amendment. The ability to obtain the needed information electronically from other sources allows for more efficient and accurate information retrieval.

The public benefit anticipated as a result of enforcing the new section, amended section, and repeal will be implementation of the Workers' Compensation Act as amended by recent legislation, clarification of requirements for risk management programs, clarification of report filings and provision of a definite standard for state agency risk management programs. The result should be a safer workplace for state government workers in Texas. A reduction in employee injuries will result in a cost savings to taxpayers.

Comments expressing general opposition to the proposed rules were received from the Texas Rehabilitation Commission and Terrell State Hospital.

Summaries of the comments and commission responses are as follows.

COMMENT: Commenter stated that the time and equipment necessary to accomplish the requirements of subsections (a), (b), and (c) cannot be accurately projected and budgeted for this fiscal year and so the proposed change is ill-timed. Commenter also asked whether any agencies could comply with these changes without additional staff and overhead and whether additional TWCC staff would be needed to accomplish review and approval of risk management programs. If additional TWCC resources would be necessary, commenter questioned what the costs to state agencies would be.

RESPONSE: The commission disagrees that the proposed change is ill-timed. The timing for these changes was dictated by House Bill 1089 and exists regardless of the requirements of this rule. The commission does, however, agree that development, implementation and maintenance of a comprehensive risk management program requires considerable time and a commitment of staff and resources by a state agency. As a result, subsection (a) has been revised as follows:

"Each state agency covered by Texas Labor Code, Chapter 412 shall, by January 1, 1996, develop and implement an agency risk management program which shall include a safety and health program and a return to work program. State agency risk management programs shall either:

(1) comply with the risk management guidelines, including risk control and risk financing, contained in *Risk Management for Texas State Agencies*, published by the Risk Management Division of the commission; or

(2) utilize other appropriate nationally recognized standards, including the Occupational Safety and Health Administration (OSHA) standards."

This will provide more flexibility to state agencies and allow the agency to choose the most appropriate measures taking into consideration the agency's ability to implement each measure. The Division's program review also recognizes that state agencies must be allowed sufficient time to develop and implement their programs by including a timeline to address the issues and recommendations identified in the review. The current Risk Management Division staff is adequate to review, verify, monitor, and approve risk management programs adopted by state agencies as required by §412.003(a) of the revised Act.

COMMENT: Both commenters objected to the provision of §170.2(a) which requires state agency risk management programs to comply with the guidelines in *Risk Management for Texas State Agencies*, because it allows the Risk Management division to change the guidelines without going through the rule making process if the text is not published for comment and adopted in the rulemaking process.

RESPONSE: The commission disagrees. This rule restates the intent of the legislature specified in the Labor Code, regarding the development by state agencies of individual risk management programs. The Division of Risk Management is required by §412.003(a)(1) of the Labor Code, to administer guidelines adopted by the commission for a comprehensive risk management program applicable to all state agencies. It does not, however, require those guidelines to be adopted by rule. In addition, because compliance with the guidelines is voluntary, and agencies are authorized to utilize other appropriate nationally recognized standards, *Risk Management for Texas State Agencies* is not required to be adopted by rule. Like the guidelines issued by the Texas Education Agency (TEA) in the case *TEA v. Leeper* (893 S.W. 2d 432), the risk management guidelines are only recommended, not prescriptive and, as noted previously, a state agency is free to utilize other appropriate nationally recognized standards.

COMMENT: Commenter found the term "appropriate nationally recognized standards" in §170.2(b) vague and suggested that specific standards be cited in the rule.

RESPONSE: The commission agrees and subsection (b) has been amended to provide an example of appropriate nationally recognized standards.

COMMENT: Commenter questioned the reference in the preamble to "each state agency and major facility" because this reference does not appear in §170. 2(a) of the rule. In addition, commenter stated that the Risk Management division has chosen to approach large facilities, such as state hospitals and schools, which are actually subsets of a large state agency, independently. This disregards the operational mandates and authority of the parent agency. Commenter contended that the rule should apply to state agencies only and not independently to large facilities which are subsets of the agency.

RESPONSE: The commission agrees in part The reference to major facilities was mistakenly included in the preamble of the rule. The Division of Risk Management considers its mandate from the legislature to be to assist state agencies to reduce losses to the state. However, when the division is conducting a review of the risk management program of a state agency, it also has the authority to review the risk management programs of the major facility subunits as a part of the overall review.

COMMENT: Commenter expressed the opinion that there will be costs to state agencies in personnel time to research, analyze and comply with any nationally recognized standards for risk exposures. Commenter stated that §170.2 requires more staff analysis, research and reporting than can be done in state agencies to implement national standards. Commenter felt that the costs to develop the expertise needed for implementation is beyond the budgets of many agencies and therefore the commission should identify applicable standards and adopt them as rules. Commenter also stated that there is no law requiring the statement mentioned in subsection (c).

RESPONSE: The commission disagrees. Because of the changing dynamics of risk exposures and statutory changes affecting these exposures, guidelines have not been developed for all risk exposures. In the absence of an adopted risk management guideline, state agencies are still exposed to the risks of loss and need to exercise initiative in taking all reasonable steps to voluntarily comply with established standards.

Subsection (c) requires a state agency to file a statement with the Division of Risk Management which identifies the factors preventing the agency's compliance with the appropriate guideline or nationally recognized standard. The Division of Risk Management is required to approve state agency risk management programs and this statement will provide information to assist in the review and approval process. The language in subsection (c) has been revised to make clear that such statements must only be filed when the Division specifically requires one. The revision to §170.2(c) is as follows:

"(c) A state agency which cannot comply with any applicable guideline or nationally recognized standard shall, upon request of the Division of Risk Management, at the time of a risk management program review, file a statement with the Risk Management Division which:

(1) clearly identifies the factors preventing the agency's compliance with the appropriate guideline or nationally recognized standard; and

(2) states the action the agency will take in lieu of complying with the guideline or nationally recognized standard."

COMMENT: Commenter questioned whether §170.2(a) meant to make only Chapters 5 and 6 of *Risk Management for Texas State Agencies* standards for state agencies or to make all sections and chapters standards. Commenter felt that Chapters 5 and 6 contain little substance and offer only general definitions and doctrine.

RESPONSE: The commission agrees that the current wording is confusing and has added the word "including" before the phrase "risk control and risk financing". Each state agency's risk management program in its comprehensive sense shall meet all applicable risk management guidelines developed by the Division, as published in the set entitled *Risk Management for Texas State Agencies* or use approved alternatives to address each type of risk covered by the guidelines. The staff also notes that Chapters 5 and 6 are intended to be informative and educational and specific risk management techniques are described in other parts of the guideline.

COMMENT: Commenter suggested that the phrase "in lieu of complying" in subsection (c)(2) be changed to "state the actions the agency should take".

RESPONSE: The commission disagrees that a change in the language is needed. The language of Rule 170.2 subsection (c)(2) clearly states the intent of the rule, that if a state agency cannot comply with an appropriate guideline or appropriate nationally recognized standard, the agency shall specify the action the agency will take in lieu of (i.e. instead of) complying with the guideline or nationally recognized standard.

COMMENT: Commenter suggested that "non-compliance" reports to the legislature mentioned in §170.2(e), include an agency's position or rationale for such non-compliance to ensure the accuracy and clarity of the information. The commenter also suggested that the nature of the reports be communicated to risk managers in advance.

RESPONSE: The commission disagrees. The report to the legislature only requires a listing of agencies not in compliance and not an explanation of the cause of this designation. In addition, an agency that is determined to be "not in compliance" will be given opportunities to come "into compliance" before the Division of Risk Management includes the agency in the biennial report to the legislature. The Division views its legislative mandate to be one of joint cooperation with all state agencies subject to Chapter 412 to reduce injuries to employees, and to reduce the costs to the state for workers' compensation, property and liability losses. Providing information to risk managers about the nature of the report would be helpful, but does not need to be addressed by rule.

COMMENT: Commenter questioned why TWCC forms 121, 122, 123, 124, 126A, 126B, 126C, analyses of losses on AGS 10-91/TWCC 121, and "list of any loss exposures unique to the agency that have not been reported and placed in a statewide data base not accessible to the commission" are referenced in §170. 3, because most of them are obsolete. Commenter also questioned why the forms were being reintroduced if the intent is to reduce the amount of information required from state agencies.

RESPONSE: The commission disagrees. The commenter may have misread the proposed revision to Rule 170.3 in the *Texas Register*. References in the rule to obsolete reporting forms have been deleted. The Division of Risk Management is not proposing reinstatement of obsolete forms.

COMMENT: Commenter objected to the requirement in §170.3(b) that state agencies provide the Risk Management division with access to data bases. Commenter stated that much of this data is confidential and the Risk Management division cannot demonstrate a need for the information.

RESPONSE: The commission disagrees. It is not the intent of the Division of Risk Management to obtain access to any and all databases of information controlled by state agencies. However, the Division is interested in information residing in state agency-controlled databases that contains current and historical claims, loss and exposure information relating to property, liability and workers' compensation losses, in fulfillment of the legislative mandate specified in the Labor Code, §412.005. The Division will cooperate with other state agencies to maintain all controlling laws on confidentiality in accordance with the provisions of Texas Government Code, Chapter 552 as interpreted in Office of the Attorney General Open Records Decisions Nos. 576, dated Nov. 28, 1990 and 617, dated August 23, 1993. The Division proposes revised language to clarify this intent in §170.3(b), as follows:

"(b) Where state controlled databases containing information relating to state property, and liability and workers' compensation losses exist, the controlling agency shall, upon request by the Division of Risk Management, provide the Division access to the database to obtain claim and/or loss information.

COMMENT: Commenter stated that the access to state agency data bases required in §170.3(b) will require TWCC to have a security manager to administer each agency's access management protocols and that the cost for this will likely be charged-back to the state agencies thereby increasing the costs to comply with the rule and increasing the amount of information required to be provided by state agencies.

RESPONSE: The commission disagrees that a security manager would be necessary to make access to state agency databases available to the Division. The Division currently is provided access to certain state agency-controlled databases through the provision of a computer tape provided to the Division by the controlling agency. Access to the database in this manner does not require a security manager since a direct link into the controlling agency's computer system is not made. Therefore, no additional significant costs will be charged back to state agencies, and no increased costs are necessary to comply with this rule.

• 28 TAC §170.2, §170.3

The amendment and new section are adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; and the Texas Labor Code, §§412.001-412.008, as amended by House Bill 1089, 74th Legislature, 1995, which set out requirements for management of job related risks in state agencies, the duties of state agencies and the commission's division of risk management, duties of the state risk manager, annual reports of state agencies, the commission's rulemaking authority, the commission's report to the legislature and interagency contracts for payment of risk management costs.

§170.2. State Risk Management Guidelines.

(a) Each state agency covered by Texas Labor Code, Chapter 412 shall, by January 1, 1996, develop and implement an agency risk management program which shall include a safety and health program and a return to work program. State agency risk management programs shall either:

(1) comply with the risk management guidelines, including risk control and risk financing, contained in *Risk Management for Texas State Agencies* published by the Risk Management Division of the commission; or

(2) utilize other appropriate nationally recognized standards, including Oc-

cupational Safety and Health Administration (OSHA) standards.

(b) When a risk exposure is not covered by the guidelines referenced in subsection (a) of this section, appropriate nationally recognized standards shall be followed, including the OSHA standards.

(c) A state agency which cannot comply with any applicable guideline or nationally recognized standard shall, upon request of the Division of Risk Management at the time of a risk management program review, file a statement with the Risk Management division which:

(1) clearly identifies the factors preventing the agency's compliance with the appropriate guideline or nationally recognized standard; and

(2) states the action the agency will take in lieu of complying with the guideline or nationally recognized standard.

(d) The division shall review, verify, monitor, and approve state agency risk management programs based on compliance with subsections (a), (b), and (c) of this rule.

(e) State agencies covered by Chapter 412 of the Texas Labor Code, which do not comply with subsections (a), (b), and (c) of this rule will be identified as not in compliance with this subchapter in the biennial report to the Legislature.

§170.3. Reports.

(a) A state agency subject to the Texas Labor Code, Chapter 412, shall file the following with the Commission no later than October 30 of each year:

(1) an annual Loss Summary Report on TWCC form 126;

(2) a list of any loss exposures unique to the agency that have not been reported and placed in a statewide database accessible to the Division.

(b) Where state controlled databases containing information relating to state property, and liability and workers' compensation losses exist, the controlling agency shall, upon request by the Division of Risk Management, provide the Division access to the database to obtain claims, and/or loss information.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514703 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700

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Chapter 180. Compliance and Practices

• 28 TAC §180.8

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §180.8, concerning notice of administrative violation and penalty, without changes to the proposed text as published in the September 19, 1995 issue of the *Texas Register* (20 TexReg 7470).

The amendment clarifies the procedure for requesting a hearing on a sanction. Recent legislation (House Bill 1089, 74th Legislature, 1995) amended the Texas Labor Code, §402.073 and §415.034 to provide that hearings on sanctions or related to an administrative penalty assessed by the commission be held by the State Office of Administrative Hearings (SOAH) rather than commission staff. House Bill 1089, §1.57 provides that transfer of jurisdiction of hearings to SOAH takes effect January 1, 1996 and a hearing held before or pending on December 31, 1995 is governed by the law in effect immediately before September 1, 1995. Procedures for requesting and conducting hearings transferred to SOAH are contained in commission rules adopted as Chapter 148 of this title. Hearings where the first day of a hearing in which evidence is admitted occurs prior to December 31, 1995 will continue to be conducted in accordance with Chapter 145 of this title. The amendment to §180.8 implements this transfer of jurisdiction by referencing the Chapter 148 rules as well as the Chapter 145 rules.

Comments were solicited through the *Texas Register* and a public hearing was held on October 11, 1995 regarding this rule. No comments on the proposal were received.

The amendment is adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §402.072, which sets out sanctions only the commission can impose; the Texas Labor Code, §402.073, as amended by House Bill 1089, 74th Legislature, 1995, which transfers specific hearing functions to the State Office of Administrative Hearings; the Texas Labor Code, §415.034, as amended by House Bill 1089, 74th Legislature, 1995, which allows a party charged with an administrative violation or the Executive Director or the Commission to request a hearing with the State Office of Administrative Hearings; House Bill 1089, 74th Legislature, 1995, §1.57, which provides that the State Office of Administrative Hearings has jurisdiction over the transferred hearings effective January 1, 1996, but that hearings held before or pending on December 31, 1995 will be governed by the law in effect immediately before September 1, 1995; the Texas Government Code, §2003.021(c), as amended by House Bill 1089, 74th Legislature, 1995, which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514702 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: December 4, 1995

Proposal publication date: September 19, 1995

For further information, please call: (512) 440-3700

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 332. Composting

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §§332.1-332.8, 332.21-332.23, 332.31-332.38, 332.41-332.47, 332.51-332.53, 332.61-332.64, 332.71-332.75, concerning composting of materials that might otherwise be placed in landfills. Sections 332.2, 332.3, 332.4, 332. 5, 332.7, 332.8, 332.21, 332.22, 332.31, 332.32, 332.33, 332.34, 332.35, 332..37, 332.41, 332.42, 332.43, 332.45, 332.47, 332.52, 332.53, 332.61, 332.71, and 332.72 are adopted with changes to the proposed text as published in the June 20, 1995, issue of the *Texas Register* (20 TexReg 4464). Sections 332.1, 332.6, 332.23, 332.36, 332.38, 332.44, 332.46, 332.51, 332.62, 332.63, 332.64, 332.73, 332.74, and 332.75 are adopted without changes and will not be republished.

The purpose of the compost rules is to establish a regulatory scheme which will promote the composting and beneficial use of organic materials which traditionally have been landfilled. The statutory basis for the rules is found in Senate Bill (SB) 1340, 72nd Legislature, and SB 1051, 73rd Legislature which amended the Health and Safety Code, Chapter 361, the Solid Waste Disposal Act (SWDA). Senate Bill 1340, the Texas Omnibus Recycling Law of 1991, establishes a statewide recycling goal of 40%, and includes composting as an acceptable method of recycling. In addition, the statute directs the TNRCC to establish a composting program capable of achieving at least a 15% reduction

in the amount of the municipal solid waste stream that is otherwise deposited in landfills. Senate Bill 1051 requires the TNRCC to adopt rules establishing minimum standards and guidelines for the issuance of permits for the composting of mixed municipal solid waste.

The adopted rules address composting, mulching and land application, and beneficial re-use of non-hazardous organic materials. While it is anticipated that the majority of composted materials will be diverted from the municipal waste stream, the proposed rules also address agricultural materials, sludge, and other organic materials diverted from the industrial waste stream. The final rule represents a complete, consolidated rule package which includes facility criteria for source-separated and mixed waste operations, and which sets forth end-product standards.

The commission accepted public comment on the proposed rules until 5:00 p.m. on July 21, 1995. A public hearing to accept verbal and written comment on the proposed rule was held at TNRCC offices in Austin, Texas on July 21, 1995. The commission received written comment from 25 entities, and seven persons provided verbal comment at the public hearing.

The following entities provided comment on the proposed rules: Allwaste Recovery Systems, City of Amarillo, American Forest & Paper Association, American WasteWater, City of Austin, Bedminster Bioconversion Corp., Black and Veatch, Brazos River Authority, Bill Carter-Recycling & Composting Consultant, Center for Maximum Potential Building Systems, Champion International Corp., Cold Springs Processing, The Composting Council, Gulf Coast Waste Disposal Authority, Henry, Lowerre, Johnson, Hess & Frederick Attorneys at Law, League of Women Voters of Texas, Mesa Processors, The Procter & Gamble Co., Recycling Coalition of Texas, Silver Creek Materials, Inc., Sojo Treatment, Texas Disposal Systems, Inc., Trap Master, Upper Trinity Regional Water District, Wastewater Systems.

A number of typographical errors were identified in the proposed rule. In §332.21(1), the words "for feedstock" have been deleted to be consistent with §332.3(c)(1). In §332.2, the proposed definition of "Mulch" utilized language referring to "wood that has been systematically killed..." The word "systematically" has been replaced with "systemically." In §332.34(9)(B), "and" has been removed from the end of the paragraph because §332.34(10) is not the last paragraph in the section. A catchline has been added to §332. 4(11) because it is the only paragraph in that section proposed without one. In §332.45(5), the first sentence reads, "The facility shall be sited and operated in such a manner as to minimize the potential of nuisance conditions.. ." The term "minimize" has been replaced with "prevent" to be consistent with the statutory requirements and other requirements in the rule to prevent, rather than minimize nuisances. In proposed §332.47(6)(B)(v), the last sentence reads, "The minimum number of piezometers...for sites of five acres or less, for site greater than..." The term "site" has been changed to "sites. " In proposed §332 47(6)(E)(v), the first sentence has been changed to read, "Provide a complete narrative on product distribution to include..." In proposed §332.47(6)(E)(vi), there is a reference to clauses (i)-(iv). The reference to clause (iv) has been changed to (v). In §332.52(2)(A) and (B), the proposed rule references §332 54; however, the reference should be to §332.53, and the change has been made. Proposed §332.61(a) read, "A permittee...have reasonable access household hazardous waste..." The word "to" has been added before household hazardous waste (HHW). In §332.72(c), the proposed last sentence in the subsection states, "Testing of final product... or, in the case of facilities with TNRCC permit, the Quality..." The final rules add "or registration" after TNRCC permit in this sentence.

Several section titles were changed to more accurately reflect the requirements of those sections. The sections with changed titles are listed in this paragraph. The title of §332.31 has been changed to "Definition of and Requirements for Registered Facilities," and the title of §332.32 has been changed to "Certification by Engineer, Approval by Landowner, and Inspection." The title of §332.33 in the final rule is "Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production." The titles of §332.41 and §332.42 have been changed to "Definition, Requirements, and Application Processing for a Permit Facility," and "Certification by Engineer, Ownership or Control of Land, and Inspection," respectively. The title of §332.43 in the final rule is "Required Forms, Applications, and Reports." The title of §332.53 has been changed to "List of Recyclable Materials."

The adoption preamble addresses all comments received by the commission regarding the proposed compost rules. Due to the number of comments received, however, the preamble is very lengthy. So that persons may quickly review the changes to the proposed rules in those sections identified above, the preamble will list those changes as follows. More detailed descriptions of the comments and the commission responses are contained in the body of the preamble. The term and definition of "Curing" have been removed from the §332.2. The commission has amended the definition of "Mature compost" in the final rule to replace "sanitized" with "the appropriate level of pathogen reduction (ie. PFRP or PSRP)." The definition of "Nuisance" has been amended to reference the nuisance provisions of the Health and Safety Code, Chapter 341, Texas Water Code, Chapter 26, and 30 TAC §101.4 of the air regulations to eliminate confusion. The definitions for "PFRP" and "PSRP" have been amended to reference United States Environmental Protection Agency (EPA) regulations. The definition of "Semi-mature compost" has been amended to replace "sanitization" with "the appropriate level of pathogen reduction (ie. PFRP or PSRP)." Proposed §332.3(a)(1), has been changed by removing certain language to clarify that mixed municipal solid waste cannot be composted at registered facilities. Proposed §332.3(d)(1)(B) has been amended because the cross-references in the subparagraph to various provisions of §332.4 were incorrect. Proposed §332.4(11) has been changed by moving the following language "any of the materials listed in paragraph (10) of this section which are not managed in accordance with the requirements of this chapter" to the very beginning of the paragraph to make the paragraph clearer. Proposed §332. 5 is amended and restructured to provide a more clear process for the application and granting of variances. Proposed §332.7 has been changed by adding language to state "If the wastewater treatment facility has received a water quality permit under the Texas Water Code, Chapter 26 which authorizes compost operations, the compost operation shall be conducted in accordance with the facility permit". Proposed §332.8(b)(3), (c)(4), (d)(4), and (e)(4) have been modified, as follows: "Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement ..." Both §332.31 and §332.41 have been restructured for purposes of clarity and consistency. More clearly defined public notice and processing requirements have been added to proposed §§332.22, 332.35, and 332.41 in the final rule. Section 332.35 also now addresses the motion for reconsideration of an executive director's decision on a registration. Proposed §332.32(a) and §332.42(a), which stated that facilities must comply with any future rules to be in compliance with the registration, have been removed due to concerns that they may not be in compliance with §481. 143 of the Government Code. As a result of this change, proposed §332.32(b), (c) have become §332.32(a), (b) and proposed §332.42(b), (c) have become §332.42(a), (b) in the final rule. Proposed §332.32(b) and §332.42(b), now §332.32(a) and §332.42(a) respectively, have been revised to read "... in general compliance with the regulations prior to accepting any feedstock at the facility that requires registration and maintaining that certification on-site available for inspection by the commission." In addition, a new paragraph (c) has been added to §332.32 and §332.42 to require an inspection by TNRCC prior to the acceptance of any feedstocks. Sections 332.33 and 332.43 have been amended to address the requirement for submission of final product testing to be consistent with §332.71. Additionally, the paragraphs in §332.33 were rearranged to add clarity. Proposed §332.35(c) has been amended to state that the executive director will base his decision to approve or deny a registration application on whether the application meets the criteria established in §332.4, General Requirements, and Subchapter C. Proposed §332.37(1) and §332.45(1) have been amended to allow leachate to be processed at an authorized facility or as authorized by a National Pollution Discharge Elimination System (NPDES) permit. Proposed §332.37(2) has been modified so that the second sentence reads: "Facilities that compost municipal sewage sludge, grease trap waste, disposable diapers, "and/or" the sludge byproduct of paper mill production shall install and maintain a liner system..." Previously, the sentence utilized "and" rather than "and/or." Proposed §332.37(2) and §332.47(6)(C)(i) have also been amended to allow for alterna-

tive designs including concrete. Proposed §332.45(9) has been amended to add a reference to 30 TAC Chapter 305, relating to Consolidated Permits. Proposed §332.47(6)(A)(iv)(II) has been clarified by changing the reference of "TxDOT Circular 80-76" to its generally recognized name of the "Bridge Division Hydraulic Manual" to alleviate confusion. Proposed §332.47(6)(A)(iv)(IV) is the only subclause in clause (iv) with a title; therefore, the title has been removed for consistency. New paragraph (11) has been added to §332.47 to require applicants to submit a list of landowners, residents, and businesses to be consistent with the public notice provisions of §332.41. The list of recyclable materials in proposed §332.53 has been removed and replaced with a statement that the executive director will maintain the list of recyclable materials, and the title of the section has been amended. References to §332.53 in §332.52 have been changed accordingly Proposed §332.61(a), has added "compost" prior to permittee to clarify that not just any permittee is subject to the household hazardous waste (HHW) collection requirements. Proposed §332.71(d)(1) has been changed to allow for the use of the ROM method (Reduction in Organic Matter) in the Maturity Protocol. Subparagraph 332.71(e)(1)(D) has been removed because the information required by the subparagraph will be provided by subparagraph (C) of that section.

The commission received several general comments on the rule. Five commenters expressed general support for the proposed rules as published. Another commenter expressed strong support for the overall character of the compost regulations with the exception of the source-separated recycling and HHW collection requirements, and the lack of size limits. Three commenters believe the regulations are daunting and will discourage composting. They noted that the regulations should be a broad and flexible set of operational standards that would accommodate site-specific conditions and variations in feedstocks and market conditions. Another commenter expressed concern that TNRCC's intent to protect natural resources and public health will be frustrated by various exemptions and over-broad standards in the rules as proposed. In response, the commission believes that the proposed rules create an accommodating environment for the processing and beneficial reuse of organic materials. In general, the rules set forth a regulatory environment that is intended to protect human heath and the environment while establishing reasonable regulatory requirements. The commission feels strongly that it is appropriate for the registration and permit tier feedstocks to contain design, location, and operational requirements and be subject to final product standards due to the potential contamination from those feedstocks. However, the commission recognizes that many different operational methods exist for compost facilities, and the rules include the variance provision in §332.5 to allow flexibility.

One commenter requested that to the extent possible, reporting requirements should be minimized. The commission believes the reporting requirements provide the necessary information for compliance monitoring while not being overly burdensome. Another commenter noted that the registration and notification tiers are so similar in feedstock and in processing needs that, in the interest of clarity and simplicity, they should be combined. The commission disagrees that the notification and registration tiers should be combined. The notification tier feedstocks are source-separated materials that do not possess the potential for contamination that registration tier feedstocks do. However, pathogens are a concern with the notification tier feedstocks, thus the operational requirements for those facilities require pathogen reduction. Registration tier feedstocks on the other hand, may be contaminated with heavy metals and the requirements on those facilities are generally accepted industry standards

The commission received a comment that Texas should adopt provisions to allow small-scale experimental composting facilities to get started easily. The commission responds that the rules should allow adequate flexibility for experimental composting at exempt and notification tier facilities. Currently, commission staff are reviewing the 30 TAC 330 municipal solid waste (MSW) rules for experimental sites. If any rule changes are adopted for the MSW rules, the commission will revisit the compost rules to consider adding language that will allow these experimental sites.

A comment was received regarding the issue of land use compatibility. The comment is that land use compatibility issues are inadequately addressed in the proposed rule. The failure of the rules to effectively address odor issues serves to heighten the potential for serious problems resulting from the absence of any meaningful mechanism for reviewing land use compatibility. Regarding land use, the commission believes that the location restrictions in Subchapters C and D for registration and permit tier facilities address certain land use criteria For all facilities, the provisions of the Health and Safety Code, Chapters 341 and 382, and Texas Water Code, Chapter 26, provide sufficient protection from nuisances. More restrictive land use issues should be addressed by local ordinances One comment was received stating that there is no reference to fees in the proposed regulations, nor is there an estimate of cost for the Compost Operator Certification At this time, the commission does not intend to levy a solid waste fee on compost facilities that receive authorization under this chapter because the primary purpose of these regulations is to promote the composting and beneficial reuse of these materials. Registration and permit tier facilities should be aware that if their final product is a waste grade material, it must be properly disposed. In most cases, this will likely mean disposal at a municipal landfill, and the landfill will probably charge a tipping fee for the disposal. In the event the commission considers charging a fee in the future, all municipal waste fee rules are currently located in 30 TAC Chapter 330, Subchapter P. The operator certification program has not been developed, so the agency cannot provide a fee for that program.

The commission received several comments regarding proposed definitions in §332.2. One commenter believes the proposed definition for "agricultural materials" is too broad. By including "vegetative materials" within that definition, which in turn is defined very broadly, a wide variety of materials from various commercial and industrial operations arguably could be considered to be "agricultural materials." The commission believes that the inclusion of vegetative materials is appropriate for agricultural operations since farms and other agricultural operations produce fruits, vegetables, and grains. Section 332.4(10) provides a list of appropriate industrial feedstocks for composting under the authority of this chapter. The commission will retain the proposed definition. Another comment concerns the definition of "backyard operations." Because of the inclusion of the undefined terms "non-industrial organic material," "vegetative food material," and "commercial or institutional complex," the commenter is concerned that the definition is overly broad. The commission responds that the intent for including these sources in backyard operations is to encourage stores, schools, and businesses to set up a backyard composting operation. By encouraging persons other than homeowners to compost, TNRCC believes that more of these materials will be beneficially reused. The TNRCC has reviewed the definition and determined the definition is appropriate as proposed One comment concerned "Beneficial reuse " The commenter stated that it would consider use of compost as cover on a landfill to be a beneficial use. According to the Health and Safety Code, §361.428(b), beneficial reuse does not include landfilling or the use of compost as daily landfill cover. This does not preclude the use of compost as final cover to be considered beneficial reuse The rules do not exclude daily cover as a reuse; however, a municipal landfill may not count compost used as daily cover toward their composting refund and it will also not count toward the State's 40% recycling goal. The commission will retain the definition as proposed. One commenter suggested revising the definition of "Bulking Agent" to identify paper as a bulking agent. The TNRCC has reviewed the definition for "Bulking Agent" and has determined that the definition does not prohibit the use of paper as a component of a bulking agent and has determined the definition is satisfactory. A comment was received requesting the removal of "Curing" from this section because it is not used anywhere else in rule. The commission agrees that "curing" should be removed. Regarding the definition of "Feedstock," a commenter suggested the reference to land application was not pertinent to this regulation. The commission responds by noting that the exempt tier allows the land application of yard trimmings, clean wood materials, vegetative materials and paper. The definition for "feedstock" has been retained as proposed.

One commenter wanted the commission to clarify calling mature compost "sanitized" in the definition of "Mature compost," indicating that if sanitized means free of microorganisms, this is not a desirable trait for compost. Sanitized in this context is intended to mean the reduction of pathogens to such an extent

as to pose no significant threat to the health and safety of the population that receives the product. However, the commission considers a more appropriate term would be "the appropriate level of pathogen reduction (ie. PFRP or PSRP)" as one commenter suggests for the definition of "Semi-mature compost." The commission has amended the definition of "Mature compost" in the final rule. The commission received several comments relating to the prohibition of nuisances throughout the proposed rules, including a concern that the definition of "Nuisance" in §332.2 related only to air nuisances. The commission responds that the general requirement found in §332.4(2) prohibiting nuisances refers to the Health and Safety Code, Chapters 341 and 382, and the Texas Water Code, Chapter 26. The commission agrees that the definition of "Nuisance" is confusing because it does not address other nuisances. The definition has been amended to reference the nuisance provisions of 30 TAC §101.4 of the air regulations (the proposed definition for Nuisance), the Health and Safety Code, Chapter 341, the Texas Water Code, Chapter 26. One commenter suggested use of the EPA descriptions of the terms "PFRP" and "PSRP". The commission agrees, and the final rule reflects this change. Another commenter objected to allowing yard trimmings and clean wood materials collected with white goods to be considered source-separated materials in the definition of "Source-separated organic material". The TNRCC has reviewed existing projects and determined that the probability of cross contamination is too low to warrant the elimination of this provision. The proposed definition is retained. Two commenters stated that the definition of "Semi-mature compost (SMC)" uses the term "pathogen sanitization" which, to many, implies total disinfection. The commenters indicated the more appropriate term should be "the appropriate level of pathogen reduction (i.e, PSRP or PFRP)" since composting alone cannot achieve disinfection since temperatures of only 60 to 70 degrees C (Pasteurization) can be reached in the process. Another commenter suggests "met pathogen standards. As with the definition of "Mature compost," the definition of "Semi-mature compost" has been amended to replace "sanitization" with "the appropriate level of pathogen reduction (ie. PFRP or PSRP)." The commission received one comment that the definition of "Voucher" should be called an "information sheet" or some other similar, generic term. The TNRCC believes the term is appropriate as defined. One comment was received noting that the definition of "vegetative materials" is very broad and uncertain and may be susceptible to various interpretations. The TNRCC has reviewed the definition and determined the definition is appropriate as written.

The commission received a comment that the proposed rules should have definitions for "grease trap waste," "organic materials," and "sludge." Grease trap waste is a standard industry term meaning grease caught in a waste trap before entering a sewage system. Sludge is defined as municipal sewage sludge and organic materials is defined by its plain meaning. The commission has not added these definitions to the rule.

Regarding proposed §332.3, Applicability, the commission received many general comments, as well as specific comments on the subsections. One commenter expressed support for the number and types of feedstocks either exempted or with notification-only requirements. Several commenters requested that all tiers should be sized for maximum allowable annual feedstock quantities, and that some maximum quantity be specified for exempt, notification and registration tier facilities The TNRCC does not agree. Sizing a facility for the maximum allowable annual feedstock quantities would cause the facility to be about four times larger than it needs to be (assuming a three month process). The commission believes the exempt, notification, registration, and permit tier requirements comply with Subchapter N of the SWDA. Another commenter stated that registration, notification, and exempt facilities should not be subject to a public hearing. The commission responds by noting that neither the proposed nor the adopted rules require public hearings for tiers other than the permit tier. However, the registration tier does include landowner notification, and does provide an opportunity for appeal of the executive director's decision through a motion for reconsideration. Additionally, after review of several comments received addressing public notice throughout Chapter 332, the commission believes that adjacent landowner notification is appropriate at the notification tier, and this has been included as §332.22(b). One comment was received indicating that the proposed §332.3 is unclear as to whether a more regulated tier facility can accept feedstocks identified for a less regulated tier. The TNRCC has reviewed the language in each subsection of §332.3 and believes the agency's intent is clear that a more regulated facility can accept feedstocks identified for less regulated facilities. For example the applicability section for the permit tier states, "Operations that add any amount of mixed municipal solid waste as a feedstock in the composting process," which the TNRCC feels clearly indicates that less regulated material can be used as a feedstock for a permitted facility.

With regard to 332.3(a), the commission received two general comments. One commenter objects to allowing mixed municipal solid waste composting because Texas does not have the infrastructure to ensure the quality control necessary. Another commenter believes the TNRCC is not in favor of municipal solid waste (MSW) composting since that is the only category that requires a full permit under the proposed regulations. The commission responds the Health and Safety Code, §361.428(b), requires the commission to adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost from the typical mixed municipal solid waste stream. The commission believes the proposed rules provide necessary safeguards for the protection of health and the environment, while providing reasonable standards that are consistent with other municipal solid waste processing permits. The rules retain the requirements for mixed MSW composting. Regarding §332.3(a)(1), a comment was received stating that the paragraph is confusing because it suggests that mixed municipal solid waste may be composted at registered facilities under some circumstances. The commission agrees with the comment and the paragraph has been changed to delete the confusing language.

The commission received several comments regarding §332.3(b) which identifies those feedstocks eligible for the registration tier. One comment indicated that this level of authorization initially seems to be not as burdensome, but is actually not much different than the permit tier. The commission disagrees that the registration requirements are almost as stringent as those set forth for permitted facilities. The registration is not subject to a public hearing, and does not require a geologic/hydrogeologic assessment. Both of these requirements add a substantial cost and technical element to the permit facilities that are not encumbered by those seeking a registration. A technical review is appropriate for the registration tier, and the rules retain this tier of regulation. Several commenters requested that TNRCC should define grease trap waste as mixed municipal solid waste and allow the composting of grease trap waste only at the permit tier. Two other commenters expressed support for grease trap waste at the registration tier. The TNRCC does not consider grease trap waste to be a mixed solid waste, and further believes there are adequate safeguards at the registration tier. The commission keeps grease trap waste as a registration tier feedstock. One comment received suggested allowing septage at the registration tier, and another suggested allowing sludge generated at Type V grease trap processing facilities to be composted. Domestic septage is contained in the definition for "Municipal Sewage Sludge," and is, therefore, an acceptable feedstock for the registration tier. The TNRCC feels grease trap sludge is covered by the inclusion of grease trap waste.

Several commenters requested adding certain materials as feedstocks to §332.3(b) including: grit trap wastes, petroleum contaminated soils, and water treatment sludges (not waste water treatment sludges). The final rule does not include any of these materials as acceptable feedstocks. The commission did not propose grit trap wastes as a compost feedstock because the majority of grit trap waste is non-compostable. Regarding petroleum contaminated soils, soils that are hazardous are not appropriate for composting at facilities covered by Chapter 332. At this time, the commission does not believe that contaminated non-hazardous soils are appropriate either for these facilities. In the future, the commission may consider adding water treatment sludges as a feedstock, but only after careful review and analysis of the feedstock.

The commission also received several comments regarding specific provisions in §332.3(b)(1). A comment noted that §332.3(b)(1) should be clarified to state that facilities composting municipal sewage sludge with mixed municipal solid waste are subject to §332.3(a). The commission disagrees that §332. 3(b)(1) should be clarified as the commenter suggests. Section

332.2(a)(2) makes clear that if mixed MSW is added to any feedstock, including municipal sewage sludge, the operation must receive a permit. The language has not been changed in the final rule. Another comment indicated that §332.3(b)(2) appears to be overbroad because it allows any "positively-sorted organic material," which is in turn defined without limitation, to be composted at a registered facility. This provision or the definition of "positively-sorted organic material" should include a limitation on the materials allowed to be included. Another commenter suggests that "Positively-sorted organic materials" as a feedstock should fall within the permit tier since there is a high probability of contamination from the mixed municipal solid waste stream. The commission responds that consistent with other feedstocks, there are no limits on the amount of positively-sorted organic material accepted at a registered operation. Additionally, the definition sets forth a list of materials that are considered to be organic materials. Regarding contamination, the commission believes that there is less chance of contamination from positively-sorted feedstocks as opposed to mixed municipal solid waste, and, therefore, believes the registration tier is an appropriate level of regulation for these feedstocks. The commission retains the proposed language. Two comments were received regarding §332.3(b)(5). One commenter stated that disposable diapers should only be an acceptable feedstock in the permit tier and another commenter supports disposable diapers at the registration tier. The commission responds that as long as the diapers are source-separated or positively-sorted, the TNRCC believes the safeguards at the registration tier are adequate to protect the public health and environment.

Section 332.3(d) lists the appropriate feedstocks for those facilities that are exempt from notification, registration, and permitting. The proposed exemptions generated many comments. One comment suggested that agricultural and industrial operations should not be exempt and should be subject to end-product standards and final product grades. The commission responds that compost feedstocks at agricultural operations should be source-separated, and not contaminated with heavy metals and polychlorinated biphenyl (PCB). Consistent with other source-separated feedstocks, end-product testing is, therefore, not required. The final rule continues to exempt agricultural operations. Regarding industrial operations, specific nonhazardous industrial feedstocks are listed in §332.4(10) for composting at exempt and notification operations. These feedstocks are source-separated which the commission believes should be treated the same as municipal or commercial source-separated materials. Concerning the exemption provided by §332.3(d)(6) for on-site industrial facilities, "on-site" is set forth in §335.2(d) as meaning land owned or effectively controlled by the owner or operator of the facility within 50 miles. This exemption is limited to the composting of materials where the composting takes place on-site, and the final product is utilized or disposed on-site. The commission believes such an exemption is consistent with the Health and Safety Code, Chapter 361, and the exemption from permitting provided by §335.2(d). The commission emphasizes that this exemption does not apply to final product that is taken off-site for distribution, application, disposal, or any other purpose. The commission retains the exemptions for industrial on-site facilities and the allowance of industrial feedstocks identified in §332.4(10).

A comment was received that the TNRCC lacks authority to provide for exemptions, since composting facilities are not included among the types of facilities exempted from permit requirements in the Health and Safety Code. Further, that §361.111 lists certain facilities that are to be exempted from permit requirements and no longer provides discretionary authority to exempt others. Accordingly, composting facilities are subject to the requirements of the Health & Safety Code, §361.088, and authorization must be preceded by notice and the opportunity to request a contested case hearing. The commission agrees that Health and Safety Code, §361.111, requires the commission to exempt certain facilities listed in the section from permit requirements. However, §361.111 does not limit the commission from exempting facilities not listed in §361.111. Furthermore, §361.061 states that the commission may require permits authorizing the construction, operation and maintenance of solid waste facilities to store, process or dispose of the solid waste. The exception for municipal waste facilities is found in the Health and Safety Code, §361.428(b), which requires the commission to adopt rules establishing a permit program for mixed municipal solid waste composting operations. The TNRCC has complied with this provision in the Chapter 332 rules.

Another general comment regarding §332.3(d) was the concern that exempt operations will not necessarily meet the requirements of §332.4, General Requirements, and §332.8, Air Quality Requirements, because they will not have the means to know of these requirements. The commission will disseminate the rules to interested parties and others it believes may have an interest in composting. Furthermore, most of the requirements in §332.4 represent general statutory provisions that each person and activity in the state is required to comply with. Another comment notes that the categories of operations included within proposed §332.3(d) are overbroad. The commission disagrees and will retain the operations in §332.3(d) as proposed.

The commission also received several comments targeted at specific paragraphs in §332.3(d). With regard to §332.3(d)(1)(B), the commenter noted the cross-references in §332.3(d)(1)(B) to various provisions of §332.4 are all incorrect, and there is not a §332.4(j) in the proposed regulation. The TNRCC agrees and has changed §332.3(d)(1)(B) to read "Source-separated industrial materials listed in §332.4(10) of this title (relating to General Requirements) excluding those items listed in subparagraphs (A), (F), (G), (H), and (J)." With regard to §332.3(d)(2), a comment suggests the paragraph is overbroad because of the definitions of "agricultural operations" and "agricultural materials" which may allow numerous industrial and commercial operations to fall within the scope of this provision. The Industrial and Hazardous Waste program at the TNRCC determines when agricultural operations become industrial operations. As an example, cotton is an agricultural product until entering a cotton gin. It then becomes an industrial product. The commission believes that safeguards exist to make accurate determinations as to whether an operation is an agricultural operation or an industrial operation. In addition, §332.4(10) identifies specific industrial non-hazardous feedstocks that are acceptable at this tier. The proposed exemption for agricultural operations is retained. Concerning §332.3(d)(4), a comment was received that the allowance of "land application" is overbroad and is inconsistent with the proposed definition of "land application," and could allow the land application of industrial waste. Again, the commission believes that industrial source-separated materials should be treated the same as municipal or commercial source-separated materials. A comment was received addressing §332.3(d)(5). The commenter states that the paragraph appears to allow any quantity of "paper," which is defined as "a material made from plant fibers," to be applied to land at any location as an erosion control or soil amendment. An incredible variety of materials are made from plant fibers, e.g. cotton cloth, lumber. The commission responds that source-separated paper is not a solid waste, and it has effectively been beneficially reused in land application as a measure against erosion and as a soil amendment. The commission believes it is appropriate to allow land application of paper for these reasons at the exempt tier. The exemption is retained. Finally, a comment states that §332.3(d)(6) also is incredibly overbroad. It appears to allow the on-site "composting" of any type of industrial solid waste from industrial plants, manufacturing plants, mining operations, or agricultural operations. For reasons discussed earlier in the preamble, the commission will retain the exemption for on-site composting.

With regard to proposed §332.4, General Requirements, the commission received two general comments. One commenter noted that there does not seem to be a general requirement in the rules that non-compostable materials be excluded from feedstock. The commission replies that allowable feedstocks are contained in §332.3 "Applicability," and the commission believes this is sufficient to keep prohibited materials out of processing. Another general comment was that many of the provisions in §332.4 are worded so broadly that they may have no practical value in terms of enforcement. The TNRCC does not agree. In general, the provisions that are worded broadly are referring to other laws and regulations that are enforceable.

Concerning §332.4(1) which prohibits pollution of waters in the state, the commission received a comment that the provision does not stand as a clear prohibition of discharges except as expressly authorized by a Chapter 26 permit. The commission disagrees. There is nothing in this regulation that allows a discharge of pollutants into waters in the state and Chapter 26 clearly prohibits it. A com-

ment received regarding §332.4(2), which addresses nuisances, stated that this general requirement is only related to air emissions and does not appear to include any generally applicable provision directly requiring prevention of conditions such as high levels of flies or other insects, rodents, insect vectors, or wind-blown materials. As discussed earlier, the definition of "Nuisance" has been changed. The TNRCC also believes that the language in the nuisance rule allows for adequate enforcement against windblown material leaving the property of any composting facility. Concerning proposed §332.4(3), the commission received two comments. One comment noted that although this statement may be useful as a general reminder, it does not appear to be specific enough to serve as an unambiguous statement that discharges to waters in the state are prohibited. The second comment stated that §332.4(1) and §332.4(3) say the same thing in different words. The commission disagrees with the first commenter, and believes the performance standard to not pollute waters in the state is enforceable. In response to the second comment, the two paragraphs address different issues. Paragraph (1) refers to discharges and pollution of ground-water or surface-water from the compost operation and is targeted at the operator. Paragraph (3) refers to discharges and pollution caused by use and application of final product and is targeted at end-users.

With regard to §332 4(8), a comment was received that the requirement that unauthorized materials be disposed of in a "timely manner" is extremely ambiguous, and enforcement could be very difficult. The commission wishes to retain some flexibility because disposal time may be variable depending upon the problem that the unauthorized materials present. The term "timely manner" remains in the rule. Several persons commented on §332.4(9). One comment suggests that it is inappropriate to allow landfill leachate to be used as feedstock at permitted composting sites, while two other commenters supported the use of landfill leachate at exempt, notification, and registration tier facilities. The commission believes use of landfill leachate is appropriate at the permit tier, but only at the permit tier. The feedstock at the permit tier is mixed municipal solid waste which is the material that generates landfill leachate. In turn, the use of landfill leachate as make-up water in non-permitted facilities would increase the probability of end-product contamination without adequate testing.

One comment was received regarding §332.4(10) stating that the provision should be completely rewritten because it appears that it may be intended to provide that only the listed nonhazardous industrial solid wastes may be accepted for composting, mulching, or land application at facilities authorized under this Chapter. However, the reference to the 30 TAC §335.2(d) exemption further confuses the issue. The language might be interpreted as allowing any nonhazardous industrial solid waste to be composted at a facility qualifying for the 30 TAC §335.2(d) exemption which would be inappropriate. The commission does not agree. The provisions contained in the applicability section indicate what may be processed at a facility. This provision indicates that industrial wastes are not prohibited from process or disposal provisions of 30 TAC §335.2(d). As stated earlier, the exemption for on-site industrial facilities is consistent with existing TNRCC rules in 30 TAC Chapter 335 and the Health and Safety Code, Chapter 361. No public comments were received on proposed §332.4(11); however, in reviewing the proposed language, the commission believes a change is necessary to make the paragraph clearer. The proposed rule has been changed by moving the following language "any of the materials listed in paragraph (10) of this section which are not managed in accordance with the requirements of this chapter" to the very beginning of the paragraph.

The commission retains §§332.4(1)-332.4(10) as proposed. Section 332.4(11) has been changed as discussed.

One comment was received regarding §332.5 suggesting that the provision does not provide an adequate standard for determining when the granting of a variance is appropriate, and that no variance should be granted unless the person granting the variance expressly finds, in writing, that the applicant has demonstrated that the new standard is no less protective of human health, welfare, physical property, and the environment than the standard from which a variance is sought. The commission responds that there are many different methods utilized for composting, especially for composting processes for the registration and permit tier feedstocks It is the intent of the TNRCC to be flexible by encouraging the most appropriate technology for each operation. It is for this reason that the variance provision was included in the proposed rule. The commission believes the standards set forth in §332.5 are adequate for determining whether a variance is appropriate. However, the commission does believe §332 5, as proposed, did not provide clear guidance on the process for submitting a variance request and did not clearly identify the entity at TNRCC responsible for approving or denying a variance request. Section 332.5 has been amended in the final rule to address these issues.

The commission received several comments discussing proposed §332.6. One comment stated that the reference to "materials considered to be exempt, notification or registered facilities" in the first sentence of §332.6(a) is unclear, and that the types of changes to a solid waste permit authorized by §332.6(a) and (b) require permit amendments and are not appropriately authorized as permit modifications. The commission does not agree. The provisions of §332.6 are consistent with existing commission procedures established in Chapter 305. Another commenter believes the proposed regulation should clearly indicate the process an existing MSW facility with permit provisions for composting exempt tier materials, would need to follow if the facility wanted to process material listed in a more regulated tier. Additionally, the commenter does not feel the proposed regulation clearly indicates whether an existing MSW facility would be inspected in accordance with the existing permit or the proposed regulation. The commission believes §332.6 directs a permit holder to the appropriate sections in Chapter 305 for processing a modification or amendment to the permit. The commission emphasizes that this Chapter is not intended to affect existing MSW permits unless modified under Chapter 332. If a permit is amended or modified in accordance with the provisions of this chapter, the amended or modified permit governs. One commenter was concerned about which division will review applications. The commission reserves the right to allocate staff resources as appropriate. The commission will retain §332.6 as proposed.

Two comments were received on §332.7. One commenter indicated that §332. 7 is not clear on how it applies to existing wastewater treatment facilities operating under a permit. They request that the proposed rules allow variances for composting operations at existing wastewater treatment facilities because the design of operations occurred prior to rules development. The commenter suggests using the following language "If the wastewater treatment facility has received a water quality permit under the Texas Water Code, Chapter 26 which authorizes compost operations, the compost operation shall be conducted in accordance with the facility permit". The commission agrees with the commenter and the proposed wording will be added to §332.7. The second comment stated that the TNRCC's modification practice with respect to solid waste facilities is not applicable to water quality permits. This type of change requires a permit amendment. The commission responds that the term "modification" in §332.7 is appropriate because the placement of a composting operation at a water quality permitted facility issued under the Texas Water Code, Chapter 26 requires a permit to be "modified" by an amendment in accordance with 30 TAC Chapter 305.

Proposed §332.8 allows compost operators the opportunity to obtain a standard air quality permit as an alternative to a regular air quality permit to create a one-stop permitting program. The standard permit sets forth basic requirements that the operator must meet, and by doing so the operator will not be required to go through a separate air quality review and public hearing. The commission received a number of comments regarding the standard air quality permit. One general comment stated the provisions in §332.8 are wholly inadequate to address air emissions issues associated with these types of facilities because the requirements simply do not address the primary causes of air contaminants concerns at composting facilities: odors and volatile organic compounds (VOC). Of the limited control measures mentioned in the rules, many are simply too general to be readily enforceable. An example is the requirement for "an adequate volume of bulking material to blend with/cover the material" prior to receiving material with high odor potential. This requirement is too general. The commenter states that the rules must be written in a manner that provides adequate directive and guidance to assure that nuisance conditions never develop. The TNRCC does not believe that it is necessary to list every possible control measure for composting fa-

cilities to have adequate protection against nuisance conditions. As minimum requirements, the TNRCC has included certain specific design and operational criteria in these rules. However, to meet the standard of not creating a nuisance, the rules are written to provide the operators with flexibility. For example, proposed §332.8(c)(3) requires that an "adequate volume of bulking material" must be used; what an "adequate volume" is depends on a variety of factors, such as climatic conditions, type of feedstocks, type of bulking material, etc. Prescribing specific volumes of bulking or cover material may be too restrictive given the variety of feedstocks and methods for processing and may not be economically reasonable. Also, any compost operation which is operating under the notification or permitted tiers must provide certain information to the agency and those operators will be held to the representations made in their notification and application forms. The operator's incentive to avoid creation of a nuisance is to avoid enforcement action by the agency. As a comparison, specific design or operational criteria in the rules promulgated under the Texas Clean Air Act (TCAA) for other sources of air contaminants also provide operational flexibility for compliance with the nuisance rule. Given the nature of these operations, the TNRCC does not believe that it is technically practicable and economically reasonable to require additional controls for facilities covered by this chapter, including controls for the emission of VOCs.

Another general comment regarding §332.8 is that the statutory prerequisites for standard air quality permits have not been met. Prior to issuing any such permit, TNRCC must comply with the mandates of §382.0518 of the Health & Safety Code. However, the provisions in the proposed rules are not adequate to assure that facilities will use best available control technology (BACT) or that emissions from facilities will not contravene the intent of Chapter 382 of the Health & Safety Code, particularly as it relates to aesthetics. The commenter further notes that the provisions in the rules relating to air issues address certain limited aspects of operations at facilities, e.g., grinding operations and dust from vehicle traffic, but fail to address the actual composting process, a major aspect of operations related to odor emissions and VOCs from stockpiles or leachate retention facilities. The TNRCC believes that these proposed rules are adequate for the finding that BACT will be used and that the emissions from the facilities will not contravene the intent of the TCAA. In drafting these rules, technical practicability and economic reasonableness of reducing or eliminating the emissions from these facilities was considered. The actual composting process is addressed in requirements throughout these rules, such as §332.8(b)(1), (c)(1) and (3), and §8(e)(6). Emissions from materials stockpiles must not cause a nuisance. Further, if the facilities operate in accordance with the requirements of these rules, the TNRCC believes that there will be protection of aesthetic enjoyment of air resources by the public. Leachate retention facilities are not typically sources of odors at municipal landfills and are not expected to be sources of odor emissions at compost facilities. Likewise emissions of certain gases such as VOCs, from these are expected to be minimal if present at all.

Specifically, regarding §§332.8(b)(3), 332.8(c)(4), 332.8(d)(4), and 332. 8(e)(4), a comment was received that the requirement can be met by simply parking a water truck or having a garden hose available next to the grinding operation. The commenter suggests that no restrictions should be required on a grinder unless a problem is identified at a later time. The TNRCC recognizes that grinders are sources of particulate emissions and the operators should be prepared to control these emissions if and when they occur. The rules do not require use of water at all times because the amount of water needed depends on various factors, including climatic conditions, type of feed stock and location, thereby providing the operator with flexibility in how to maintain compliance with the rule. Continuous use of dust suppressants is not required, but is an option for the operator as a control measure. Regarding §332.8(d) (1), two commenters believe it is unnecessary to require a speed limit of ten mph on roads already treated for dust suppression. The commission believes that dust emissions generated from vehicular traffic can be controlled by various measures as listed in the proposed rule. Measures such as watering or treating with dust suppressants are only temporary methods compared to paving which is considered a more permanent control measure. Paved and clean roads have an inherently lower potential for emissions. Relaxation of the ten mph speed limit is appropriate for those facilities which choose to pave traffic areas. In addition, the TNRCC believes that vehicular speeds on unpaved roads should be limited to ten mph because increased speeds on unpaved roads will reduce the long-term effectiveness of dust suppressants and require more frequent application of these suppressants to maintain the same control efficiency.

Concerning proposed §332.8(d)(3),(e)(3), the requirement for venting through a fabric filter, a commenter expressed concern that this is an inflexible technology standard. A suggestion was made that if odor is the concern here, other states have used a limit of seven dilutions to threshold at facility boundary lines. The commission responds that the requirement for use of a fabric filter is due to the concern of particulate emissions. If an operation wants to use an alternative technology for the control of particulate emissions from conveying air, they may apply for a permit under Chapter 116 of this Title (Control of Air Pollution by Permits for New Construction or Modification). Regarding proposed §332.8(d)(4)-(5), one commenter believed the requirements are overly restrictive and limit the use of alternative or innovative technologies. The commenter acknowledges particulate matter control is important, but the specific requirements are excessive. The TNRCC believes that these requirements are necessary for BACT while providing the operator with flexibility. For facilities that cannot meet the requirements of this chapter, they may apply for a permit under Chapter 116 of this Title (Control of Air Pollution by Permits for New Construction or Modification) to use alternative or innovative technologies.

One commenter requested modifying the term "entitled to an air quality standard permit" to "will be issued an air quality standard permit," in proposed §332.8(e). The TNRCC responds that the proposed language is consistent with other standard permits available under the TCAA, Texas Health and Safety Code Chapter 382, found in 30 TAC Chapter 116, Subchapter F.

A general comment concerning §332.8(d),(e) was that the two sections are almost identical and they should be combined. This commenter is correct in pointing out that §332.8(d) and §332.8(e) are almost identical. However, these will not be consolidated in order to maintain consistency with the remainder of the format of these proposed rules which list requirements for four different types of compost facilities, each with different design and operational criteria.

After reviewing the proposed language in §332.8(b)(3), 332.8(c)(4), 332. 8(d)(4), and 332.8(e)(4), the commission believes that these paragraphs should be modified, although no specific comments were received regarding this concern. Due to the design of most tub grinders, the requirement to maintain a full receiving hopper during all grinding operations is unduly burdensome and technically unfeasible. For start-up, a pre-filled hopper could cause the grinder to remain in a locked condition. For grinder shut-down, maintaining a full hopper would require that the tub be manually emptied after shut-down. The proposed revision below should not significantly affect emissions and does not represent an additional restriction for the composting industry. The TNRCC recommends that §332.8(b)(3), (c)(4), (d)(4), and (e)(4) be modified, as follows: "Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement ..."

The commission will retain the proposed language in §332.8 with the exception of the changes in §332.8(b)(3), 332.8(c)(4), 332.8(d)(4), and 332. 8(e)(4) discussed above.

Subchapter B, §§332.21-332.23, addresses composting operations requiring a notification. The commission received several comments concerning this subchapter. Two commenters suggested deleting §332.21 because this section is identical to §332.3(c). The commission believes that the feedstocks should be repeated at the beginning of each subchapter for clarity. The section has been retained. Consistent with changes to the notification requirements in the rule for registered and permitted facilities, the commission has amended §332.22 to clarify the notification procedures to adjacent landowners.

Concerning §332.23, one commenter suggested that it would be better if this section were simply entitled "Suggested Operational Standards." The commission does not agree. These are operational requirements and if problems arise and are brought to the attention of the commission, enforcement action may be appropriate. One comment on §332.23(1) stated that it is extremely inappropriate to authorize the intentional use of an anaerobic composting phase. Such a phase greatly increases the potential for odor gener-

ation. The commission disagrees with the comment. There are appropriate processes that rely on an anaerobic phase that decrease the potential for odor generation. Several comments were received discussing §332.23(2)(A),(B). One comment suggests clarifying paragraphs (A) and (B) by providing that the listed temperatures are to be maintained for continuous periods of 72 hours or longer and 360 hours or longer, rather than days. The commission does not agree with the suggested changes because the language in these provisions was borrowed from federal regulations and has functioned effectively for several years. Two commenters requested that pathogen reduction required at this tier be removed. Pathogen reduction is required at this tier because of the potential for pathogens to be present in the feedstocks associated with this tier. Pathogen reduction is required in the registration tier for municipal sewage sludge composting in accordance with the provisions of 30 TAC Chapter 312 pertaining to Sludge Use, Disposal, and Transportation. The commission further notes that pathogen testing is required for permitted and registered facilities. The commission received one comment on proposed §332.23(3) stating that trace amounts of many different hazardous substances are found throughout the environment. If the standard is zero as the language indicates by its exclusion of pesticides, herbicides, fungicides, and insecticides that contain hazardous constituents, then almost nothing could be composted. The commission believes the intent of the provision is clear; the prohibited substances shall not be applied or incorporated into the feedstock, in-process or processed material. The commission retains the language in §332.23 as proposed.

Subchapter C, §§332.31-332.38, contains the requirements for registered facilities, and the commission received many comments regarding the provisions of this subchapter. One commenter suggested that the effect of the site restrictions and operational requirements of this subchapter will be to force these operations indoors, and the result will be that most available feedstock material will be disposed of by other means. The commission believes that the proposed rules create an accommodating environment for the processing and beneficial reuse of organic materials. The commission feels strongly that it is appropriate for the registration and permit tier feedstocks to contain design, location, and operational requirements and be subject to final product standards due to the potential contamination from those feedstocks. The requirements for these facilities are consistent with other municipal solid waste registrations and permits. One commenter suggested deleting §332.31 because it is identical to §332.3(b). The commission believes that the feedstocks should be repeated at the beginning of each subchapter; however, for clarity, the structure of proposed §332.31 has been modified.

Concerning §332.32(a), the commission received a comment that this provision, which states that facilities must comply with any future rules to be in compliance with the registration, is not in compliance with the Health and Safety Code, §481.143. The commission assumes the commenter is actually referring to the Government Code rather than the Health and Safety Code. Section 481.143 of the Government Code, "Uniformity of Requirements," essentially requires that a permit application shall be considered by a regulatory agency under the rules that are effective at the time the application is filed. The commission has removed this requirement, and believes that the existing program requirements provide sufficient protection for human health and environmental protection. As a result of this change, proposed §332.32(b),(c) have become §332.32(a),(b) in the final rule. The commission received two comments regarding proposed §332.32(b). One commenter suggested that certification by a professional engineer should also be required for the design of the facility, and that such certification should be required to be included with the registration application. The comment also suggests that the requirement for a certification that a facility "is in general compliance" is simply too open-ended to be meaningful. Another comment states that there are many low-tech composting methods which can be accomplished with little or no design. Requiring certification by an engineer in such cases only elevates costs. The commission responds that the regulations only require engineer certification for general compliance, and do not require submittal of documents requiring an engineers seal or certification because it cannot and should not perform quality control and proof reading for professionals. Requiring the applicant to submit the required engineers certification with the application would require construction of the facility prior to submitting the application which the commission feels would be inappropriate. Additionally, certification of general compliance with the regulations is a standard practice of the commission. The commission does agree that a time limit for obtaining the engineers certification is appropriate; therefore, proposed §332.32(a)(b) in the proposed rule) has been revised to read "...in general compliance with the regulations prior to accepting any feedstock at the facility that requires registration and maintaining that certification on-site available for inspection by the commission; and..." In addition, the commission believes that it is appropriate for registered facilities to be inspected by the TNRCC prior to accepting feedstocks. The inspection requirement has been added to §332.32.

The commission received one comment regarding §332.33. Concerning §332. 33(1), two commenters recommend that existing Annual Reports being submitted by composters of biosolids be accepted in place of TNRCC Form #3. The commission believes this is not appropriate to address in the regulations, but is an operational implementation issue. It is likely that another report could be attached to Compost Form #3 if it provided the information required by the annual reporting form. Operators should understand that Form #3 is not planned to be a lengthy form that will take a lot of time to fill out. The commission is not interested in creating a paperwork burden on operators. The commission retains the language of §332.33(1) as proposed. For clarity and consistency, though, the structure of §332.33 in the final rule has been changed. In addition, the catchline of proposed §332.33(4) has been changed to "Final product testing report," and the last sentence of the paragraph has been deleted because it referred to permits rather than registrations.

The commission received several comments on proposed §332.34 which discusses the registration application. One commenter requested that specific designs for odor control processes must be required as part of the application. Those designs must be based on appropriate air dispersion modeling. The commission does not believe odor dispersion models are necessary in light of the prohibition of nuisance conditions that exists as a general requirement. Another commenter felt the application requirements are much to extensive, and all that should be required is name, address, legal authority, and a brief description of the anticipated process including types of feedstocks, and a statement the facility will be constructed and operated to meet the requirements of §332.4 and §332.8. The commission disagrees with the comment. The material processed at the registration tier can be problematic and the commission will retain oversight. Specifically regarding §332.34(11), the commission received a comment requesting guidance for identification of potentially affected landowners, residents, and businesses because of the high potential for generation of significant odors. Several factors may determine who is an affected party including distance to the operation, location to the entrance, prevailing wind direction, etc. The commission anticipates that determination will be on a site-specific basis, and the final rule clarifies that it is the executive director's discretion to determine who may be affected. For the registration tier, the final rules require notification of landowners. It is left to the discretion of the landowners to notify residents and businesses on their property. The commission received two comments concerning proposed §332.34(12). One comment stated that the rules need specifically to provide that a registered facility is limited to the quantities and types of feedstocks and the process identified in the registration application, unless specific approval is granted. The commission responds that §332.37(9) requires the applicant to receive written permission from the commission for significant changes. Another commenter believes that the language infers that the facility was or will be designed by a Texas Registered Professional Engineer knowledgeable in the management and operation of a composting facility. The commenter believes that if the engineer is to develop the operating plan, the engineer should also be a certified compost operator or the rules should allow the operating plan to be developed by a Certified Compost Operator. The commission does not agree. The Texas Engineering Practice Act requires an engineer to be qualified by education or experience before the engineer accepts an assignment, a certified compost operator may not be qualified to design facilities. The commission will retain §332.34(12) as proposed.

A comment received by the commission discussing §332.34(13) requested a provision that plans and specifications should be re-

quired to comply with all applicable provisions of the chapter. If compliance is not possible, the applicant should be required to submit a request for a variance pursuant to §332.5. The commission does not agree because the engineer is required to provide a certification that the site is in general compliance with the regulations. Regarding §332.34(14), a commenter noted that the provision for a closure plan needs more specificity including a closure cost estimate. Additionally, some financial assurance mechanism is needed. The commission believes that the closure plan for registered facilities should be site-specific. These are not municipal landfills. The major concern is the disposition of waste if the facility closes, and the applicant is required to provide this information according to §332.34(14). The commission also believes financial assurance should not be required of registered facilities. If, after a period of time, there appear to be several closures that become problems, the commission may revisit the financial assurance issue in the future. The commission will retain the language in proposed §332.34(13) and §332.34(14) as proposed.

Regarding §332.35, the commission received a comment that the proposed rules would have the effect of depriving the public of the opportunity for public hearings on matters for which they currently are entitled to that opportunity. Legislation limiting such opportunities did not pass the state legislature. The TNRCC should not, and does not have legal authority to, deprive the public of that right through the adoption of rules. The commission responds that the registration tier does not eliminate the opportunity for public participation in the process. The rules require public notice and provide the opportunity for a motion for reconsideration of an executive director's action on a registration. Furthermore, the commission believes the technical requirements required of registered facilities provide the necessary protection of human health and the environment. Another comment suggested that a groundwater characterization is needed for registered facilities because the authorized wastes could include numerous contaminants. Further, the commenter states that because of the potential for contamination, registered facilities should not be allowed in areas with shallow groundwater. The commission believes the liner requirements are adequate to protect the groundwater, and does not believe a characterization is necessary in all cases, nor is a prohibition of registered facilities necessary in areas with shallow groundwater. One commenter noted that the application processing in §332.35 is missing in the permit tier. Most requirements for application processing for permits are contained in 30 TAC Chapters 281 and 305; however, public notice requirements have been added to the permit tier in §332.41. The requirements for application processing for registrations were included in Chapter 332 because Chapter 281 and 305 do not address registration processing for compost facilities.

The commission received a comment specific to §332.35(a). The comment notes that subsection (a) requires a notice suitable for publication or mailing, but there does not appear to be any requirement that the notice be published or mailed to anyone. The commission agrees and the rules are amended to clarify the public notice procedures. Additionally, the final rule includes an appeal process of the executive director's decision on a registration through a motion for reconsideration. Applicants, the public interest council, or other persons may file a motion for reconsideration pursuant to §332.35(e) , if the party wishes to have the commission review the executive director's action. Regarding proposed §332.35(c), the commission received a comment stating that subsection (c) fails to provide any guidance on the factors to be considered by the executive director in determining whether to approve or deny an application. The commission agrees that rules should establish a decision criteria for the executive director. The final rules have been changed to state that the executive director will base his decision on whether the application meets the criteria established in §332.4, General Requirements and Subchapter C. The structure of §332.35 was altered to accommodate the changes in the final rule.

Regarding §332.36, the commission received several comments. One commenter stated that it is unclear what is meant in §332.36(1) by preventing "washout." If a facility is located within the 100 year floodplain, it should be designed and maintained, with dikes or similar structures, to prevent flooding during a 100-year event. The commission responds that preventing "washout" is clear criteria and it is a design function to determine how it is best accomplished. The 50 foot set back is consistent with existing MSW requirements. Concerning §332.36(2), a commenter suggested that a facility designed to prevent run-on and run-off must significantly alter natural drainage patterns. The commission does not agree. Several programs at the commission have that as a requirement and have issued permits and registrations. A comment suggested that the 100 foot setback requirement in §332.36(5) should be extended to include aquifer recharge features. The set back is intended to help prevent wash-out which is not a problem with recharge features. A comment again suggested it is extremely inappropriate to authorize the intentional use of an anaerobic composting phase in §332.36(6). There are appropriate processes that rely on an anaerobic phase and the commission does not intend to dictate operational criteria. The commission will retain the proposed language in §332.36.

A number of comments were received concerning §332.37 which sets forth operational requirements for registered facilities. One comment noted that the only provision addressing vehicular access for facilities requiring registration is one requiring that the access road be an "all-weather road," which is inadequate. The commission also needs to consider traffic on access roads. The commission responds that traffic safety is not a commission function. Limitations on roadway use is best left to the local jurisdiction responsible for maintaining the roadways, or with the Department of Transportation in the case of a state highway.

Another commenter suggests there is no reasonable basis for not requiring information equivalent to that required pursuant to §332.47(6) relating to facility information. Without that level of information, the TNRCC will not have the information it needs to adequately evaluate these types of facilities. Further, the commenter notes that no facility should be authorized to accept sewage treatment sludges without this level of review. The commission does not agree. Very careful consideration was given to the information required for the commission to make a decision on a registration tier facility. The commission believes the requirements set forth in Subchapter C for registered facilities provide an acceptable level of regulation to protect human health and the environment while retaining the necessary flexibility to promote composting. The commission emphasizes that these facilities must still undergo a review by the agency prior to operation.

Another comment regarding §332.37 states that there are no consistent pathogen reduction requirements for registered facilities, although there are for "exempt" operations. There are no pathogen reduction requirements for exempt tier facilities, but there are clear pathogen reduction requirements for notification tier facilities. There are also clear (30 TAC Chapter 312) requirements for the registration tier facilities that compost wastewater treatment sludges, and all other registered and permitted operations must test final product for pathogens. One commenter believes the entire §332.37 is redundant and is adequately covered by the general requirements of §332.4. In response, §332.4 represents general requirements that all facilities must follow, while §332.37 presents specific operational requirements tailored for registration tier feedstocks.

Specifically concerning §332.37(1), a commenter believes that it is unclear what is intended by the requirement that the facility be constructed, maintained, operated to "manage" run-on and run-off during a 25-year, 24-hour rainfall event. Additional clarification is needed. At a minimum, language should be added to make the provision consistent with the requirements of 30 TAC §330.55(b)(1), (2) and (3). The commission believes the provisions of §332.37(1) are clear and are adequate to protect surface waters. The use of a 25 year 25 hour storm is standard. The commission will retain the proposed language. With regard to proposed §332.37(2), a commenter suggested the second sentence should be modified to read: "Facilities that compost municipal sewage sludge, grease trap waste, disposable diapers, "or" the sludge byproduct ...." As currently drafted, only facilities with all of those feedstocks would be covered by this requirement. The commenter also notes the reference in the third sentence to areas where "receiving, mixing, composting, post-processing, screening and storage areas would be in contact with the ground ..." is ambiguous, and that a liner should be required under all areas regardless of processing method. Furthermore, some form of leak detection and/or groundwater monitoring system is needed in order to determine if the liner system is intact. Another commenter stated that it is unreasonable to restrict receiving and processing of yard waste and wood to lined areas if materials are pro-

cessed and removed from the unlined area within a short time. Another commenter recommends allowing concrete as an acceptable surface in addition to clay and synthetic liners. Two commenters believe that liners should not be required for registration tier facilities, rather sufficient run-on and run-off controls with a suitable working surface for the composting pad should be minimum requirements. The commission agrees that "and" should be changed to "and/or" to clarify that any of these feedstocks alone or combined is required to install a liner system. The change has been made. The commission disagrees that a liner is necessary in all instances. As an example, requiring a liner for many within-vessel composting systems would be expensive while not affording much more environmental protection for that part of the operation. The commission will retain the proposed language. To address the comment on yard trimmings and clean wood materials, the rules only require lining areas that are for municipal sewage sludge, grease trap waste, disposable diapers, and/or the sludge byproduct of paper. Yard trimmings and clean wood materials waiting to be processed with these materials are not required to be on a liner. Regarding other surfaces, it was not the intent of the commission in the proposed rule to limit liners to clay or synthetic materials. The commission agrees that other materials such as concrete are effective, and the rule has been changed to provide for alternative designs including concrete. The commission disagrees with the comment that liners should not be required. It is appropriate to require liners for the identified feedstocks due to potential contamination. The commission retains the requirement for liners.

Regarding §332.37(4), a commenter suggests fences should be required to be adequate to prevent, or at least minimize, access by domestic pets. The commission believes that the requirement for a fence, as proposed, is adequate to control access to the facility, and a requirement to prevent access by domestic animals would be difficult to enforce. The requirement is retained as proposed. Concerning §332.37(5), a comment states that the definition of "nuisance" found in §332.2 needs to be rephrased to address broader issues related to pests, disease vectors, and the like. As discussed earlier, the definition of "Nuisance" has been changed. A comment was received on §332. 37(6) that again states that it is extremely inappropriate to authorize the intentional use of an anaerobic composting phase. As noted previously, there are appropriate processes that rely on an anaerobic phase and the commission does not intend to dictate process criteria. The proposed language is kept in the final rule. The commission received one comment discussing the proposed language in §332.37(9) which is the authorization for significant changes. The comment requested more specificity for this provision including a procedure for obtaining the authorizations. The commission believes it has the authority to require reasonable support documentation without additional verbiage. Section 332.37(9) is retained as proposed. The commission received two comments concerning §332.37(11)(A). One commenter requests language should be included in rules assuring operators that the application of biosolids compost meeting Grade 2 Compost standards remains unrestricted. The second commenter requests that end-product standards in Chapter 332 be applicable to any registered facility that composts municipal sewage sludge. Composters of municipal sewage sludge are not required to comply with the end-product standards of Subchapter G with the exception of the foreign matter requirements. Instead, those facilities must comply with the requirements of 30 TAC Chapter 312 which does not classify processed sludge as Grade 1 or Grade 2. The Grade 2 standards in the compost rules are equivalent to the Class A sludge standards in the Chapter 312 rules; and final product meeting the Class A standards does not have a restricted use. Although the commission understands the commenters concern, the commission believes that adding such language will only serve to add more confusion to the rules because it will appear that those facilities are subject to both the Chapter 332 and Chapter 312 standards. Regarding the second comment, it is the intent of the commission to not duplicate requirements. There are existing federal and state standards for municipal sewage sludge in 40 CFR Part 503 and 30 TAC Chapter 312, respectively, including end-product standards for municipal sewage sludge. The commission retains the proposed language. The commission also received two comments on proposed §332.37(12) which requires a compost facility to employ at least one TNRCC certified compost operator. One commenter had very specific questions about the certification program. The other commenter stated that once certification is available, no composting facility of significant size or accepting materials other than yard trimmings should be allowed to operate without a certified operator on-site. Furthermore, the reference to requiring that a certified operator "routinely be available on site" is unduly ambiguous. Currently, the TNRCC does not have an established certification program for composting. The proposed rules were written to only require a certified compost operator when the program became available. At this time, the commission cannot speculate as to the specific requirements of the certification program, but it would probably be similar to the multi-level landfill certification program. Operators will be notified when the program comes into existence. The commission disagrees that a facility should not be allowed to operate without a certified operator. If this were the case, an operation could be held up for months before starting because the agency will probably provide a limited number of trainings. Furthermore, it may be impossible to have a certified operator on site at all times, so the commission believes that "available on site" is appropriate. The proposed language has been kept without change in the final rule.

The commission received one comment concerning proposed §332.38. The comment requests that a facility also should be required to maintain records of any complaints received, discharges to surface waters, the results of periodic water balance calculations to determine if leachate may be seeping into groundwater, and records of any repairs to liners, and records of types and quantities of wastes received. The commission gave careful consideration to the records it would require and does not intend to require a facility to expend resources toward recordkeeping beyond what the commission believes is reasonable. The final rules retain §332.38 as proposed.

Subchapter D of the rules addresses the requirements for permitted facilities. The commission received several comments on the requirements for this tier; however, many of them are duplicative of comments received for the registration tier. Regarding §332.41, one commenter suggested deleting the section because it is identical to §332.3(a). The rules retain §332.41, but public notice requirements have been added to the section, and the section has been restructured.

Concerning §332.42(a), a comment received believes that this provision seems entirely appropriate, but does not comply with the Government Code, §481.143. The commission has removed this requirement, and believes that the existing program requirements provide sufficient protection for human health and environmental protection. As a result of this change, proposed §332.42(b) -(c) have become §332.42(a)-(b) in the final rule.

Concerning §332.42(b), a commenter recommends that certification by a professional engineer should also be required for the design of the facility Also, the requirement for a certification that a facility "is in general compliance" is simply too open-ended to be meaningful. A certification of construction in compliance with all applicable design requirements should be required to be submitted to the TNRCC prior to commencement of operations at the facility. The commission disagrees. The regulations do not require submittal of documents requiring an engineers seal or certification because it cannot and should not preform quality control and proof reading for professionals. Requiring the applicant to submit the required engineers certification with the application would require construction of the facility prior to submitting the application which the commission feels would be inappropriate. Certification of general compliance with the regulations is a standard practice of the commission. The commission does agree that a time limit for obtaining the engineers certification is appropriate; therefore, §332.42(b) has been revised to read "...in general compliance with the regulations prior to accepting any feedstock at the facility that requires a permit and maintaining that certification on-site available for inspection by the commission; and..." In addition, the commission believes that it is appropriate for permitted facilities to be inspected by the TNRCC prior to accepting feedstocks. The inspection requirement has been added to §332.42.

In §332.43, the commission amended the catchline of paragraph (3), which now is "Final product testing report."

Concerning §332.44(1), the commenter states that it is unclear what is meant by preventing "washout." If a facility is located within the 100 year floodplain, it should be designed and maintained, with dikes or similar structures, to prevent flooding during a 100-year event. The commission believes

that preventing "washout" is clear criteria and it is a design function to determine how it is best accomplished. The 50 foot set back is consistent with existing MSW requirements. With regard to §332.44(6), a commenter suggests the 100 foot setback requirement should be extended to include aquifer recharge features. The commission responds that the set back is intended to help prevent washout which is not a problem with recharge features. The commission retains §332.44 as proposed.

Regarding §332.45, the commission received a general comment that the entire section is redundant and is adequately covered by the general requirements of §332.4. The commission does not agree that the general requirements of §332.4 adequately address concerns with these facilities. The material processed at permit tier can be extremely problematic and the commission will retain oversight. With regard to §332.45(1), a comment stated that it is unclear what is intended by the requirement that the facility be constructed, maintained, and operated to "manage" run-on and run-off during a 25-year, 24-hour rainfall event. Additional clarification is needed. At a minimum, language should be added to make the provision consistent with the requirements of 30 TAC §330.55(b)(1),(2) and (3). The language should be amended to clarify that the discharge of feedstock, in-process, processed materials, and leachate is prohibited regardless of the storm event. In addition, some provision should be made for requiring operators to dispose of leachate at a facility permitted pursuant to the Texas Water Code, Chapter 26, if retention capacity is not adequate to contain the leachate expected from processing and rainfall events. The rules also need to require the use of a water balance in order to assure adequate leachate and contaminated water containment capacity. The commission believes the provisions of §332.45(1) are clear and adequate to protect surface waters. The use of a 25 year, 24 hour storm is standard. Proposed §332.45(1) is retained as proposed.

With regard to §332.45(4), the commission received a comment that fences should be required to be adequate to prevent, or at least minimize, access by domestic pets. Again, the commission believes that the requirement for a fence, as proposed, is adequate to control access to the facility, and a requirement to prevent access by domestic animals would be difficult to enforce. The proposed language has been kept. Concerning proposed §332.45(5), a comment notes that although this provision is intended to address a broader definition of nuisance, it is limited to air issues by the definition of "nuisance" found in §332.2. Accordingly, this language needs to be rephrased to address broader issues related to pests, disease vectors, and the like. As discussed earlier, the definition of "Nuisance" has been amended. Regarding §332.45(6), a commenter stated that it is inappropriate to authorize the intentional use of an anaerobic composting phase. The commission again responds that there are appropriate processes that rely on an anaerobic phase and the commission does not intend to dictate process criteria. The proposed language is retained. Concerning §332.45(9), a commenter suggests a reference to a specific procedure to be followed in obtaining permit amendments. The commission agrees that the paragraph should incorporate a reference to 30 TAC Chapter 305, relating to Consolidated Permits, and the change has been made. The commission received one comment on §332.45(12). The comment stated that the provision appears to allow a facility to operate for six months without a certified compost operator on staff, even if the operation commences a year after the certification program has been established and after these rules have been adopted. That result is indefensible. Once certification is available, no composting facility of significant size or accepting materials other than yard trimmings should be allowed to operate without a certified operator on-site. Also, the reference to requiring that a certified operator "routinely be available on site" is unduly ambiguous. As stated earlier, the TNRCC does not have an established certification program for composting. The proposed rules were written to only require a certified compost operator when the program became available. The commission disagrees that a facility should not be allowed to operate without a certified operator. The frequency of the program may be such that an operation is held up for months before starting because the agency may only provide a limited number of trainings. Furthermore, it may be impossible to have a certified operator on site at all times, so the commission believes that "available on site" is appropriate. The proposed language has been kept without change in the final rule.

With respect to §332.46, a commenter requests that a facility also should be required to maintain records of any complaints received, discharges to surface waters, the results of periodic water balance calculations to determine if leachate may be seeping into groundwater, and records of any repairs to liners, and records of types and quantities of wastes received. The commission gave careful consideration to the records it would require and does not intend to require a facility to expend a lot of resources toward recordkeeping other than that which is absolutely necessary. The language in §332.46 is retained as proposed.

Concerning §332.47, the commission received one comment that the permit application requirements for a mixed municipal solid waste composting facility are unnecessary, completely ridiculous, and complete overkill. The commission does not agree. The feedstock for the permit tier can be problematic and should receive no less oversight than other MSW facilities. The commission believes the application requirements are wholly appropriate. Furthermore, the SWDA requires a permit for mixed municipal solid waste composting. Although no official comment was received, agency staff in reviewing the proposed rule determined that §332.47(6)(A)(iv)(II) should be clarified by changing the reference of "TxDOT Circular 80-76" to its generally recognized name of the "Bridge Division Hydraulic Manual" to alleviate confusion. The proposed language has been amended to incorporate this change. Proposed §332.47(6)(A) (iv)(IV) is the only subclause in clause (iv) with a title; therefore, the title has been removed for consistency. As with the registration tier, the commission has amended proposed language regarding liners in §332.47(6)(C)(i) to allow for alternative designs. With these exceptions and those changes identified as typographical errors earlier in the preamble, the commission retains the language in §332.47 as proposed. Paragraph (11) has been added to §332.47 to require that applicants submit a list of landowners.

Subchapters E (§332.51-332.53) and F (§332.61-332.64) set forth requirements for source-separated recycling and HHW collection respectively. The commission received several comments on both subchapters.

Regarding §332.51(a), one commenter supported the reasonable access provisions of Subchapter E. Another commenter stated that the rules for source-separated recycling have no basis to be called "source separated recycling". Two commenters requested removal of Subchapter E from the rules. The commission responds that the requirement for reasonable access to source-separated recycling is a statutory requirement specified in §361.428 of the SWDA. The rules retain the requirement. The commission disagrees that these rules do not provide reasonable access. In developing standards for source-separated recycling programs, the commission has been very cognizant of establishing realistic requirements so that recycling is encouraged without discouraging mixed waste composting. Concerning §332.51(b), a comment stated that the provision could be interpreted to imply that a permitted composting facility could not accept mixed municipal solid waste for composting. The commission disagrees that §332.51(b) forbids a permitted composting facility from receiving mixed MSW. The materials "collected pursuant to this subchapter" are source-separated cans, bottles, etc. The section is simply pointing out that the source-separated recyclable materials cannot be mixed with the solid waste that will be composted. The proposed language is retained.

With respect to §332.52(1), two commenters stated that Option 1 can in no way be considered reasonable access. One commenter further suggest the following should be required: one center at the composting facility; a center at each transfer station in the service area; at least one center in each municipality or subdivision of 5,000 or more population; and additional centers for 15,000 population served or at least 80% of the population in area served is within five miles of a recycling center. There should also be some minimum set of materials to accept. The commission believes the proposed Option 1 provides reasonable access by requiring a collection station at each MSW composting operation and each transfer station. Regarding §332.5(2), one commenter states that curbside recycling should be an option to that basic minimum. The commission believes that in providing four options, the rules establish minimum criteria for each including allowing curbside recycling as a basic minimum in §334.52(2). Concerning §332.52(3), a commenter suggests this option should not be allowed to substitute for the basic requirement of recycling centers unless it involves at least an

equivalent convenience of access by the public. The commission disagrees with the comment, and considers this option reasonable access. One comment was received discussing proposed §332.52(4). The commenter recommends that any alternative method should at least meet the 10% recovery standard. Additionally, there is no guidance for the TNRCC to make the determination of whether reasonable access will be achieved. The alternative plan was included to provide applicants flexibility in developing a tailored plan for their specific circumstances. The rule does require the permittee to address certain criteria to show reasonable access. Setting forth specific standards already established as options for establishing reasonable access, as in the 10% requirement of Option 3, is in conflict with the goal of allowing alternative designs. The commission retains the proposed language in §332.52 with the exception of typographical errors previously identified.

Concerning §332.53, the commission believes the executive director should maintain the list of recyclable materials rather than specifying materials by rule, and the section has been changed accordingly. The title of the section has been amended to reflect this change, and corresponding changes have been made to §332.52 where §332.53 is referenced.

With regard to Subchapter F, the commission received several comments. Concerning §332.61(a), one commenter supports the proposed rule as providing reasonable access, two commenters suggest removal of these requirements, and one commenter recommends clarification in the rules that this requirement applies to a "compost" permittee. The commission agrees that the rule should specify that a "compost" permittee is subject to the HHW collection requirements, and the change is made in the final rule. However, the commission disagrees that this subchapter should not be part of the compost rules package. The requirement for reasonable access to HHW collection is a statutory requirement specified in the SWDA, §361.428, as part of the establishment of a composting program; therefore, it is appropriate to include this subchapter in Chapter 332. The general requirement for a HHW collection program is retained. The commission received one comment regarding proposed §332.62. The commenter is concerned that the only one location for HHW collections is required even in the largest cities, which would not provide reasonable access for large metropolitan areas. Each option should include a provision such that 80% of the population is within ten miles of one of the collection locations. The commission responds that in developing standards for HHW collection programs, the commission has been very cognizant of establishing realistic requirements. After a review of existing programs in the state, the commission believes that one permanent collection center or a series of events provides reasonable access. The commission retains the requirements as proposed.

Subchapter G includes §§332.71-332.75, and relates to end-product testing, end-product grades and allowable uses, and labelling. Regarding §332.71, one commenter requested that rules allow leachate to be treated by a wastewater treatment plant and discharged. The commission agrees that leachate can be processed at an authorized facility or as authorized by a NPDES permit as is the case with leachate from municipal waste landfills. Language allowing this has been added to the rules in §332.37(1) pertaining to operational requirements for registered operations and §332.45(1) pertaining to operational requirements for permitted facilities.

With respect to §332.71(a), one commenter recommends that all facilities, not just registered and permitted operations, should be subject to some end-product testing. Another comment objects to the exemption from the end-product requirements of Subchapter G for final product derived from municipal sewage sludge. The commenter also suggests Subchapter G should include a restriction on the growing of food crops on land where composted sewage sludge is applied. Another commenter stated that composted municipal sewage sludge should be acceptable for growing food crops. The commission believes that testing only product from registered and permitted facilities is adequate, and there is no evidence that indicates testing of products from the lower tiers is justified. With regard to sewage sludge, it is the intent of the commission to not duplicate requirements. There are existing federal and state standards for municipal sewage sludge in 40 CFR Part 503 and 30 TAC Chapter 312, respectively. In these rules, there are end-product standards for municipal sewage sludge. Because the Part 503 and Chapter 312 rules do not prohibit the application of municipal sewage sludge on land for growing food crops, the commission will not consider adding this provision to the composting rules.

The commission received a comment regarding proposed §332.71(b) stating that all analytical methods should be EPA approved. Inclusion of "off the wall" methodology such as some of those listed will only result in unproven, uncontrolled and non-verifiable answers. The commission responds that EPA does not regulate compost or compost facilities; therefore, not all the tests required for compost or compost facilities have been examined by the EPA. The commission has carefully chosen standard tests so that a meaningful cost-effective testing program could be established. Regarding §332.71(b)(6), one commenter requested clarity if the addition of large amounts of material with low volatile solids as an operating strategy to lower the organic content would be allowed. The maturity testing proposed in this regulation is intended to give the operator significant flexibility while providing the state with reliable bench marks that allow comparative testing for non-mature compost. The protocol presented is intended to test the feedstocks the facility is processing. If large amounts of material with low volatile solids is representative of the feedstock stream then it would be allowed, if not then the provision for changing the feedstock would apply and the protocol for the new feedstock would have to be established. The commission received one comment concerning §332.71(d). The commenter notes that the maturity testing protocol outlined is a comparison of the simple reduction of organic matter (ROM) method versus certain test procedures that are much more complex, and many of the tests in this section are complex and expensive. A simple volatile solids determination is much more cost-effective. Furthermore, it seems the rules could be interpreted to require a new maturity analysis upon the slightest change in compost composition. The commission responds that the maturity testing protocol is intended to give an operator flexibility to provide for distribution of semi-mature product and still give the state assurance the metals limits are not exceeded. However, if no correlation is found between the ROM and the physical/chemical/respiratory tests, it is appropriate for the operator to utilize the ROM method. Proposed §332.71(d) (1) is amended to allow for the ROM method in the Maturity Protocol. One comment was received discussing §332.71(d)(5). The commenter noted that the requirement that the maturity test not be repeated unless a "significantly" new compost feedstock recipe is utilized seems vague and open to wide-ranging interpretations. The protocol is established for the feedstock then the testing is performed in accordance with the established protocol. The commission recognizes that operators are constantly trying new recipes and may alter the recipe depending on climatic conditions or for other reasons. It is not the TNRCC's intent to require a new maturity protocol every time a recipe is changed, but only for major changes in the recipe. Examples of a significant change would be the inclusion of a higher tier feedstock for any tier facility, or another registration tier feedstock at a registered facility. Another example might be a situation where the net volatile solids change. The commission will retain the term "significantly" in §332.71(d)(5), and emphasizes that it will generally rely on the professional judgement of the compost operator to determine when a change is significant. The commission encourages operators to contact agency staff for guidance in this matter as it arises at a facility.

One commenter complained about the documentation requirements in §332. 71(e). The commenter also pointed out that the meaning of subparagraph (D) in this section is very confusing. The commission believes the documentation and record-keeping requirements are reasonable and not overly burdensome, and represent standard analytical documentation. The commission agrees that §332. 71(e)(1)(D) is ambiguous and does not provide any additional information over subparagraph (E) of that subsection. Subparagraph (D) has been removed and proposed subparagraphs §332.71(e)(1)(E) and (F) have been changed to §332. 71(e)(1)(D) and (E).

With regard to proposed §332.71(f), the commission received several comments. One commenter expressed support for the proposed sampling frequencies. Two commenters stated that the sampling frequencies could become rather onerous for large volume producers, and recommended frequent testing during the first six months or year, but only every 10,000 to 20,000 cubic yards after that. Two commenters believe the

sampling frequencies should be more frequent. The commission received one comment recommending that yard waste should be tested every quarter for the first two years of operation, and then once a year if the compost falls within the metals limits during the first two years. The commission believes the high testing frequency is necessary to characterize, rather than monitor, the final product and represents a reasonable requirement on compost facilities. Furthermore, the commission considers the proposed testing frequency to be acceptable toward this goal. The commission recognizes that less frequent monitoring may be appropriate after a facility has tested final product for one year, and included §332.71(f)(3) in the proposed rule to allow for an alternative testing plan. Concerning yard trimmings, the commission does not believe it is necessary to test the final product from these materials. The final rule remains unchanged from the proposed rule.

One comment expressed general concern that the analytical requirements for final product samples in §332.71(h) are very extensive. Additionally, foreign matter by weight is required but this parameter requires further information from the TNRCC given the nature of the material. One commenter specifically questioned the need for salinity testing in §332.71(h)(5). Another commenter requested that registered facilities be required to test for PCBs in addition to permitted facilities. The commission responds that the metals to be tested are the same metals required to be tested for in the federal 503 rules. Salmonella, fecal coliform, pH, and salinity are also generally accepted testing parameters. The rules do allow a substantial range for salinity and pH; thus the commission does not believe requiring these is burdensome. Testing for the metals, pH, salinity, salmonella, and fecal coliform continues to be required in the final rule. Final product testing of compost derived from mixed municipal solid waste in Minnesota has shown PCBs in the final product, and the commission feels it is appropriate for this reason to require testing for PCBs for permitted facilities. The commission does not believe that registration tier feedstocks present the same potential for PCB contamination that permit tier feedstocks do because PCBs are not likely to contaminate feedstocks when the waste is not coprocessed. The proposed requirement is unchanged for the final rule. The foreign matter requirements are generally accepted industry standards. The commission retains the proposed foreign matter requirements.

Regarding proposed §332.71(j)(1), one comment notes that §332.33 and §332.43 require annual reports only, including the results of all analysis. Proposed §332.71(j) is in conflict with §332.33 and §332.43. The commission has amended §332.33 and §332.43 to address the requirement for submission of final product testing to be consistent with §332.71. Specifically in §332.33, paragraph (4) now requires submission of end-product testing. For purposes of clarity, proposed paragraphs (2) and (3) are subsection (a)(1) and (2) in the final rule, proposed paragraph (1) is now subsection (a)(3), and proposed paragraph (4) is now subsection (b). In §332. 43, paragraph (3) now requires submission of end-product testing, and proposed paragraph (3) has been renumbered paragraph (4).

Proposed §332.72 establishes the end-product standards for the constituents that are required to be tested in §332.71. The commission received a number of comments regarding these final product standards. Four commenters expressed their belief that proposed Grade 1 metals limits are not technically defensible and should be eliminated. In addition, several commenters wanted to know if the TNRCC performed a risk assessment to generate the Grade 1 compost limits as the EPA did to generate their numerical limits in 40 CFR Part 503. The TNRCC addressed the methodology and reasoning employed to derive the Grade 1 and Grade 2 limits in the proposed rule; however, the commission believes it is appropriate, in light of these comments, to again discuss the agency staff's methodology. The commission also emphasizes that the preamble noted that the TNRCC's justification document regarding the risk assessment was available for review by the public. The TNRCC staff performed a risk assessment to generate both the Grade 1 and Grade 2 final product standards for metals and PCBs. Staff of the Toxicology and Risk Assessment (TARA) Section reviewed the EPA standards for the Use or Disposal of Sewage Sludge (40 CFR, 1993), Technical Support Document for Land Application of Sewage Sludge (EPA, 1992), and other states' and international compost regulations. A literature search was also conducted to determine the chemical concentrations that are currently measured in different types of compost. The approach used to determine end-product standards for chemicals in compost followed the methodology in the Sewage Sludge Rules (EPA, 1992), with slight modifications. Ten inorganic chemicals (arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc) that are present in compost were identified as chemicals of concern. These inorganic chemicals were selected because the EPA has identified them as, "pollutants that may pose health or environmental hazards when sewage sludge is used or disposed (EPA, 1992)." A limited review of the literature to-date (MDEP, 1992; Johnson and Crawford, 1993; Glenn, 1994; Tisdell, 1993; Lisk et al., 1992; Walker and O'Donnell, 1991) indicates that the same inorganic chemicals have been detected at significant concentrations in compost derived from MSW. Thus, the same inorganic chemicals that are regulated in sewage sludge were selected to be regulated in compost. The potentially exposed populations (*i.e., humans, domestic animals, and plants*) and potential exposure pathways (*e.g., human ingestion of compost*) were identified for the residential (Grade 1) and non-residential (Grade 2) usage patterns of compost. Exposure limits (i.e., maximum allowable concentrations in compost which are not expected to adversely affect the receptor) were determined for each potential exposure pathway, for both grades of compost.

The end-product standards for Grade 1 compost were determined by using the lowest value of: 1) the lowest exposure limit for each chemical, 2) the 99th percentile of the chemical's concentration range currently measured in MSW compost, and 3) the standards listed in the Sewage Sludge Rules (EPA, 1992). For Grade 1 compost, the lowest exposure limit for arsenic, based on carcinogenic endpoints, is below the levels detected in compost and in soil. Because it is virtually impossible to have arsenic concentrations in compost at levels lower than those found naturally, it was decided that the level currently measured in compost, which is also within the range of background soil arsenic concentrations measured in the State of Texas, would be an appropriate end-product standard. The end-product standards for Grade 2 compost were determined by using the lowest value of: the lowest exposure limit for each chemical, and the standards listed in the Sewage Sludge Rules (EPA, 1992). No data was identified for MSW compost that provided concentrations of molybdenum and selenium in MSW compost so the standards determined in the Sewage Sludge Rules (EPA, 1992) were used as end-product standards for both grades of compost. Because most of the Grade 1 end-product standards are based on the 99th percentile chemical concentration currently measured in MSW compost, it is believed that the majority of MSW compost produced in the State of Texas will meet Grade 1 end-product standards. Furthermore, the 99th percentile methodology is consistent with the methodology used to develop the federal 503 limits for sludge. The compost end-product standards may be subject to change as more data become available; however, any change would be subject to proposal.

Another commenter believes that a system with only two grades is simplistic, and notes the TARA report, "End Product Standards for Compost" issued July 12, 1995 states repeatedly that "data on the actual concentrations of potentially toxic organic chemicals in compost was very limited or unavailable altogether, particularly for MSW compost generated in Texas"(p.1). TARA staff also recommend that "...adequate data be collected to determine the concentrations of potentially toxic organic compounds in MSW." The commission believes that two grades of compost are adequate, and that both grades are protective of human health and the environment. The TARA report does acknowledge that there is a limited amount of data on compost quality in Texas; however, the commission believes the TNRCC should be the entity to establish a testing program that would test for substances other than those already required. Additionally, the agency would incur the costs of doing so.

Another comment regarding §332.72 recommends that every registration and permit tier facility should be required to submit testing data of their end product prior to obtaining permission to market material to the public, either as Grade 1 or Grade 2. The commission responds that the requirement to label final product and identify the grade effectively requires that product be tested before distribution. Another commenter stated that a producer of compost at registered or notification type facilities would still be required to monitor for PCBs to effectively produce a compost that could be marketed back to the general public. The commenter also recommended PCB limits of 50 ppm which is consistent with the federal 503 rules. The commission disagrees that registered facilities will be re-

quired to monitor their product for PCBs to competitively market their product. PCB testing is only required for permitted facilities because analytical results from facilities in Minnesota have shown PCBs in final product. The commission believes that registration tier feedstocks do not present the same potential for PCB contamination as mixed municipal solid waste; therefore, PCB testing is not required. However, registered facilities may choose to test for PCBs for their own information, but the results are not required to be submitted to the agency. The exposure limits for PCBs in Grade 1 and Grade 2 compost were based on the lowest federal regulatory limits for residential and non-residential land use scenarios, respectively. The regulatory limits for PCBs have been based on carcinogenic endpoints.

With regard to §332.72(d)(1)(A)(C), one comment stated that the prohibitions against foreign material need much better definition and development. The commission responds that these are standard industry requirements for foreign matter. The proposed Grade 1 and Grade 2 final product grades are retained in §332.72.

Concerning proposed §332.72(d)(1)(B) and §332.72(d)(2)(B), one commenter noted that these sections make reference to the "MAXIMUM ALLOWABLE CONCENTRATIONS" in Table 1, but Table 1 was not included in the rules. Table 1 appeared in the June 20, 1995, issue of the *Texas Register* (20 TexReg 4991) in the Tables and Graphics section. The commission retains the proposed language in §332.72 with exception of typographical errors previously identified.

Concerning proposed §332.73, the commission received one comment that two grades are inconsistent with the 30 TAC Chapter 312 Sludge Rules which allow biosolids meeting the metals limits listed in the Grade 2 criteria to be used in a totally unrestricted manner. As stated earlier, the commission believes that two grades of compost and the restricted use on Grade 2 are appropriate. It is important to also note that consistent with federal programs, compost from municipal sewage sludge must only comply with the 503 standards (except for foreign matter) and as such does not have a restricted use. The language in proposed §332.73 remains unchanged.

Regarding proposed §332.74, one commenter believes the label requirements should not impose a burden on the producer. Three commenters believe it is appropriate to require label information, but not to specify feedstocks, as required by §332.74(b)(2)(B). The requirement should be eliminated. The commission believes that it is appropriate to identify feedstocks on the label as a consumer information measure. The commission retains the requirement for declaring feedstocks on labels.

Concerning §332.75, one comment was received questioning the TNRCC's ability to enforce the requirement that out-of-state products comply with the label requirements. The commission believes that a state may regulate out-of-state products so long as the standards that these products must meet do not place a burden on the out-of-state producers that is not borne by the in-state producers. The staff does not believe that the requirements in §332.74, relating to Compost Labelling Requirements place an unreasonable burden on producers of out-of-state compost.

Subchapter A. General Information

• 30 TAC §§332.1-332.8

The new rules are adopted under the Texas Water Code, §5.103, which gives the TNRCC the authority to adopt rules necessary to carry out its powers, duties, and responsibilities; and Health and Safety Code, Chapter 361, SWDA, which provides TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

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

Agricultural materials-Litter, manure, bedding, feed material, vegetative material, and dead animal carcasses from agricultural operations.

Agricultural operations-Operations involved in the production of agricultural materials.

Air contaminant-Particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof produced by processes other than natural. Water vapor shall not be considered an air contaminant.

All-weather roads-A roadway that has been designed to withstand the maximum load imposed by vehicles entering and exiting the facility during all types of weather conditions.

Anaerobic composting-The controlled biological decomposition of organic materials through microbial activity which occurs in the absence of free oxygen. Anaerobic composting does not include the stockpiling of organic materials.

Backyard operations-The composting, land application and mulching of non-industrial organic material, such as grass clippings, leaves, brush, clean wood material or vegetative food material, generated by a homeowner, tenant of a single or multi-family residential or apartment complex, or a commercial or institutional complex where the composting, land application or mulching occurs on the dwelling property and the final product is utilized on the same property. Backyard operations includes neighborhood composting demonstration sites which generate less than 50 cubic yards of final product per year.

Batch (or Sampling batch)-The lot of produced compost represented by one analytical sample (3,000 cubic yards or 5000 cubic yards depending on facility type).

Beneficial reuse-Any agricultural, horticultural, reclamation, or similar use of compost as a soil amendment, mulch, or component of a medium for plant growth, when used in accordance with generally accepted practice and where applicable is in compliance with the final product standards established by this chapter. Simply offering a product for use does not constitute beneficial reuse. Beneficial reuse does not include placement in a disposal facility, use as daily cover in a disposal facility, or utilization for energy recovery.

Bulking Agent-An ingredient in a mixture of composting materials included to improve structure and porosity (which improve convective air flow and reduce settling and compaction) and/or to lower moisture content. Bulking agents may include but are not limited to: compost, straw, wood chips, saw dust or shredded brush.

Clean wood material-Wood or wood materials, including stumps, roots, or vegetation with intact rootball, sawdust, pallets and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as but not limited to paint or other chemicals, glass, electrical wiring, metal and sheetrock.

Commission-The Texas Natural Resource Conservation Commission and its successors.

Compost-The stabilized product of the decomposition process that is used or distributed for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

Composting or functionally aerobic composting-The controlled, biological decomposition of organic materials through microbial activity which occurs in the presence of free oxygen. Composting or functionally aerobic composting does not include the stockpiling of organic materials.

Cured compost (CC)-A highly stabilized product which results from exposing mature compost to a prolonged period of humification and mineralization.

Dairy material-Products which have a Standard of Identity defined in the Code of Federal Regulations, Title 21 §131.

Distribute-To sell, offer for sale, expose for sale, consign for sale, barter, exchange, transfer possession or title, or otherwise supply.

Executive director-The Executive Director of the Texas Natural Resource Conservation Commission or his duly authorized representative.

Facility-All structures, other appurtenances, and improvements within the property boundaries used for receiving and storage of organic materials and processing them into useable final products.

Feedstock-Any material used for land application or as a basis for the manu-

facture of compost, mulch or other useable final product.

Final Product-Composed material meeting testing requirements of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product) and awaiting distribution or disposal.

Fish feedstocks-Fish, shellfish, or seafood and by-products of these materials whether raw, processed, or cooked. Fish feedstocks does not include oils and/or greases that are derived from these same materials.

Foreign matter-Inorganic and organic constituents which are not readily decomposed, including metals, glass, plastics and rubber, but not including sand, dirt, and other similar materials.

Grab sample-A single sample collected from one identifiable location.

Grease-See the definition of Oil in this section.

Hours of operation-Those hours which the facility is open to receive feedstock, incorporate feedstock into the process, retrieve product from the process, and/or ship product.

Land application-The spreading of yard trimmings, manure, clean wood material and/or vegetative food materials onto the surface of the land or the incorporation of these materials within 3 feet of the surface.

Leachate-Liquid which has come in contact with or percolated through materials being stockpiled, processed, or awaiting removal and which has extracted, dissolved or suspended materials. Leachate also includes condensate from gases resulting from the composting process.

Manure-Animal excreta and residual materials that have been used for bedding, sanitary or feeding purposes for such animals.

Mature compost-Mature compost is the stabilized product of composting which has achieved the appropriate level of pathogen reduction (ie. PFRP or PSRP) and is beneficial to plant growth, and meets the requirements of Table 2 of §332.72 of this title (relating to Final Product Grades)

Maturity-A measure of the lack of biological activity in freshly aerated materials, resulting from the decomposition of the incoming feedstock during the active composting period.

Meat feedstocks-Meat and meat byproducts whether raw, processed, or cooked including whole animal carcasses, poultry and eggs. Meat feedstocks does not include oils and/or greases that are derived from these same materials.

Mixed municipal solid waste-Garbage, refuse, and other solid waste from residential, commercial, industrial nonhazardous, and community activities which is generated and collected in aggregate.

Mulch-Ground, coarse, woody yard trimmings and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood that has been systemically killed using herbicides.

Municipal sewage sludge-Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screening generated during preliminary treatment of domestic sewage in a treatment works.

Nuisance-Nuisances as set forth in the Texas Health and Safety Code, Chapter 341, the Texas Water Code, Chapter 26, and §101.4 of this title (relating to Nuisance).

Oil-Any material rendered from vegetative material, dairy material, meat and fish feedstocks, that is soluble in trichlorotrifluoroethane. It includes other material extracted by the solvent from an acidified sample and not volatilized during the test. Oil and greases do not include grease trap waste.

One hundred-year floodplain-Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

Operator-The person(s) responsible for operating the facility or part of a facility.

Quality Assurance/Quality Control (QAQC) plan-A written plan to describe standard operating procedures used to sample, prepare, store, and test final product, and report test results. The plan outlines quality assurance criteria, as well as quality control procedures, needed to meet the operational specifications of 30 TAC Chapter 332.

Quality Assurance Program Plan (QAPP)-A QAQC plan prepared by the TNRCC that may be substituted for the QAQC plan.

Paper-A material made from plant fibers (such as but not limited to wood pulp, rice hulls, and kenaf). The sludge byproduct resulting from the production of paper may be approved as a feedstock pursuant to §332. 33(b) of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production).

Permit-A written document issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a facility or operation in accordance with specific limitations.

Person-Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

PFRP-The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

PSRP-The process to significantly reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

Positively-sorted organic material-Positively-sorted organic material includes materials such as, but not limited to, yard trimmings, clean wood materials, manure, vegetative material, paper, meat and fish feedstocks that are sorted or pulled out as targeted compostable organic materials from mixed municipal solid waste prior to the initiation of processing.

Processing-Actions that are taken to land apply feedstocks or convert feedstock materials into finished compost, mulch or a useable final product. Processing does not include the stockpiling of materials.

Recyclable material-For purposes of this chapter, a recyclable material is a material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced from raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Protection Act. If, however, recyclable materials may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Recycling-A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes the composting process if the compost material is put to beneficial reuse as defined in this section.

Residence-A single-family or multifamily dwelling.

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

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

Semi-mature compost (SMC)-Organic matter that has been through the ther-

mophilic stage and achieved the appropriate level of pathogen reduction (ie. PFRP or PSRP). It has undergone partial decomposition but it is not yet stabilized into mature compost. Semi-mature compost shall not be packaged, as uncontrolled microbial transformations will occur.

Solid waste-Garbage; rubbish; refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining and agricultural operations from community and institutional activities.

Source-separated-Set apart from waste after use or consumption by the user or consumer.

Source-separated organic material-Organic materials from residential, commercial, industrial, and other community activities, that at the point of generation have been separated, collected and transported separately from non-organic materials, or transported in the same vehicle as non-organic materials but in separate compartments. Source-separated organic material may include materials such as, but not limited to, yard trimmings, clean wood materials, manure, vegetative material, and paper. Yard trimmings and clean wood material collected with whitegoods, as in brush and bulky item collections, will be considered source-separated organic materials for the purposes of these rules.

Stockpile-A collection of materials that is either awaiting processing or removal.

Unauthorized material-Material which is not authorized to be processed in a particular type of composting, mulching or land application facility.

Vegetative material-Fruit, vegetable or grain material whether raw, processed, liquid, solid, or cooked. Vegetative material does not include oils and/or greases that are derived from these same materials.

Vector-An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

Voucher-Provides the same information as required on a label to persons receiving compost distributed in bulk.

Wetlands-Those areas defined as wetlands in the Texas Water Code, Chapter 26.

Wet weight-The weight of the material as used, not a weight that has been adjusted by subtracting the weight of water within the feedstock.

White goods-Discarded large household appliances such as refrigerators, stoves, washing machines or dishwashers.

Yard trimmings-Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. Yard trimmings does not include stumps, roots, or shrubs with intact root balls.

§332.3. Applicability.

(a) Permit required. The following compost operations are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the requirements set forth in Subchapters D, E, F, and G of this title (relating to Operations Requiring a Permit; Source-Separated Recycle; and Household Hazardous Waste Collection; End-Product Standards), and the air quality requirements in §332. 8 of this title (relating to Air Quality Requirements). These facilities are required to obtain a permit from the commission pursuant to Chapters 305 of this title (relating to Consolidated Permits) and 281 of this title (relating to Application Processing).

(1) Operations that compost mixed municipal solid waste.

(2) Operations that add any amount of mixed municipal solid waste as a feedstock in the composting process.

(b) Registration required. The following compost operations are subject to the requirements of the General Requirements found in §332.4 of this title (relating to General Requirements), the requirements set forth in Subchapters C and G of this title (relating to Operations Requiring a Registration; and End-Product Standards), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements).

(1) Operations that compost municipal sewage sludge, except those facilities that compost municipal sewage sludge with mixed municipal solid waste.

(2) Operations that compost positively-sorted organic materials from the municipal solid waste stream.

(3) Operations that compost source-separated organic materials not exempted under subsection (d) of this section.

(4) Operations that compost grease trap waste.

(5) Operations that compost disposable diapers or paper products soiled by human excreta.

(6) Operations that compost the sludge byproduct generated from the production of paper if the executive director determines that the feedstock is appropriate pursuant to §332.33 of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production).

(7) Operations that incorporate any of the materials set forth in paragraphs (1)-(6) of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dairy, oil, grease materials or dead animal carcasses.

(c) Operations requiring notification. The following operations are subject to all requirements set forth in Subchapter B of this title (relating to Operations Requiring Notification), the general requirements found in §332.4 of this title (relating to General Requirements) , and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements):

(1) Operations that compost any source-separated meat, fish, dead animal carcasses, oils, greases, or dairy materials.

(2) Operations that incorporate any of the materials set forth in paragraph (1) of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, or manure.

(d) Operations exempt from facility notification, registration, and permit requirements. The following operations are subject to the general requirements found in §332.4 of this title (relating to General Requirements) and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements), and exempt from notification, registration and permit requirements found in Subchapter B of this title (relating to Operations Requiring Notification), Subchapter C of this title (relating to Requirements for Registered Facilities), and Subchapter D of this title (relating to Permit Required).

(1) Operations that compost only materials listed in subparagraphs (A) and (B) of this paragraph.

(A) Source-separated yard trimmings, clean wood material, vegetative material, paper, and manure.

(B) Source-separated industrial materials listed in §332.4(10) of this title (relating to General Requirements) excluding those items listed in subparagraphs (A), (F), (G), (H), and (J).

(2) Agricultural operations that generate and compost agricultural materials on-site.

(3) Mulching operations.

(4) Land application of yard trimmings, clean wood materials, vegetative materials, and manure at rates below or equal to agronomic rates as determined by the Texas Agricultural Extension Service.

(5) Application of paper that is applied to land for use as an erosion control or a soil amendment.

(6) On-site composting of industrial solid waste at a facility that is in compliance with §335.2 of this title (relating to Permit Required) and §335.6 of this title (relating to Notification Requirements).

§332.4. General Requirements. All composting facilities and backyard operations shall comply with all of the following general requirements.

(1) Compliance with Texas Water Code. The activities which are subject to this chapter shall be conducted in a manner which prevents the discharge of material to or the pollution of surface or groundwater in accordance with the provisions of the Texas Water Code, Chapter 26.

(2) Nuisance conditions. The composting, mulching, and land application of material shall be conducted in a sanitary manner which shall prevent the creation of nuisance conditions as mandated by the Texas Health and Safety Code, Chapters 341 and 382 and the Texas Water Code, Chapter 26 as defined in these regulations, and any other applicable regulations or statutes.

(3) Discharge to surface or groundwater. The discharge of material or the pollution of surface or groundwater resulting from the beneficial reuse and recycling of material is subject to enforcement by the commission and may result in the assessment of civil penalties.

(4) Compliance with federal laws. Facility operations shall be conducted in accordance with all applicable Federal laws and regulations.

(5) Compliance with State laws. Facility operations shall be conducted in accordance with all applicable laws and regulations of the State of Texas.

(6) Facility operations. Facility operations shall not be conducted in a manner which causes endangerment of human health and welfare, or the environment.

(7) Operations on a municipal solid waste landfill unit. No composting activities shall be conducted on the cap of a municipal solid waste landfill without prior approval by the commission on a case by case basis.

(8) Operational requirement. Operations shall be conducted in such a manner to ensure that no unauthorized or prohibited materials are processed at the facility. All unauthorized or prohibited materials received by the facility shall be disposed of at an authorized facility in a timely manner.

(9) Leachate. Leachate from landfills and mixed municipal solid waste composting operations shall not be used on any composting process, except mixed municipal solid waste composting, and shall not be added subsequent to the designation of an end-product grade unless the product is reanalyzed to determine end-product quality.

(10) Nonhazardous industrial solid waste. This chapter applies to the composting, mulching, and land application of only the following nonhazardous industrial solid waste when the composting occurs on property which does not qualify for the exemption from the requirement of an industrial solid waste permit pursuant to §335.2(d) of this title (relating to Permit Required).

(A) dead animal carcasses;

(B) clean wood material;

(C) vegetative material;

(D) paper;

(E) manure (including paunch manure);

(F) meat feedstocks;

(G) fish feedstocks;

(H) dairy material feedstocks;

(I) yard trimmings; and

(J) oils and greases;

(11) Industrial and hazardous waste. Any of the materials listed in paragraph (10) of this section which are not managed in accordance with the requirements of this chapter, all hazardous wastes, and any nonhazardous industrial solid wastes not listed in paragraph (10) of this section shall be managed in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

§332.5. Variances.

(a) In specific cases the executive director may approve a variance from the requirements of this chapter if the variance is not contrary to the public health and safety and, due to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the chapter is observed. A variance may not be approved concerning the procedural requirements of this chapter, including application procedures and the filing of reports, or concerning the provisions of §332.8 of this title (relating to Air Quality Requirements).

(b) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration or permit. Any approval of a variance must be in writing from the executive director.

(c) If the variance is requested for a facility permitted under this Chapter, the commission must approve the variance.

§332.7. Compost Operations Located at Waste Water Treatment Facilities. Municipal sewage sludge composting facilities considered to be registered facilities in §332.3 of this title (relating to Applicability) may be located at waste water treatment facilities that have received a water quality permit under the Texas Water Code, Chapter 26. The owner shall prepare and submit a modification to amend the water quality permit in accordance with the provisions of Chapter 305 of this title (relating to Consolidated Permits). The applicant shall comply with the provisions of §332.4 of this title (relating to General Requirements) and §332.31 of this title (relating to Definition of and Requirements for Registered Facilities) except where those provisions conflict with the provisions of the water quality permit. If the wastewater treatment facility has received a water quality permit under the Texas Water Code, Chapter 26 which authorizes compost operations, the compost operation shall be conducted in accordance with the facility permit.

§332.8. Air Quality Requirements.

(a) General requirements.

(1) Any composting or mulching operation which has existing authority under the Texas Clean Air Act does not have to meet the air quality criteria of this subchapter. Pursuant to the Texas Clean Air Act, §382.051, any new composting or mulching operation which meets all of the applicable requirements of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) Those composting or mulching operations which would otherwise be required to obtain air quality authorization under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), which cannot satisfy all of the requirements of this subchapter, shall apply for and obtain air quality authorization pursuant to Chapter 116 of this title (relating to Control of Air

Pollution by Permits for New Construction or Modification) in addition to any notification, registration, or permit required in this subchapter.

(3) Any composting or mulching operation authorized under this chapter which is a new major source or any modification which constitutes a major modification under nonattainment review or Prevention of Significant Deterioration review as amended by the Federal Clean Air Act amendments of 1990, and regulations promulgation thereunder, shall be subject to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), in addition to any notification, registration or permit required in this chapter.

(4) Composting facilities that do not wish to comply with the requirements of this section, are required to apply for and obtain air quality authorization under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Once a person has applied for and obtained air quality authorization under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), the person is exempt from the air quality requirements of this chapter.

(5) No person may concurrently hold an air quality permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and an air quality standard permit authorized under this chapter for composting or mulching operations at the same site.

(6) Composting or mulching operations which have authorization under this chapter shall comply with the general requirements in §332.4 of this title (relating to General Requirements), and subsections (b), (c), (d) or (e) of this section; and

(7) The operator of a composting or mulching operation operating under an air quality standard permit shall maintain on file at all times and make immediately available documentation which shows compliance with this section.

(b) Exempt operations. Composting and mulching operations that are considered exempt operations pursuant to §332.3(d) of this title (relating to Applicability), and that meet the following requirements are hereby entitled to an air quality standard permit.

(1) If the total volume of materials to be mulched and/or composted, including in-process and processed materials at any time is greater than 2000 cubic yards, the setback distance from all property boundaries to the edge of the area receiving, processing or storing feedstock or finished product shall be at least 50 feet.

(2) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed 10 Mph.

(3) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(4) All conveyors which offload materials from grinders at a point which is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) If there are any changes to the composting or mulching operation that would reclassify it from an exempt operation to a notification, registration, or permit facility as authorized under §332.3 of this title (relating to Applicability), the operation shall obtain an air quality standard permit for a notification, registered, or permitted composting operation.

(c) Notification operations. Composting operations required to notify pursuant to §332.3(c) of this title (relating to Applicability) which meet the following requirements are hereby entitled to an air quality standard permit.

(1) The setback distance from all property boundaries to the edge of the area receiving, processing or storing feedstock or finished product shall be at least 50 feet.

(2) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten mph.

(3) Prior to receiving any material with a high odor potential such as, but not limited to dairy material feedstocks, meat, fish, oil and grease feedstocks, the operator shall insure that there is an adequate volume of bulking material to blend with/cover the material, and shall begin processing the material in a manner that prevents nuisances.

(4) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) All conveyors which offload materials from grinders at a point which is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(6) If there are any changes to the composting or mulching operation that would reclassify it from a notification operation to a registration or permit operation as authorized under §332.3 of this title (relating to Applicability), the operation shall obtain an air quality standard permit for a registered or permitted composting operation.

(d) Registered operations. Composting operations required to obtain a registration pursuant to §332.3(b) of this title (relating to Applicability) which meet the following requirements are hereby entitled to an air quality standard permit.

(1) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten mph.

(2) Prior to receiving any material with a high odor potential such as, but not limited to dairy material feedstocks, sewage sludge, meat, fish, oil and grease feedstocks, and grease trap waste, the operator shall insure that there is an adequate volume of bulking material to blend with/cover the material, and shall begin processing the material in a manner that prevent nuisances.

(3) All material shall be conveyed mechanically, or if conveyed pneumatically, the conveying air shall be vented to the atmosphere through a fabric filter(s) having a maximum filtering velocity of 4.0 ft/min with mechanical cleaning or 7.0 ft/min with air cleaning.

(4) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior

to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) All conveyors which offload materials from grinders at a point which is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(6) If there are any changes to the composting or mulching operation that would reclassify it from a registration operation to a permit operation as authorized under §332.3 of this title (relating to Applicability), the operation shall obtain an air quality standard permit for a permitted composting operation.

(e) Permit operations. Composting operations required to obtain a permit pursuant to §332.3(a) of this title (relating to Applicability) which meet the following requirements are hereby entitled to an air quality standard permit.

(1) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten mph.

(2) Prior to receiving any material with a high odor potential such as, but not limited to dairy material feedstocks, sewage sludge, meat, fish, oil and grease feedstocks, and municipal solid waste, the operator shall insure that there is an adequate volume of bulking material to blend with/cover the material, and shall begin processing the material in a manner that prevents nuisances.

(3) All material shall be conveyed mechanically, or if conveyed pneumatically, the conveying air shall be vented to the atmosphere through a fabric filter(s) having a maximum filtering velocity of 4.0 ft/min with mechanical cleaning or 7.0 ft/min with air cleaning.

(4) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) All conveyors which offload materials from grinders at a point which is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(6) All activities which could result in increased odor emissions such as turning of compost piles shall be conducted in a manner that does not create nuisance conditions or shall only be conducted inside a building maintained under negative pressure and controlled with a chemical oxidation scrubbing system or bio filter system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1995.

TRD-9514468 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

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

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Subchapter B. Operations Requiring Notification

• 30 TAC §§332.21-332.23

The new rules are adopted under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and responsibilities, and Health and Safety Code, Chapter 361, Solid Waste Disposal Act, which provides the TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

§332.21. Operations Requiring Notification. The following operations are subject to all the requirements of this subchapter, the General Requirements found in §332.4 of this title (relating to General Requirements) , and the air quality requirements of §332.8 of this title (relating to Air Quality Requirements).

(1) Operations that compost any source-separated meat, fish, dead animal carcasses, oils, greases, or dairy materials.

(2) Operations that incorporate any of the materials set forth in paragraph (1) of this section with source-separated yard trimmings, clean wood material, vegetative material, paper, or manure.

§332.22. Notification.

(a) The operator shall notify the executive director in writing of the existence of the facility 30 days prior to construction by completing TNRCC Compost Form Number 1, "Notice of Intent to Operate a Compost Facility," available from the commission.

(b) The applicant shall include a list of adjacent and landowners and their addresses. Upon receipt of the notification, the chief clerk shall mail notice of the planned facility to the affected landowners. The chief clerk shall also mail notice to other affected landowners as directed by the executive director.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9514469 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

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Subchapter C. Operations Requiring a Registration

• 30 TAC §§332.31-332.38

The new rules are adopted under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and responsibilities, and Health and Safety Code, Chapter 361, Solid Waste Disposal Act, which provides the TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

§332.31. Definition of and Requirements for Registered Facilities.

(a) Definition of registered facilities. The following operations are subject to the requirements of this subchapter:

(1) Operations that compost municipal sewage sludge, except those facilities that compost municipal sewage sludge with mixed municipal solid waste.

(2) Operations that compost positively-sorted organic materials from the municipal solid waste stream.

(3) Operations that compost source-separated organic materials not exempted under §332.3(d) of this title (relating to Applicability).

(4) Operations that compost grease trap waste.

(5) Operations that compost disposable diapers or paper products soiled by human excreta.

(6) Operations that compost the sludge byproduct generated from the production of paper if the executive director determines that the feedstock is appropriate pursuant to §332.33 of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production).

(7) Operations that incorporate any of the materials set forth in paragraphs (1)-(6) of this section with source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dairy, oil, grease materials or dead animal carcasses.

(b) Requirements for registered facilities. The operations listed in subsection (a) of this section are subject to the requirements of the General Requirements found in §332.4 of this title (relating to General Requirements) , the requirements set forth in this subchapter, the requirements set forth in Subchapter G of this title (relating to End-Product Standards) and the air quality requirements set forth in §332.8 of this title (relating to Air Quality Requirements).

§332.32. Certification by Engineer, Approval by Land Owner, and Inspection.

(a) Certification by registered professional engineer. The operator shall obtain certification by a Texas-Registered Professional Engineer that the facility has been constructed as designed and is in general compliance with the regulations prior to accepting any feedstock at the facility that requires registration and maintaining that certification on-site for inspection by the commission.

(b) Ownership or control of property. The facility shall be located on property owned by the operator or the operator shall establish, using an affidavit form provided by the commission, signed by the owner and notarized, that the owner is aware of and consents to the operation prior to any receipt of feedstock or processing activities. A copy of the affidavit shall be kept on-site at all times.

(c) Inspection of facility. Prior to the initial acceptance of any feedstocks, the facility shall be inspected by the TNRCC to determine compliance with the registration.

§332.33. Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production.

(a) The operator of the compost facility shall submit the following:

(1) TNRCC Form Number 2. The operator shall submit TNRCC Form Number 2, "Notice of Intent to Apply for a Compost Facility Registration or Permit," available from the commission; and

(2) Registration application. The registration application described in §332.34 of this title (relating to Registration Application).

(3) Annual report. The operator shall submit annual written reports using TNRCC Form Number 3, "Annual Report Form for Compost Facilities Requiring Registration or Permit," available from the commission. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(4) Final product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a semi-annual basis.

(b) In order to use the sludge byproduct of paper production as a composting feedstock, the operator must first receive permission from the executive director.

(1) The operator shall submit a request to the executive director to use the sludge byproduct as a feedstock. The request may also be submitted with a registration application.

(2) At a minimum, the request shall present all of the following:

(A) identification of the source of the sludge byproduct;

(B) a general description of the process that produces the sludge byproduct including the use of any elemental chlorine bleaches used in the process;

(C) analytical results that identify concentrations for polychlorinated dibenzo-p-dioxins (CCDs) and polychlorinated dibenzofurans (CDFs); and

(D) a demonstration that the final product will not be harmful to human health or the environment.

(3) The executive director or his designee shall, after review of the request, determine if he will approve or deny the request.

(4) An operator that receives approval from the executive director to include the sludge byproduct of paper production as a composting feedstock, shall submit a new request to the executive director in accordance with this subsection if a significant change, such as a new source for the feedstock, is planned.

§332.34. Registration Application. Registration applications for composting must include:

(1) Title page. The title page shall show the name of the project, the name of the applicant, the location by city and county.

(2) Signature of the applicant. The signature of the applicant(s), checked against agency requirements, in accordance with §305.44 of this title (relating to Signatories to Applications);

(3) Affidavit. A notarized affidavit from the applicant(s) verifying land ownership and landowner agreement to the proposed activity;

(4) Table of contents. The table of contents shall list and give the page numbers for the main sections of the application.

(5) Legal authority. The applicant shall provide verification of his/her legal status. Normally, this is a one-page certificate of incorporation issued by the Secretary of State.

(6) Evidence of competency. The applicant shall provide the following:

(A) The names of the principals and supervisors of the applicant's organization relative to the proposed compost operation; and

(B) The name, location, and permit or registration number of any compost operations or solid waste operations that it is operating or has operated in Texas.

(7) Notice of Appointment. The applicant shall provide a notice of appointment identifying the applicant's engineer.

(8) Notice of coordination. The applicant shall provide notice of coordination with all local, state, and federal government officials and agencies.

(9) Legal description. The applicant shall provide the following:

(A) A legal description of the property and the county, book, and page

number of the current ownership record from the county deed records; and

(B) a boundary metes and bounds drawing and description of the site signed and sealed by a Registered Professional Land Surveyor;

(10) Location description.

(A) Map. The applicant shall clearly show the boundaries of the planned facility on a map that is all or a portion of a county map prepared by Texas Department of Transportation (TxDOT). At a minimum, the map shall be at a scale of one-half inch equals one mile.

(B) Geographic coordinates. The applicant shall supply geographic coordinates for the southeast corner of the facility.

(11) Landowner list. The applicant shall include a list of adjacent landowners and their addresses along with an appropriately scaled map locating the property owned by these persons.

(12) Site operating plan. The applicant shall submit a site operating plan. This document is to provide guidance from the design engineer to site management and operating personnel in sufficient detail to enable them to conduct day to day operations in a manner consistent with the engineer's design. At a minimum, the site operating plan shall include specific guidance or instructions on all of the following:

(A) Process description. The process description shall be composed of a descriptive narrative along with a process diagram. The process description shall include:

(i) Feedstock identification. The applicant shall prepare a list of the materials intended for processing along with the anticipated volume to be processed. This section shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for unauthorized and prohibited materials.

(ii) Tipping process. Indicate what happens to the feedstock material from the point it enters the gate. Indicate how the material is handled in the tipping area, how long it remains in the tipping area, what equipment is used, how the material is evacuated from the tipping area, at what interval the tipping area is cleaned, the process used to clean the tipping area.

(iii) Process. Indicate what happens to the material as it leaves the tipping area. Indicate how the material is incorporated into the process and what process or processes are used until it goes to the post-processing area. The narrative shall include: water addition, processing rates, equipment, energy and mass balance calculations, and process monitoring method.

(iv) Post-processing. Provide a complete narrative on the post-processing process, include post-processing times, identification and segregation of product, storage of product, quality assurance and quality control.

(v) Product distribution. Provide a complete narrative on product distribution including items such as: end-product quantities, anticipated final grades, packaging, labeling, loading, and tracking bulk material.

(vi) Process diagram. Present a process diagram that displays graphically, the narrative generated in response to clauses (i)-(v) of this paragraph.

(B) The minimum number of personnel and their functions to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards.

(C) The minimum number and operational capacity of each type of equipment to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards.

(D) Security, site access control, traffic control and safety.

(E) Control of dumping within designated areas, screening for unprocessable, prohibited, and unauthorized material.

(F) A fire prevention and suppression plan that shall comply with provisions of the local fire code, which shall also be sent to the local fire protection entity responsible for responding to a fire at the facility.

(G) Control of windblown material.

(H) Vector control.

(I) Quality assurance and quality control.

(i) Municipal sewage sludge compost facilities. The operator shall comply with the provisions of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(ii) All other registered facilities. As a minimum the applicant shall provide testing and assurance in accordance with the provisions of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product).

(J) Equipment failures including alternative plans in the event of an equipment failure.

(K) A description of the anticipated final grade of the materials.

(13) Construction plans and specifications. The applicant shall submit facility construction plans and specifications. The facility plans and specification shall reflect the provisions of this chapter to the maximum extent possible.

(14) Closure plan. The applicant shall provide a plan for proper closure of the facility including disposition of any remaining feedstocks, in-process, and processed materials.

§332.35. Registration Application Processing.

(a) An application shall be submitted to the executive director. When an application is administratively complete, the executive director shall assign the application an identification number.

(b) Public Notice.

(1) When an application is administratively complete the chief clerk shall mail notice to adjacent landowners. The chief clerk also shall mail notice to other affected landowners as directed by the executive director.

(2) When an application is technically complete the chief clerk shall mail notice to adjacent landowners. The chief clerk shall also mail notice to other affected landowners as directed by the executive director. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice shall explain the method for submitting a motion for reconsideration.

(3) Notice issued under paragraphs (1) or (2) shall contain the following information:

(A) the identifying number given the application by the executive director;

(B) the type of registration sought under the application;

(C) the name and address of the applicant(s);

(D) the date on which the application was submitted; and

(E) a brief summary of the information included in the application.

(c) The executive director or his designee shall, after review of any application for registration of a compost facility determine if he will approve or deny an application in whole or in part. The executive director shall base his decision on whether the application meets the requirements of this subchapter and the requirements of §332.4 of this title (relating to General Requirements).

(d) At the same time that the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all adjacent and affected landowners, residents, and businesses.

(e) Motion for Reconsideration.

(1) The applicant or a person affected may file with the chief clerk a motion for reconsideration of the executive director's final approval of an application.

(2) A motion for reconsideration must be filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed to the applicant the signed registration or other approval.

(3) A decision by the executive director, including a registration issued by the executive director, is not affected by the filing of a motion for reconsideration under this section unless expressly so ordered by the commissioners. If a motion for reconsideration is not acted on by the commissioners within 45 days after the date on which chief clerk mailed the signed registration to the applicant, the motion shall be deemed overruled. When a motion for reconsideration is overruled by commission action or pursuant to this subsection, the Texas Government Code, §2001.146, regarding motions for rehearing in contested cases is inapplicable and no motions for rehearing shall be filed. To the extent applicable, the commission decision may be subject to judicial review pursuant to Texas Water Code, §5.351 or the Texas Health & Safety Code, §361.321.

§332.37. Operational Requirements. The operation of the facility shall comply with all of the following operational requirements:

(1) Protection of surface water. The facility shall be constructed, maintained and operated to manage run-on and run-off during a 25-year, 24-hour rainfall event and shall prevent discharge into waters in the state of feedstock material, including but not limited to, in-process and/or processed materials. Any waters coming into contact with feedstock, in-process, and processed materials shall be considered leachate. Leachate shall be contained in retention facilities until reapplied on piles of feedstock, in-process, or unprocessed materials. The retention facilities shall be lined and the liner shall be constructed in compliance with paragraph (2) of this section. Leachate may be treated and processed at an authorized facility or as authorized by an NPDES permit. The use of leachate in any processing shall be conducted in a manner that does not contaminate the final product;

(2) Protection of groundwater. The facility shall be designed, constructed, maintained and operated to protect groundwater. Facilities that compost municipal sewage sludge, grease trap waste, disposable diapers, and/or the sludge byproduct of paper mill production shall install and maintain a liner system complying with the provisions of subparagraph (A), (B), or (C) of this paragraph. The liner system shall be provided where receiving, mixing, composting, post-processing, screening and storage areas would be in contact with the ground or in areas where leachate, contaminated materials, contaminated product or contaminated water is stored or retained. The application shall demonstrate the facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. The lined surface shall be covered with a material designed to withstand normal traffic from the composting operations. At a minimum the lined surface shall consist of soil, synthetic, or an alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of 1 x 10-7 centimeters per second or less.

(A) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30% and a plasticity index greater than 15;

(B) Synthetic liners shall be a membrane with a minimum thickness of 20 mils;

(C) An alternative design that utilizes an impermeable liner (such as concrete).

(3) Unauthorized and prohibited materials. The operator shall operate the facility in a manner that will preclude the entry of any unauthorized or prohibited materials from entering the composting process.

(4) Access. Access to the facility shall be controlled to prevent unauthorized disposal of unauthorized or prohibited material and scavenging. The facility shall be completely fenced with a gate that is locked when the facility is closed.

(5) Nuisance conditions. The facility shall be sited and operated in such a manner as to prevent the potential of nuisance conditions and fire hazards. Where nuisance conditions or fire hazards exist, the operator will immediately take action to abate such nuisances.

(6) Aerobic composting required. The facility shall utilize functionally aerobic composting methods, although an anaerobic composting phase may be utilized in the early stages of processing, if it is followed by a period of functionally aerobic composting.

(7) Site sign. The facility shall have a sign at the entrance indicating the type of facility, the registration number, hours of operation and the allowable feedstocks.

(8) Access road. The facility access road shall be an all-weather road.

(9) Authorization required for significant changes. The operator shall obtain written permission from the commission before changing the processing method or other significant changes to the original registration application.

(10) Prohibited substances. Fungicides, herbicides, insecticides or other pesticides that contain constituents listed in 40 CFR Part 261, Appendix VIII-Hazardous Constituents or on the Hazardous Substance List as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) shall not be applied to or incorporated into feedstocks, in-process materials or processed materials.

(11) End-product standards.

(A) Facilities that compost municipal sewage sludge. For facilities that compost only municipal sewage sludge or compost municipal sewage sludge with any source-separated materials, the operator shall comply with the provisions of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and shall not exceed the foreign matter criteria contained §332.72(d)(2)(A) and (D), of this title (relating to Final Product Grades).

(B) All other registered facilities. The operator shall meet compost test-

ing requirements set forth in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product), final product grades set forth in §332.72 of this title (relating to Final Product Grades), and label all materials which are sold or distributed as set forth in §332.74 of this title (relating to Final Product Labelling Requirements).

(12) The operator shall employ at least one TNRCC-certified compost operator within six months from the adoption of this title, the initiation of operations at the compost facility, or the establishment of the compost certification program which ever occurs later and a TNRCC-certified compost operator shall routinely be available on site during the hours of operation.

§332.38. Records Requirements.

(a) Facilities that compost municipal sewage sludge. For facilities that compost only municipal sewage sludge or compost municipal sewage sludge with any source-separated materials, the operator shall comply with the provisions of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) All other registered facilities.

(1) The operator shall maintain records on-site, available for inspection by the commission, for a period consisting of the two most recent calendar years. The records shall consist of the following:

(A) the facility registration obtained from the commission;

(B) a log of abnormal events at the facility, including but not limited to, process disruptions, extended equipment failures, injuries, and weather damage; and

(C) Results of final product testing required by §332.71(j) of this title (relating to Sampling and Analysis Requirements for Final Product).

(2) The operator shall maintain copies of the annual report on-site for the five most recent calendar years.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Legal Division
Texas Natural Resource Conservation Commission

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Subchapter D. Operations Requiring a Permit

• 30 TAC §§332.41-332.47

The new rules are adopted under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and responsibilities, and Health and Safety Code, Chapter 361, Solid Waste Disposal Act, which provides the TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

§332.41. Definition, Requirements, and Application Processing for a Permit Facility.

(a) Definition of permitted facilities. The following operations are subject to the requirements of this subchapter:

(1) Operations that compost mixed municipal solid waste not in accordance with §332.31 of this title (relating to Definition of and Requirements for Registered Facilities).

(2) Operations that add any amount of mixed municipal solid waste as a feedstock in the composting process.

(b) Requirements for permitted facilities. The operations listed in subsection (a) of this section are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the requirements set forth in this subchapter, the requirements set forth in Subchapters E, F, and G of this title (relating to Source-Separated Recycling; and Household Hazardous Waste Collection; and End-Product Standards), and the air quality requirements set forth in §332.8 of this title (relating to Air Quality Requirements).

(c) Processing of Application for Permit Facility.

(1) Public Notice.

(A) When an application is administratively complete the chief clerk shall mail notice to adjacent landowners, residents, and businesses. The chief clerk also shall mail notice to other affected landowners, residents, and businesses, as directed by the executive director.

(B) When an application is technically complete the chief clerk shall mail notice to adjacent landowners, residents, and businesses. The chief clerk shall also mail notice to other affected landowners, residents, and businesses, as directed by the executive director. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The published notice shall be published once a week for three weeks, with the first publication occurring no earlier than 30 days before any hearing. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice shall explain the method for submitting a request for hearing or a protest.

(C) Notice issued under subparagraphs (A) or (B) shall contain the following information:

(i) the identifying number given the application by the executive director;

(ii) the type of registration sought under the application;

(iii) the name and address of the applicant(s);

(iv) the date on which the application was submitted; and

(v) a brief summary of the information included in the application.

(d) Other chapters. A facility must obtain a permit from the commission pursuant to Chapters 305 of this title (relating to Consolidated Permits) and 281 of this title (relating to Application Processing). A permit may be issued under Chapter 263, Subchapter A (relating to Final Approval by the Executive Director). The public notice requirements of Chapters 305, 281, and 263 apply to the extent consistent with this subchapter.

§332.42. Certification by Engineer, Ownership or Control of Land, and Inspection.

(a) Certification by registered professional engineer. The operator shall obtain certification by a Texas-Registered Professional Engineer that the facility has been constructed as designed and in general compliance with the regulations prior to accepting any feedstock at the facility that requires a permit and maintaining that certification on-site available for inspection by the commission; and

(b) Ownership or control of property. The facility shall be located on property owned by the operator or the operator shall establish, using an affidavit form provided by the commission, signed by the owner and notarized, that the owner is aware of and consents to the operation prior to any receipt of feedstock or processing activities. A copy of the affidavit shall be kept on-site at all times.

(c) Inspection of facility. Prior to the initial acceptance of any feedstocks, the facility shall be inspected by the TNRCC to determine compliance with the permit.

§332.43. Required Forms, Applications, and Reports The operator shall submit all of the following:

(1) TNRCC Compost Form Number 2. The operator shall submit TNRCC Compost Form Number 2, "Notice of Intent to Apply for a Compost Facility Registration or Permit," and a permit application prepared in accordance with the requirements of §332.47 of this title (relating to Permit Application Preparation).

(2) Annual report. The operator shall submit annual written reports using TNRCC Form Number 3, "Annual Report Form for Composting Facilities Requiring Registration or Permit, " available from the commission. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(3) Final product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a monthly basis.

(4) Engineer's appointment. An engineer's appointment which consists of a letter from the applicant to the Executive Director identifying the engineer responsible for the submission of the plan, specifications and any other technical data to be evaluated by the commission regarding the project.

§332.45. Operational Requirements. The operation of the facility shall comply with all of the following operational requirements:

(1) Protection of surface water. The facility shall be constructed, maintained and operated to manage run-on and run-off during a 25-year, 24-hour rainfall event and shall prevent discharge into waters in the state of feedstock material, including but not limited to, in-process and/or processed materials. Any waters coming into contact with feedstock, in-process, and processed materials shall be considered leachate. Leachate shall be contained in retention facilities until it is reapplied on piles of feedstock, in-process, or unprocessed materials, or it is disposed or treated. The retention facilities shall be lined and the liner shall be constructed in compliance with §332.47(6)(C) of this title (relating to Permit Application Preparation). Leachate may be treated and processed at an authorized facility or as authorized by an NPDES permit. The use of leachate in any processing shall be conducted in a manner that does not contaminate the final product.

(2) Protection of groundwater. The facility shall be constructed, maintained and operated to protect groundwater. As a minimum, groundwater protection shall be in accordance with the provisions of §332.47(6)(C) of this title.

(3) Unauthorized and prohibited materials. Delivery of unauthorized or prohibited materials shall be prevented. As a minimum there shall be one employee on-site at all times inspecting each delivery of feedstock to insure there is no unauthorized or prohibited material incorporated into the feed-stock.

(4) Access. Access to the facility shall be controlled to prevent unauthorized disposal of unauthorized and prohibited materials, and scavenging. The facility shall be completely fenced with a gate that is locked when the facility is closed.

(5) Nuisance conditions. The facility shall be sited and operated in such a manner as to prevent the potential of nuisance conditions and fire hazards. Where nuisance conditions or fire hazards exist, the operator will immediately take action to abate such nuisances.

(6) Aerobic composting required. The facility shall utilize functionally aerobic composting methods, although an anaerobic composting phase may be utilized in the early stages of processing, if it is followed by a period of functionally aerobic composting.

(7) Site sign. The facility shall have a sign at the entrance indicating the type of facility, the permit number, hours of operation and the allowable feedstocks.

(8) Access road. The facility access road shall be an all-weather road;

(9) Amendment required for significant changes. The operator shall submit and obtain a permit amendment from the commission in compliance with Chapter 305 of this title (relating to Consolidated Permits) before changing the processing method or other significant changes to the original permit application.

(10) Prohibited substances. Fungicides, herbicides, insecticides or other pesticides that contain constituents listed in 40 CFR Part 261, Appendix VIII-Hazardous Constituents or on the Hazardous Substance List as defined in the Comprehensive Environmental Response, Compensation, and Liability Acto of 1980 (CERCLA) shall not be applied to or incorporated into feedstocks, in-process materials or processed materials.

(11) End-product standards. The operator shall meet compost testing requirements set forth in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product), final product grades set forth in §332.72 of this title (relating to Final Product Grades), and label all materials which are sold or distributed as set forth in §332.74 of this title (relating to Final Product Labelling Requirements).

(12) Certified compost operator. The operator shall employ at least one TNRCC-certified compost operator within six months from the adoption of this title, or the initiation of operations at the facility, or the establishment of the compost certification program which ever occurs later and a TNRCC-certified compost operator shall routinely be on-site during the hours of operation.

§332.47. Permit Application Preparation. To assist the commission in evaluating the technical merits of a compost facility, a site development plan shall be prepared and submitted to the commission along with Compost Form Number 3. The site development plan shall be sealed by a registered professional engineer in accordance with the provisions of 22 TAC §131.138. If the site development plan is submitted in a three ring binder or in a format that allows the removal or insertion of individual pages, it shall not be considered a bound document. The site development plan shall contain all of the following information.

(1) Title page. A title page shall show the name of the project, the county (and city if applicable) in which the proposed project is located, the name of the applicant, the name of the engineer, the date the application was prepared and the latest date the application was revised.

(2) Table of contents. A table of contents shall be included which lists the main sections of the plan, any requested variances and includes page numbers.

(3) Engineer's appointment. An engineer's appointment which consists of a letter from the applicant to the executive director identifying the consulting engineering firm responsible for the submission of the plan, specifications and any other technical data to be evaluated by the commission regarding the project.

(4) Land Use. To assist the executive director in evaluating the impact of the facility on the surrounding area, the applicant shall provide the following:

(A) a description of the zoning at the facility and within one mile of the facility. If the facility requires approval as a nonconforming use or a special use permit from the local government having jurisdiction, a copy of such approval shall be submitted with the application;

(B) a description of the character of the surrounding land uses within one mile of the proposed facility;

(C) proximity to residences and other uses (e.g. schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, parks, recreational sites, recreational facilities, licensed day care etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses;

(D) a discussion that shows the facility is compatible with the surrounding land uses; and

(E) a constructed land use map showing the land use, zoning, residences, businesses, schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, licensed day care centers, parks, recreational sites and recreational facilities within one mile of the facility and wells within 500 feet of the facility.

(5) Access. To assist the executive director in evaluating the impact of the facility on the surrounding roadway system, the applicant shall provide the following:

(A) Data on the roadways, within one mile of the facility, used to access the facility. The data shall include dimensions, surfacing, general condition, capacity and load limits;

(B) Data on the volume of vehicular traffic on access roads within one mile of the proposed facility. The applicant shall include both existing and projected traffic during the life of the facility (for projected include both traffic generated by the facility and anticipated increase without the facility);

(C) An analysis of the impact the facility will have on the area roadway system, including a discussion on any mitigating measures (turning lanes, roadway improvements, intersection improvements, etc.) proposed with the project; and

(D) An access roadway map showing all area roadways within a mile of the facility. The data and analysis required in subparagraphs (A), (B), and (C) of this paragraph shall be keyed to this map.

(6) Facility Development. To assist the executive director in evaluating the impact of the facility on the environment, the applicant shall provide the following.

(A) Surface water protection plan. The surface water protection plan shall be prepared by a registered professional engineer. At a minimum the applicant shall provide all of the following.

(i) Present a design for a run-on control system capable of preventing flow onto the facility during the peak discharge from at least a 25-year, 24-hour rainfall event.

(ii) Present a design for a run-off management system to collect and control at least the peak discharge from the facility generated by a 25-year 24-hour rainfall event.

(iii) Present a design for a contaminated water collection system to collect and contain all leachate. If the design uses leachate for any processing, the applicant shall clearly demonstrate that such use will not result in contamination of the final product.

(iv) Present drainage calculations as follows.

(I) Calculations for areas of 200 acres or less shall follow the rational method as specified in the Texas Department of Transportation Bridge Division Hydraulic Manual.

(II) Calculations for discharges from areas greater than 200 acres shall be computed by using USGS/DHT hydraulic equations compiled by the United States Geological Survey and the Texas Department of Transportation Bridge Division Hydraulic Manual, the HEC-1 and HEC-2 computer programs developed through the Hydrologic Engineering Center of the United States Army Corps of Engineers, or an equivalent or better method approved by the executive director.

(III) Calculations for sizing containment facilities for leachate shall be determined by a mass balance based on the facilities proposed leachate disposal method.

(IV) Temporary and permanent erosion control measures shall be discussed.

(v) Drainage Maps and Drainage Plans shall be provided as follows.

(I) An off-site topographic drainage map showing all areas which contribute to the facilities run-on. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity and flow rate. This map shall also show all creeks, rivers, intermittent streams, lakes, bayous, bays, estuaries, arroyos, and other surface waters in the state.

(II) A pre-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity and flow rate.

(III) A post-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity and flow rate.

(IV) A Drainage facilities map. The map shall show all proposed drainage facilities (ditches, ponds, piping, inlets, outfalls, structures, etc.) and design parameters (velocities, cross-section areas, grades, flowline elevations, etc.). Complete cross sections of all ditches and ponds shall be included.

(V) A profile drawing. The drawing shall include profiles of all ditches and pipes. Profiles shall include top of bank, flowline, hydraulic grade and existing groundline. Ditches and swells shall have a minimum of one foot of freeboard.

(VI) A floodplain and wetlands map. The map shall show the location and lateral extent of all floodplains and wetlands on the site and on lands within 500 feet of the site.

(VII) An erosion control map which indicates placement of erosion control features on the site.

(B) Geologic/Hydrogeologic report. The geologic/hydrogeologic report shall be prepared by an engineer or qualified geologist/hydrogeologist. The applicant shall include discussion and information on all of the following:

(i) a description of the regional geology of the area. This section shall include:

(I) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An

appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the Bureau of Economic Geology is acceptable;

(II) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable ground water, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variation in lithology, thickness, depth geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information.

(ii) A description of the geologic processes active in the vicinity of the facility. This description shall include an identification of any faults and/or subsidence in the area of the facility.

(iii) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources. The section shall provide:

(I) aquifer names and their association with geologic units described in clause (i) of this subparagraph;

(II) a description of the composition of the aquifer(s);

(III) a description of the hydraulic properties of the aquifer(s);

(IV) identification of areas of recharge to the aquifers within five miles of the site; and

(V) the present use of ground water withdrawn from aquifers in the vicinity of the facility.

(iv) Subsurface investigation report. This report shall describe all borings drilled on-site to test soils and characterize ground water and shall include a site map drawn to scale showing the surveyed locations and elevations of the boring. Boring logs shall include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Each boring shall be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers description of each layer using the Unified Soil Classification, color, degree of compaction and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure shall be provided.

(I) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. The minimum number of borings required for a site shall be three for sites of five acres or less, for sites larger than five acres the required number of borings shall be three borings plus one boring for each additional five acres or fraction thereof. The boring plan shall be approved by the executive director prior to performing the bores.

(II) Borings shall be sufficiently deep to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Boring shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least thirty feet deeper than the elevation of the deepest excavation on-site and in no case shall be less than thirty feet below the lowest elevation on-site. If no aquifers exist within fifty feet of the elevation of the deepest excavation, at least one test bore shall be drilled to the top of the first perennial aquifer beneath the site. In areas where it can be demonstrated that the uppermost aquifer is more than three hundred feet below the deepest excavation, the applicant shall provide the demonstration to the executive director and the executive director shall have the authority to waive the requirement for the deep bore.

(III) All borings shall be conducted in accordance with established field exploration methods.

(IV) Installation, abandonment, and plugging of the boring shall be in accordance with the rules of the commission.

(V) The applicant shall prepare cross-sections utilizing the information from the boring and depicting the generalized strata at the facility.

(VI) The report shall contain a summary of the investigator's interpretations of the subsurface stratigraphy based upon the field investigation.

(v) Ground water investigation report. This report shall establish and present the ground water flow characteristics at the site which shall include ground water elevation, gradient and direction of flow. The flow characteristics and most likely pathway(s) for pollutant migration shall be discussed in a narrative format and shown graphically on a piezometric contour map. The ground water data shall be collected from piezometers installed at the site. The minimum number of piezometers required for the site shall be three for sites of five acres or less, for sites greater than five acres the total number of piezometer required shall be three piezometer plus one piezometer for each additional five acres or fraction thereof.

(C) Groundwater protection plan. The application shall demonstrate the facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. As a minimum, groundwater protection shall consist of all of the following:

(i) Liner system. All feedstock receiving, mixing, composting, post-processing, screening and storage areas shall be located on a surface which is adequately lined to control seepage. The lined surface shall be covered with a material designed to withstand normal traffic from the composting operations. At a minimum the lined surface shall consist of soil, synthetic, or an alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of 1 x 10-7 centimeters per second or less.

(I) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30% and a plasticity index greater than 15;

(II) Synthetic liners shall be a membrane with a minimum thickness of 20 mils; or

(III) An alternative design that utilizes and impermeable liner (such as concrete).

(ii) Ground water monitor system. The ground water monitoring system shall be designed and installed such that the system will reasonably assure detection of any contamination of the ground water before it migrates beyond the boundaries of the site. The monitoring system shall be designed based upon the information obtained in the "Ground water investigation report" required by subparagraph (6)(B)(v) of this paragraph.

(I) Details of monitor well construction and placement of monitor wells shall be shown on the site plan;

(II) A groundwater sampling program shall provide four background ground water samples of all monitor wells within 24 months from the date of the issuance of the permit. The background levels shall be established from samples collected from each well at least once during each of the four calendar quarters: January-March; April-June; July-September; and October-December. Samples from any monitor well shall not be collected for at least 45 days following collection of a previous sample, unless a replacement sample is necessary. At least one sample per well shall be collected and submitted to a laboratory for analysis prior to accepting any material for processing at the facility. Background samples shall be analyzed for the parameters as follows:

(-a-) Heavy metals; arsenic, copper, mercury, barium, iron, selenium, cadmium, lead, chromium, and zinc;

(-b-) Other parameters: calcium, magnesium, sodium, carbonate, bicarbonate, sulphate, fluoride, nitrate (as N), total dissolved solids, phenolphthalein alkalinity as CaCo3, alkalinity as CaCo3, hardness as CaCo3, pH, specific conductance, anion-cation balance, groundwater elevation (MSL), total organic carbon (TOC)(four replicates/sample); and

(-c-) After background values have been determined the following indicators shall be measured at a minimum of 12 month intervals; TOC (four replicates), iron, manganese, pH, chloride, ground water elevation (MSL), and total dissolved solids. After completion of the analysis, a copy shall be sent to the executive director and a copy shall be maintained on-site.

(D) Facility plan and facility layout. The facility plan and facility layout shall be prepared by a registered professional engineer. All proposed facilities, structures and improvements shall be clearly shown and annotated on this drawing. The plan shall be drawn to standard engineering scale. Any necessary details or sections shall be included. As a minimum the plan shall show property boundaries, fencing, internal roadways, tipping area, processing area, post-processing area, facility office, sanitary facilities, potable water facilities, storage areas, etc. If phasing is proposed for the facility, a separate facility plan for each phase is required.

(E) Process description. The process description shall be composed of a descriptive narrative along with a process diagram. The process description shall include all of the following.

(i) Feedstock identification. The applicant shall prepare a list of the materials intended for processing along with the anticipated volume to be processed. This section shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for unauthorized materials.

(ii) Tipping process. Indicate what happens to the feedstock material from the point it enters the gate. Indicate how the material is handled in the tipping area, how long it remains in the tipping area, what equipment is used, how the material is evacuated from the tipping area, at what interval the tipping area is cleaned, the process used to clean the tipping area.

(iii) Process. Indicate what happens to the material as it leaves the tipping area. Indicate how the material is incorporated into the process and what process or processes are used until it goes to the post-processing area. The narrative shall include, water addition, processing rates, equipment, energy and mass balance calculations, and process monitoring method.

(iv) Post-processing. Provide a complete narrative on the post-processing, include post-processing times, identification and segregation of product, storage of product, quality assurance and quality control.

(v) Product distribution. Provide a complete narrative on product distribution to include items such as: end product quantities, qualities, intended use, packaging, labeling, loading, and tracking bulk material.

(vi) Process diagram. Present a process diagram that displays graphically, the narrative generated in response to clauses (i)-(v) of this subparagraph.

(7) Site operating plan. This document is to provide guidance from the design engineer to site management and operating personnel in sufficient detail to enable them to conduct day to day operations in a manner consistent with the engineers design. As a minimum, the site operating plan shall include specific guidance or instructions on the all of the following:

(A) the minimum number of personnel and their functions to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards;

(B) the minimum number and operational capacity of each type of equipment to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards;

(C) security, site access control, traffic control and safety;

(D) control of dumping within designated areas, screening for unprocessable or unauthorized material;

(E) fire prevention and control plan that shall comply with provisions of the local fire code, provision for fire-fighting equipment, and special training requirements for fire fighting personnel;

(F) control of windblown material;

(G) vector control;

(H) quality assurance and quality control. As a minimum the applicant shall provide testing and assurance in accordance with the provisions of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product);

(I) control of airborne emissions;

(J) minimizing odors;

(K) equipment failures and alternative disposal and storage plans in the event of equipment failure; and

(L) a description of the intended final use of materials.

(8) Legal description of the facility. The applicant shall submit an official metes and bounds description, and plat of the proposed facility. The description and plat shall be prepared and sealed by a registered surveyor.

(9) Financial Assurance. The applicant shall prepare a closure plan acceptable to the executive director and provide evidence of financial assurance to the commission for the cost of closure. The closure plan at a minimum shall include evacuation of all material on-site (feedstock, inprocess and processed) to an authorized facility and disinfection of all leachate handling facilities, tipping area, processing area and post-processing area and shall be based on the worst case closure scenario for the facility, including the assumption that all storage and processing areas are filled to

capacity. The financial assurance may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds, letters of credit, insurance, financial test and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director and shall be submitted to the commission 60 days prior to the receiving any materials for processing.

(10) Source-separated recycling and household hazardous waste collection. The applicant shall submit a plan to comply with the requirements of Subchapters E and F of this title (relating to Source-Separated Recycling; and Household Hazardous Waste Collection).

(11) Landowner list. The applicant shall include a list of landowners, residents, and businesses within one half mile of the facility boundaries along with an appropriately scaled map locating property owned by the landowners.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1995.

TRD-9514471 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

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

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Subchapter E. Source-Separated Recycling

• 30 TAC §§332.51-332.53

The new rules are adopted under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and responsibilities, and Health and Safety Code, Chapter 361, Solid Waste Disposal Act, which provides the TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

§332.51. General Requirements and Applicability.

(a) A permittee shall not accept mixed municipal solid waste from a governmental unit for composting purposes until the commission determines that residents have reasonable access to source-separated recycling programs.

(b) Materials collected or accepted pursuant to this subchapter shall not be placed into the mixed municipal solid waste composting or mixed waste handling operations at a mixed municipal solid waste composting facility, but may be processed separately at such a facility for recycling.

(c) For purposes of this subchapter, recyclable materials that are collected separately from mixed municipal solid waste are considered source-separated recyclable materials. Recyclable materials collected in separate containers or bags and commingled with mixed municipal solid waste shall be considered to have been collected separately unless the bags or containers break during the time the materials are commingled.

§332.52. Demonstration to Provide Reasonable Access for Residents. The permit applicant shall provide demonstration of reasonable access to source-separated recycling programs using any one of the four options presented in paragraphs (1)-(4) of this section.

(1) Option 1. At least one collection center for recycling of materials is provided for each mixed municipal solid waste composting facility and at least one collection center for each transfer station from which wastes are delivered to such composting facilities. These collection centers may be located at the composting facility or transfer station or at locations more convenient to the affected residents. "More convenient" means at a shorter average road distance from the residences served by the center, or in a central or high traffic location in the most populated municipality served by the center.

(2) Option 2. Curbside recycling.

(A) For each such municipality with an affected population less than 15,000, single-family homes shall be provided residential curbside recycling at least twice per month for aluminum, steel, and bimetal cans and, at a minimum, three of the materials listed in accordance with §332.53 of this title (relating to List of Recyclable Materials); or

(B) For each such municipality with an affected population of 15,000 or more, single-family homes shall be provided weekly residential curbside recycling of aluminum, steel, and bimetal cans and, at a minimum, four of the materials listed in accordance with §332. 53 of this title (relating ,to List of Recyclable Materials).

(3) Option 3. The permit applicant may submit evidence that the method of reasonable access accomplishes a degree of recovery such that at least 10% of the waste generated by the affected residents is captured for recycling.

(4) Option 4. The permit applicant may present an alternative plan for providing reasonable access to residents. The commission will evaluate alternative plans on a case-by-case basis. At a minimum, the plan shall present the following information:

(A) A description of the residential service areas, and their respective governmental units, from which mixed municipal solid waste is proposed to be accepted; and

(B) A description of the residential source-separated recycling programs and how these programs provide reasonable access.

§332.53. List of Recyclable Materials. The executive director shall establish a list of recyclable materials of which there is an established market for the processing and use of such materials, and shall make the list available to the public. The executive director may revise the list if market factors change.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource Conservation Commission

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Subchapter F. Household Hazardous Waste Collection

• 30 TAC §§332.61-332.64

The new rules are adopted under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and responsibilities, and Health and Safety Code, Chapter 361, Solid Waste Disposal Act, which provides the TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

§332.61. General Requirements and Applicability.

(a) A compost permittee shall not accept mixed municipal solid waste from a governmental entity until the commission determines that residents in that service area

have reasonable access to household hazardous waste collection programs.

(b) Materials collected or accepted pursuant to this subchapter shall not be placed into the mixed municipal solid waste composting or mixed waste handling operations at a mixed municipal solid waste composting facility, but may be processed separately at such a facility for recycling.

(c) Any person who intends to conduct a collection event or intends to operate a permanent collection center shall comply with the requirements of Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Waste).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter G. End-Product Standards

• 30 TAC §§332.71-332.75

The new rules are adopted under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and responsibilities, and Health and Safety Code, Chapter 361, Solid Waste Disposal Act, which provides the TNRCC with the authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

§332.71. Sampling and Analysis Requirements for Final Product.

(a) Applicability. Facilities that receive a registration or permit under this chapter, are required to test final product in accordance with this section. Final product derived from municipal sewage sludge at registered facilities is not subject to the requirements of this section, but must comply with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) Analytical methods. Facilities which use analytical methods to characterize their final product must use methods described in the following publications:

(1) Chemical and physical analysis shall utilize:

(A) "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (SW-846);

(B) "Methods for Chemical Analysis of Water and Wastes" (EPA-600); or

(C) "Recommended Test Methods for the Examination of Composts and Composting" (Compost Council, 1995).

(2) Analysis of pathogens shall utilize "Standard Methods for the Examination of Water and Wastewater" (Water Pollution Control Federation, latest edition).

(3) Analysis for foreign matter shall utilize "Recommended Test Methods for the Examination of Composts and Composting" (Composting Council, 1995).

(4) Analysis for salinity and pH shall utilize NCR (North Central Regional) Method 14 for Saturated Media Extract (SME) Method contained in "Recommended Test Procedure for Greenhouse Growth Media" North Central Regional Publication Number 221 (Revised), Recommended Chemical Soil Test Procedures, Bulletin Number 49 (Revised), October 1988, pages 34-37.

(5) Analysis of total, fixed and volatile solids shall utilize Method 2540 G (Total, Fixed, and Volatile Solids in Solid and Semi-solid Samples) as described in "Standard Methods for the Examination of Water and Wastewater" (Water Pollution Control Federation, latest edition).

(6) Analysis for maturity shall utilize the reduction of organic matter (ROM) calculation method, as described in the TNRCC "Quality Assurance Program Plan" (QAPP) or a TNRCC approved Quality Assurance/Quality Control (QAQC) plan during the first 18 months of a facility's operation. Reduction in organic matter is calculated by measuring the volatile solids content at two points in the composting process: when compost feedstocks are initially mixed and when the compost is sampled for end-product testing for total metals and PCBs. For purposes of compost maturity analysis, the effect of the addition and removal of volatile solids and fixed solids to the compost shall be included in the ROM calculation procedure. After the completion of the maturity testing protocol described in subsection (d) of this section, or the facility QAQC plan, or 18 months, which ever comes first, the method recommended in the protocol and approved by the TNRCC shall be utilized.

(c) Sample collection. Sample collection, preservation and analysis shall assure valid and representative results pursuant to an Agency-approved QAQC plan.

(d) Maturity Testing Protocol.

(1) A maturity testing protocol shall be described in the facility QAQC. The protocol shall consist of the ROM method or a comparison of the interim ROM method to a minimum of three test methods with one test method selected from each of subparagraphs (A), (B), and (C) of this paragraph, together with any method in subparagraph (D) of this paragraph.

(A) Chemical analyses:

(i) carbon/nitrogen ratio;

(ii) water soluble ions;

(iii) water soluble organic matter;

(iv) cation exchange capacity;

(v) electrical conductivity;

(vi) crude fiber analysis;

(vii) humification analysis; or

(viii) ratios of the above measurements.

(B) Physical analyses.

(i) Dewar self-heating, or

(ii) color.

(C) Respiration analyses:

(i) CO2 or

(ii) O2.

(D) Other test methods proposed in the facility QAQC plan and approved by the TNRCC.

(2) The test methods used in the maturity test protocol shall be based on methodologies published in peer reviewed scientific journals, the publication entitled "Recommended Test Methods for the Examination of Composts and Composting (Compost Council, 1995), or other methods as approved by the TNRCC.

(3) The completed maturity testing protocol shall lead to a recommended maturity testing method(s) capable of classifying compost into maturity grades described in §332.72 of this title (relating to Final Product Grades) and identifying materials which are stable but not mature. The maturity test protocol shall address seasonal variations in compost feedstock and shall be

completed within 18 months of the start of a new compost feedstock mixture.

(4) The results of the protocol and recommendations shall be submitted to the TNRCC for review and approval. The basis of the TNRCC review and approval shall be the demonstration that the recommended method adequately classifies compost into maturity classes. The purpose of the TNRCC review and approval is not intended to provide detailed guidance to end users about the agricultural and horticultural compost uses.

(5) The compost maturity protocol does not need to be repeated unless a significantly new compost feedstock recipe is utilized.

(e) Documentation.

(1) Owners or operators of permitted or registered facilities shall record and maintain all of the following information regarding their activities of operation for three years after the final product is shipped off site or upon site closure:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types and sources of feedstocks received and the dates received;

(C) the quantity and final product grade assigned described in §332.72 of this title;

(D) the date of sampling; and

(E) all analytical data used to characterize the final product, including laboratory quality assurance/quality control data.

(2) The following records shall be maintained on-site permanently or until site closure:

(A) sampling plan and procedures;

(B) training and certification records of staff; and

(C) maturity protocol test results.

(3) Records shall be available for inspection by TNRCC representatives during normal business hours.

(4) The executive director may at any time request by registered or certified mail that a generator submit copies of all documentation listed in paragraph (1) of this subsection for auditing the final product grade. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(f) Sampling Frequencies.

(1) Registered facilities. For those facilities which are required to register, all final product on-site must be sampled and assigned a final product grade set forth in §330.72 of this title (relating to Final Product Grades) at a minimum rate of one sample for every 5,000 cubic yard batch of final product or annually, whichever is more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (g) of this section.

(2) Permitted facilities. For facilities requiring a permit, all final product on-site must be sampled and assigned a final product grade set forth in §330.72 of this title at a minimum rate of one sample for every 3, 000 cubic yard batch of final product or monthly whichever is more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (g) of this section.

(3) Alternative testing frequency. One year after the initiation of final product testing in accordance with this section, an operator of a registered or permitted facility may submit to the executive director a request for an alternative testing frequency. The request shall include a minimum of 12 consecutive months of final product test results for the parameters set forth in subsection (h) of this section. The executive director will review the request and determine if an alternative frequency is appropriate.

(g) Sampling Requirements. For facilities subject to sampling and analysis, the operator shall utilize the protocol in the TNRCC QAPP or a TNRCC approved facility QAQC plan shall be followed. The executive director may at any time request that split samples be provided to an agency representative. Specific sampling requirements which must be satisfied include:

(1) Sampling from stockpiles. One third of the grab samples shall be taken from the base of the stockpile (at least 12 inches into the pile at ground level), one third from the exposed surface and one third from a depth of two feet from the exposed surface of the stockpile.

(2) Sampling from conveyors. Sampling times shall be selected randomly at frequencies which provide the same number of subsamples per volume of finished product as is required in subsection (d) of this section.

(A) If samples are taken from a conveyor belt, the belt shall be stopped at that time. Sampling shall be done along the entire width and depth of the belt.

(B) If samples are taken as the material falls from the end of a conveyor, the conveyor does not need to be stopped. Free-falling samples need to be taken to minimize the bias created as larger particles segregate or heavier particles sink to the bottom as the belt moves. In order to minimize sampling bias, the sample container shall be moved in the shape of a "D" under the falling product to be sampled. The flat portion of the "D" shall be perpendicular to the beltline. The circular portion of the "D" shall be accomplished to return the sampling container to the starting point in a manner so that no product to be sampled is included.

(h) Analytical Requirements. Final product subject to the sampling requirements of this section will be tested for all of the following parameters. The executive director may at any time request that additional parameters be tested. These parameters are intended to address public health and environmental protection.

(1) total metals, to include:

(A) Arsenic;

(B) Cadmium;

(C) Chromium;

(D) Copper;

(E) Lead;

(F) Mercury;

(G) Molybdenum;

(H) Nickel;

(I) Selenium; and

(J) Zinc.

(2) Maturity/Stability by reduction in organic matter on an interim basis and by approved method of maturity/stability analysis after the completion of the maturity/stability method protocol as described in subsections (b) and (d) of this section.

(3) weight percent of foreign matter, dry weight basis.

(4) pH by the saturated media extract method.

(5) salinity by the saturated media extract electrical conductivity method.

(6) pathogens:

(A) salmonella; and

(B) fecal coliform.

(7) Polychlorinated-biphenyls (PCBs)-required only for permitted facilities.

(i) Data Precision and Accuracy. Analytical data quality shall be established by EPA standard laboratory practices to ensure precision and accuracy.

(j) Reporting Requirements.

(1) Facilities requiring registration must report the following information to the executive director on a semi-annual basis for each sampling batch of final product. Facilities requiring a permit must report similarly but on a monthly basis. Reports must include, but may not be limited to all of the following information:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types and sources of feedstocks received and the dates received;

(C) the quantity of final product and final product standard code assigned;

(D) the final product grade or permit number of the disposal facility receiving the final product if it is not Grade 1 or Grade 2 Compost as established in §332.72 of this title (relating to Final Product Grades);

(E) all analytical results used to characterize the final product including laboratory quality assurance/quality control data and chain-of-custody documentation; and

(F) the date of sampling.

(2) Reports must be submitted to the executive director within two months after the reporting period ends.

§332.72. Final Product Grades.

(a) Applicability. Facilities that receive a registration or permit under this chapter, are required to test final product in accordance with this section. Final product derived from municipal sewage sludge at registered facilities is not subject to the requirements of this section, but must comply with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) Grades. Compost material that has undergone the composting process and is ready for distribution shall be considered final product, and shall be classified with one of the following grade names:

(1) Grade 1 Compost;

(2) Grade 2 Compost;

(3) Waste Grade Compost.

(c) Final product testing. Final product shall be regularly tested pursuant to §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product) to determine the product's grade. Testing of final product and interpretation of test results shall be conducted in accordance with the Texas Natural Resource Conservation Commission's current Quality Assurance Program Plan, or, in the case of facilities with TNRCC permits or registrations, the Quality Assurance Quality Control Plan specified in the facility's permit.

(d) Final product classification. Final product shall be classified according to the following classification system:

(1) Grade 1 Compost. To be considered Grade 1 Compost, the final product must meet all of the following criteria:

(A) Shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) Shall not exceed all Maximum Allowable Concentrations for Grade 1 Compost in Table 1 of this section; (Figure 1: 30 TAC 332.72(d)(1)(B))

(C) Shall not contain foreign matter in quantities which cumulatively are greater than 1.5% dry weight on a 4mm screen;

(D) Shall meet the requirements of cured compost as described in Table 2 of this section; (Figure 2: 30 TAC 332.72(d)(1)(D))

(E) Shall meet the requirements for pathogen reduction for Grade 1 Compost as described in Table 3 of this section; Figure 3: 30 TAC 332.72(d)(1)(E)) and (F) Shall meet the requirements for salinity and pH for Grade 1 Compost as described in Table 3 of this section. (Figure 3: 30 TAC 332.72(d)(1)(E)).

(2) Grade 2 Compost:

(A) Shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) Shall not exceed all Maximum Allowable Concentrations for Grade 2 Compost in Table 1 of this section at a compost organic matter content which is equivalent to a mature compost when maturity is determined by reduction in organic matter during the interim period or a maturity test which is part of an approved maturity test protocol; (Figure 1: 30 TAC 332.72(d)(1)(B))

(C) Shall not contain foreign matter in quantities which cumulatively are greater than 1.5% dry weight on a 4mm screen;

(D) Shall meet the requirements of semi-mature compost, mature compost or cured compost as described in Table 2 of this section; (Figure 2: 30 TAC 332.72(d)(1)(D))

(E) Shall meet the requirements for pathogen reduction for Grade 2 Compost as described in Table 3 of this section; and (Figure 3: 30 TAC 332.72(d)(1)(E))

(F) Shall meet the requirements for salinity and pH for Grade 2 Compost as described in Table 3 of this section. (Figure 3: 30 TAC 332.72(d)(1)(E))

(3) Waste Grade Compost:

(A) Exceeds any one of the Maximum Allowable Concentrations for Grade 2 final product in Table 1 of this section, and (Figure 1: 30 TAC 332.72(d)(1) (B))

(B) Does not meet the other requirements of Grade 1 or Grade 2 Compost.

(e) Maturity adjustment. Compost which is semi-mature or mature shall have the metal concentrations adjusted to reflect the metal concentration which would occur if the compost met the criteria for a cured compost as described in Table 2, "Maturity and Stability Standards". (Figure 2: 30 TAC 332.72(d)(1)(D))

(f) Waste grade final product. Any material which does not meet the final product standards shall be appropriately disposed at a permitted municipal solid waste facility.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1995.

TRD-9514474 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: November 29, 1995

Proposal publication date: June 20, 1995

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

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

• 30 TAC §335.2

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts an amendment to §335.2, concerning Permit Required, of the Industrial Solid Waste and Municipal Hazardous Waste rules to reference proposed rules affecting the composting of industrial materials in 30 TAC Chapter 332 (20 TexReg 4464). Section 335.2 is adopted without changes to the proposed text as published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4535). The commission accepted public comment on the proposed rules until 5:00 p.m. on July 24, 1995. A public hearing to accept verbal and written comment on the proposed rule was held at TNRCC offices in Austin, Texas on July 21, 1995 in conjunction with a public hearing to accept comment on proposed composting rules in 30 TAC Chapter 332. The final rules were adopted by the commission on September 13, 1995.

The commission received one written comment concerning the proposed amendment. The comment was submitted by a private citizen. The commenter is concerned that Chapter 335 addresses industrial solid waste and municipal hazardous waste and does not address composting. Furthermore, the commenter expressed concern that the fiscal note addressed municipal facilities rather than industrial facilities. The commenter requests that all industrial facilities that compost should be subject to 30 TAC Chapter 332.

The amendment proposed for §335.2(a) is intended as a companion rule change to the new 30 TAC Chapter 332 rules. The new compost rules provide an exemption for on-site industrial composting. This exemption is limited to the composting of materials where the composting takes place on-site, and the final product is utilized or disposed on-site. "On-site" is set forth in §335.2(d) as meaning land owned or effectively controlled by the owner or operator of the facility within 50 miles. The commission believes such an exemption is consistent with the Health and Safety Code, Chapter 361, and the exemption from permitting provided by §335.2(d). The commission emphasizes that this exemption does not apply to final product that is taken off-site for distribution, application, disposal, or any other purpose.

Regarding the fiscal note, the commission utilized the same fiscal note for the proposed amendment to §335.2(a) as it did for the proposed 30 TAC Chapter 332 because the §335.2(a) amendment is a companion rule change. The commission retains the proposed language.

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also promulgated under the Texas Health and Safety Code, Texas Solid Waste Disposal Act, §361.017 and §361.024, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1995.

TRD-9514543 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: November 29, 1995

Proposal publication date: June 20, 1995

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Case Management

• 40 TAC §48.3902, §48.3903

The Texas Department of Human Services (DHS) adopts amendments to §48. 3902 and §48.3903 in its Community Care for Aged and Disabled (CCAD) chapter. The amendment to §48.3903 is adopted with changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8072). The amendment to §48.3902 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to clarify that CCAD services may be terminated when the client or someone in the client's home threatens the health or safety of DHS staff or when the behavior of the client or someone in the client's home prevents DHS staff from determining eligibility for services or monitoring the services; to clarify that "repeatedly fails to comply" with service delivery provisions means more than three times; and to change the period in which an applicant must comply with certain requirements from "within the past 12 months if services were terminated for these two reasons" to "whenever services are terminated for these two reasons."

The amendments will function by ensuring that DHS is in compliance with civil rights requirements.

No comments were received regarding adoption of the amendments. DHS, however, has initiated a change to the text in §48.3903(a). DHS has added the term "waiver services" as another service that can be terminated if someone in the client's home or a client threatens DHS's staff or a provider's health or safety.

The amendments 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 Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

§48.3903. Denial, Reduction, and Termination of Benefits.

(a) An applicant or client may request an appeal of any decision that denies, reduces, or terminates his benefits. The effective date of the action depends on the situation, as shown in the following table: Figure 1: 40 TAC §48.3903(a)

(b)-(e) (No change.)

(f) If the client repeatedly and directly or knowingly and passively condones the behavior of someone in his home and thus, refuses (more than three times) to comply with service delivery provisions, the caseworker may terminate services. Refusal to comply with service delivery provisions includes actions by the client or someone in the client's home that prevent determining eligibility, carrying out the service plan, and monitoring the services. Before services are terminated, the client is entitled to receive written notification that his services will be terminated if he does not comply with service delivery provisions or if he continues to condone someone's behavior that results in non-compliance with service delivery provisions. Also before services are terminated, a referral to APS is made if the client is abused, neglected, or exploited by the person who prevents delivery provisions. Services continue pending the outcome of the APS investigation. If an applicant's services were terminated in the past due to his failure to comply with his service plan, the applicant must agree to cooperate with DHS staff to facilitate service delivery.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514754 Nancy Murphy
Section Manager for Media and Policy Services
Texas Department of Human Services

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (512) 450-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 25. Traffic Operations

General

• 43 TAC §25.1

The Texas Department of Transportation adopts an amendment to §25.1, concerning the Texas Manual on Uniform Traffic Control Devices for Streets and Highways (Texas MUTCD), without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7058), but with a change to the manual.

The Texas MUTCD is amended periodically to maintain substantial conformance with the National Manual on Uniform Traffic Control for Streets and Highways (National MUTCD) to allow use of a single manual for both State Funded and Federal-aid highway projects. This amendment incorporates the latest Federal requirements of the National MUTCD into the Texas MUTCD.

On September 29, 1995, the department conducted a public hearing on the amendment to §25.1 to receive data, comments, views, and testimony. The department received one written comment from Houston Lighting & Power Company.

The one commenter requested that the department reevaluate the requirements of Revision 6, Part VI of the Texas MUTCD which affect non-highway industries performing work activities on highway right-of-way, and suggested that the department consider rules granting local engineers the authority to approve alternate, industry-specific traffic control procedures.

The department is required to adopt a manual and specifications for a uniform system of traffic control devices for use upon highways, streets and roads within this state. Furthermore, the manual and specifications must correlate with and, so far as possible, conform to the current system approved by the American Association of State Highway and Transportation Officials.

Revision 6 of the Texas MUTCD adopts the provisions of the 1988 Edition of the National MUTCD, Revision 3. The Federal Highway Administration has determined that proposed Revision 6 is in substantial conformance with the National MUTCD.

Revision 6 of the Texas MUTCD and Revision 3 of the National MUTCD place more importance on the amount of time work activities affect traffic and the proximity of work activities to the travel lanes. The traffic control designs are standardized for all work activities depending on how long the work will affect traffic and the proximity of work to traffic. This emphasis provides for a more uniform application of traffic control devices, and therefore provides for orderly and predictable movement of all traffic through the work area.

Uniformity of traffic control devices simplifies the task of the road user because it aids in recognition and understanding. The department considers the commenter's request for the allowance of industry specific traffic control procedures not to be in the best interest of safety for the traveling public. The department, therefore, does not consider the requested exception feasible.

The amendment is adopted with a change to the manual. A paragraph has been added to the page entitled "Legal Authority," which clarifies the department's authority to issue the manual.

The amendment is adopted under Transportation Code, §201.101 and §544. 001, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically the authority to adopt a manual and specifications for a uniform system of traffic control devices for use upon highways within this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514782 Robert E Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 5, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512) 463-8630

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5. 97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance at a hearing held under Docket Number 2177 on November 9, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, approved the filing made by the staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Rule IX D. Volunteer Personnel-Political Subdivisions and amendment to the Texas Volunteer Workers' Coverage Endorsement WC420303 contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan of Workers' Compensation for Employer's Liability Insurance ("manual") The purpose of these amendments is to implement the provisions of Subchapter E §6.092, Labor Code as added by the 74th Legislature.

The amendments to Rule IX D. provide that an emergency service organization that is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation coverage for its named volunteer members who participate in the normal functions of the organization. In addition, the volunteer member covered under a workers' compensation policy is entitled to full medical benefits and the minimum compensation payments under the law. The volunteer members of emergency service organizations are required to be classified and rated in accordance with the appropriate classifications shown in the Classifications Section of the manual. The remuneration to be used for premium determination for each volunteer member covered shall be the hourly wage rate for a beginning full time employee engaged in similar activities, subject to a maximum of $5,200 annually. The Volunteer Workers' Coverage Endorsement WC420303 is amended to provide that volunteer members of the emergency service organizations may either be designated by name or by classification if workers' compensation coverage is to be provided.

The Commissioner of Insurance adopted this matter pursuant to the Insurance Code, Article 5.96.

The Commissioner of Insurance adopted the amendment to Rule IX D. Volunteer Personnel-Political Subdivisions and the amendment to the Texas Volunteer Workers' Coverage Endorsement WC420303 by adopting the changes set forth above and attached hereto and incorporated by reference by Commissioner's Order Number 95-1204.

A copy of the petition containing the full text of the changes to Rule IX D. Volunteer Personnel-Political Subdivisions and to Texas Volunteer Workers' Compensation Endorsement WC420303 is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6326 (Refer to Reference Number W-0995-28-I).

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 Procedures Act.)

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

Issued in Austin, Texas, on November 15, 1995.

TRD-9514858 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

For further information, please call: (512) 463-6327

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The Commissioner of Insurance at a hearing held under Docket Number 2178 on November 9, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, approved the filing made by the staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Part Seven-Our Duty to You for Claim Notification, Texas Amendatory Endorsement, WC420301C. The purpose of this amendment is to implement the provisions of the Insurance Code, Article 5. 65A(b), as amended by the 74th Legislature in House Bill 1933.

The amendment to Endorsement WC420301C requires that the insurance company provide the requested claim information to the policyholder in writing not later than the 30th day after the date the company receives the policyholder's written request for the information. The information is considered to be provided on the date that the information is received by the United States Postal Service or personally delivered.

The Commissioner of Insurance adopted of this matter pursuant to the Insurance Code, Articles 5.56, 5.57, 5.65A(b) and 5.96.

The Commissioner of Insurance adopted the amendment to Part Seven-Our Duty to You for Claim Notification, Texas Amendatory Endorsement, WC420301 C by adopting the change set forth above and attached hereto and incorporated by reference as Texas Amendatory Endorsment WC420301D, by Commissioner's Order Number 95-1203.

A copy of the petition containing the full text of the changes to Endorsement WC420301C is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6326 (Refer to Reference Number W-0995-29-I).

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 Procedures Act.)

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 Procedures Act.)

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

Issued in Austin, Texas, on November 15, 1995.

TRD-9514857 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

For further information, please call: (512) 463-6327

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TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

FIGURE 1:
YOUR RIGHTS IN THE TEXAS WORKERS' COMPENSATION SYSTEM

1. ***You may have the right to receive benefits.***

You may receive benefits regardless of who caused or helped cause your injury. You may not receive benefits if your injury occurred while you were intoxicated, you injured yourself intentionally or while unlawfully attempting to injure someone else, you were injured by another person for personal reasons, you were injured while voluntarily participating in an off-work activity, you were injured by an act of God, or your injury occurred during horseplay .

2. ***You have the right to receive the medical care reasonable and necessary to treat your work-related injury or illness for the rest of your life.***

3. ***You have the right to the initial choice of doctor.***

You may not change doctors except with the approval of the Commission. You do not need to get approval to go to a different doctor for emergency treatment, if you or your doctor moves or if your doctor is unable to continue treating you.

4. ***You have the right to hire an attorney to help you get benefits or to help you resolve disputes.***

5. ***You have the right to receive assistance from appropriate, qualified Commission staff and, in the event of a dispute resolution proceeding, from a Commission ombudsman free of charge. To request assistance, contact the field office handling your claim, or call 1-800-252-7031.***

You have the right to receive information and assistance regarding your claim. Commission staff will explain your rights and responsibilities under the Texas Workers' Compensation Act. Additionally, you have the right to be assisted by a Commission ombudsman in informal dispute resolutions and in administrative proceedings if you are not

represented. However, an ombudsman cannot serve as a legal representative or attorney for you.

6. ***You have the right to confidentiality.***

Only people who need to know - such as your doctor, your employer or your employer's insurance carrier - may see information in the commission's files. A prospective employer may get limited information from the commission about your claims. If you wish someone who is assisting you to have access to your file, you must provide written approval for them to do so.

YOUR RESPONSIBILITIES UNDER THE TEXAS WORKERS' COMPENSATION SYSTEM

1. ***You have the responsibility to tell your employer about your injury or illness.***

You must tell your employer ***within 30 days*** of the date you were injured, or ***within 30 days*** of the date you first knew your illness might be work-related. You, or someone helping you, may either talk with or write your employer or any supervisor where you work.

If you do not tell your employer within 30 days, you could lose your right to get benefits.

2. ***You have the responsibility to fill out a claim form and send it to the Commission.***

You must send a completed claim form, called a TWCC-41, to the Commission ***within one year*** of the date you were injured, or ***within one year*** of the date you first knew your illness might be work-related.

Send the completed claim form to the Commission even if you are already getting benefits.

If you do not send the form within one year, you could lose your right to get benefits. For a copy of the form, call the field office handling your claim, or call 1-800-252-7031.

3. ***You have the responsibility to tell the Commission and***

Texas Workers' Compensation Commission 28 TAC §120.2(e): Figure 1 continued

the insurance carrier any time your income changes.

If you are NOT getting benefits and you have changed employers since your injury, tell the Commission if your injury causes you to miss work or lose income. Call 1-800-252-7031.

If you ARE getting benefits and you have changed employers since your injury, tell the commission and the insurance carrier paying your benefits if your income changes. Tell the commission and the insurance carrier regardless of whether your income went up or down.

If you have stopped working since your injury, tell the commission and the insurance carrier if you start working again or if you have a job offer.

4.***You have the responsibility to tell your doctor how you were injured and if you believe it may be work-related.***

If possible, tell the doctor before the doctor treats you.

5.***You have the responsibility to tell the commission and the insurance carrier how to contact you.***

You should contact the commission and the insurance carrier if your home address, work address, or phone number change, so the commission and the insurance carrier will be able to contact you when necessary.

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You may receive benefits regardless of who caused or helped cause your injury. You may not receive benefits if your injury occurred while you were intoxicated, you injured yourself intentionally or while unlawfully attempting to injure someone else, you were injured by another person for personal reasons, you were injured while voluntarily participating in an off-work activity, you were injured by an act of God, or your injury occurred during horseplay .

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4. ***You have the right to hire an attorney to help you get benefits or to help you resolve disputes.***

5. ***You have the right to receive assistance from appropriate, qualified Commission staff and, in the event of a dispute resolution proceeding, from a Commission ombudsman free of charge. To request assistance, contact the field office handling your claim, or call 1-800-252-7031.***

You have the right to receive information and assistance regarding your claim. Commission staff will explain your rights and responsibilities under the Texas Workers' Compensation Act. Additionally, you have the right to be assisted by a Commission ombudsman in informal dispute resolutions and in administrative proceedings if you are not

represented. However, an ombudsman cannot serve as a legal representative or attorney for you.

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Only people who need to know - such as your doctor, your employer or your employer's insurance carrier - may see information in the commission's files. A prospective employer may get limited information from the commission about your claims. If you wish someone who is assisting you to have access to your file, you must provide written approval for them to do so.

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If you do not tell your employer within 30 days, you could lose your right to get benefits.

2. ***You have the responsibility to fill out a claim form and send it to the Commission.***

You must send a completed claim form, called a TWCC-41, to the Commission ***within one year*** of the date you were injured, or ***within one year*** of the date you first knew your illness might be work-related.

Send the completed claim form to the Commission even if you are already getting benefits.

If you do not send the form within one year, you could lose your right to get benefits. For a copy of the form, call the field office handling your claim, or call 1-800-252-7031.

Texas Workers' Compensation Commission 28 TAC §120.2(e): Figure 1 continued

3. ***You have the responsibility to tell the Commission and the insurance carrier any time your income changes.***

If you are NOT getting benefits and you have changed employers since your injury, tell the Commission if your injury causes you to miss work or lose income. Call 1-800-252-7031.

If you ARE getting benefits and you have changed employers since your injury, tell the commission and the insurance carrier paying your benefits if your income changes. Tell the commission and the insurance carrier regardless of whether your income went up or down.

If you have stopped working since your injury, tell the commission and the insurance carrier if you start working again or if you have a job offer.

4. ***You have the responsibility to tell your doctor how you were injured and if you believe it may be work-related.***

If possible, tell the doctor before the doctor treats you.

5. ***You have the responsibility to tell the commission and the insurance carrier how to contact you.***

You should contact the commission and the insurance carrier if your home address, work address, or phone number change, so the commission and the insurance carrier will be able to contact you when necessary.

Figure 1: 30 TAC 332.72

Table 1: Maximum Allowable Concentrations

PARAMETER	Grade 1 Compost (mg/kg)	Grade 2 Compost (mg/kg)
As	10	41
Cd	16	39
Cr (total)	180	1200
Cu	1020	1500
Pb	300	300
Hg	11	17
Mo	75	75
Ni	160	420
Se	36	36
Zn	2190	2800
PCBs	1	10

Figure 2: 30 TAC 332.72

Table 2: Maturity and Stability Standards.

METHOD	SEMI-MATURE COMPOST	MATURE COMPOST	CURED COMPOST
Reduction of Organic Matter (ROM) (%)	Between 20% and than 60% 40%	Between 40% and 60%	Greater
Other Methods	Maturity Protocol	Maturity Protocol	Maturity Protocol

Figure 3: 30 TAC 332.72

Table 3: Additional Final Product Standards.

PARAMETER	Grade 1 Compost	Grade 2 Compost
Salinity (mmhos/cm)¹ 10	10	
pH¹	5.0 to 8.5	5.0 to 8.5
Pathogens:		
Fecal Coliform	less than 1,000 MPN per gram of solid or meets PFRP	geometric mean density less than 2,000,000 MPN per gram of solids or meets PSRP
Salmonella	less than 3 MPN per 4 grams total solid or meets PFRP	No value

¹ A higher conductivity or pH outside the indicated range may be appropriate if the compost is specified for a special use.

Figure: 34 TAC 3.1101(a)

Report Due Date	Reporting Period
October 31	July 1 through September 30
January 31	October 1 through December 31
April 30	January 1 through March 31
July 31	April 1 through June 30

(Slick to be inserted in 1114.326)

Figure 1: 40 TAC 48.3903(a)

If	Then
Termination or reduction is because the client lost his eligibility as an income-eligible, failed to qualify as an income-eligible after a verbal referral, failed to meet the client needs assessment score or medical criteria for the service, repeatedly (more than three times) directly or knowingly and passively condoned the behavior of someone in his home and thus, refused to follow service delivery provisions, experienced a change in his need for the specific service, or failed to pay fees for services,	The action is effective 12 days from the date of the notice unless the action is appealed. In the event of appeal, services continue until the hearing officer gives a decision. The cost of providing services during this period is subject to recovery by the department from the client. Services to clients in residential care facilities are terminated five days after the hearing officer gives his decision.
Termination is because the client lacks AFDC, SSI, Medicaid or food stamp eligibility,	Services continue only to the end of the month that the client is determined ineligible, even if the action is appealed.
Termination is because the client lacks physician's orders for the service,	Services continue only through the date the previous orders end, even if the action is appealed.
Termination or reduction is because of budgetary constraints or changes in federal law or state regulations, and services are reduced or terminated for an entire categorical client group,	Services continue only through the date of termination of a categorical client group, even if appealed.
Termination is because the client or someone in his home threatens the health or safety of others, or because the client threatens his own health or safety.	Services may be terminated immediately under the following conditions: A client receiving residential care, adult foster care, day activity and health services, or special services to persons with disabilities threatens his own health or safety or that of others; or Someone in the client's home or a client receiving emergency response services, home-delivered meals, waiver services, family care, primary home care, or special services to persons with disabilities threatens the Texas Department of Human Services' (DHS's) staff or provider's health or safety.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Friday, December 1, 1995, 10:00 a.m. (Rescheduled from November 27, 1995, 9:00 a.m.)

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits has been rescheduled at the above date and time in SOAH Docket Number 473-95-1560-Application of Communication Telesystems International for a service provider certificate of operating authority (PUC 14982).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: November 15, 1995, 1:03 p.m.

TRD-9514877

♦ ♦ ♦

Texas Department of Agriculture

Thursday, November 30, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of the Texas Agriculture Code, §74.004(e) and the Texas Administrative Code, §6.4 by Regino Garcia.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: November 14, 1995, 2:47 p.m.

TRD-9514775

Thursday, January 4, 1996, 10:00 a.m. (Rescheduled from November 16, 1995.)

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §§101.001-101.021 . and/or §§102.001-102.172 (Vernon 1995) by Produce Marketing Company as petitioned by Cargil Produce Company.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: November 16, 1995, 8:35 a.m.

TRD-9514899

♦ ♦ ♦

Texas Bond Review Board

Wednesday, November 22, 1995, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

AGENDA:

I. Call to order

II. Approval of minutes

III. Consideration of proposed issues

A. Texas Alcoholic Beverage Commission-lease purchase of police automobiles

B. University of Texas System-Constitutional Appropriations Bonds, Series 1995 for construction at UT-Pan American

C. Texas Public Finance Authority-Revenue Bonds, Series 1996A for state office buildings in Austin and Fort Worth and air quality improvements in state office buildings in Travis County

D. Texas Public Finance Authority-Revenue Bonds, Series 1996B for laboratory facilities for Texas Department of Health

E. General Services Commission-refinancing of lease with option to purchase office building in Austin

F. Texas Turnpike Authority-Dallas North Tollway System Revenue Bonds, Series 1995

G. Texas Turnpike Authority-Subordinated loan agreement between Texas Turnpike Authority, Texas Department of Transportation and the Federal Highway Administration

H. Texas Turnpike Authority-Dallas North Tollway System Revenue Refunding Bonds, Series 1997

IV. Other business

A. Consideration of special board meeting and setting of date

B. Adoption of amendments to rules for private activity bond allocation program

C. Report by Texas Agricultural Finance Authority regarding the loan program approved by the board in April 1995

D. Consideration of ratings on lease with option to purchase transactions

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: November 14, 1995, 4:10 p.m.

TRD-9514780

♦ ♦ ♦

Children's Trust Fund of Texas Council

Friday, December 1, 1995, 10:30 a.m.

8929 Shoal Creek Boulevard, Suite 200

Austin

AGENDA:

Introduction

Approval of minutes from August 18 council meeting

Chairperson's report

Executive director's report

Discussion of proposed issues for the upcoming year 1996

New business

Adjourn

Contact: Sue Marshall, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, (512) 458-1281.

Filed: November 14, 1995, 10:17 a.m.

TRD-9514750

♦ ♦ ♦

Community Nutritional Task Force

Thursday, November 30, 1995, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 835

Austin

AGENDA:

I. Call to order

II. Agency reports

III. Discuss general developments and objectives for projects

IV. Public comment

V. Adjourn

Contact: Leda Roselle, 1700 North Congress Avenue, Room 837, Austin, Texas 78701, (512) 463-6279.

Filed: November 14, 1995, 1:24 p.m.

TRD-9514765

♦ ♦ ♦

Texas Commission for the Deaf and Hard of Hearing

Friday, December 1, 1995, 9:00 a.m.

Brown-Heatly Building, Room 1430, 4900 North Lamar Boulevard

Austin

Board

AGENDA:

Call to order; public comment; approval of minutes of August 18, 1995 meeting; executive director's report, including review of external/internal assessments for the Strategic Plan, schedule of upcoming meetings, and approval of internal operating budget for 1996; direct services report, including approval of camp contract and approval of reallocation of remaining 1995 funds; BEI report, including certifications, revocations, calendar updates, appointment of new board member, and discussion/possible action regarding proposed rules changes; information items; and adjournment.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: November 14, 1995, 12:20 p.m.

TRD-9514758

♦ ♦ ♦

Office of the Governor

Friday, December 1, 1995, 10:00 a.m.

221 East 11th Street

Austin

Ad Hoc Committee to Revise the Code of Criminal Procedure

AGENDA:

1. Open remarks

2. Procedure issues

3. Discussion of revisions to Chapters 18-42

4. Closing remarks

Contact: Cathy Herasimchuk, P.O. Box 12428, Austin, Texas 78711, (512) 463-2198.

Filed: November 15, 1995, 10:08 a.m.

TRD-9514874

♦ ♦ ♦

Texas Department of Health

Tuesday, November 28, 1995, 9:30 a.m.

Room M-618, Texas Department of Health, 1100 West 49th Street

Austin

Midwifery Board, Grievances Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes from the August 22, 1995 meeting; old business (disposition of unresolved complaints); ethics; amendment to 25 Texas Administrative Code, Chapter 37, §37.178 regarding complaint procedure; and open forum.

Contact: Cecilia Nobles, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: November 14, 1995, 2:47 p.m.

TRD-9514776

♦ ♦ ♦

Texas Incentive and Productivity Commission

Tuesday, November 28, 1995, 8:30 a.m.

Clements Building, Fourth Floor, Conference Room #406, 15th and Lavaca

Austin

AGENDA:

I. Call to order and roll call

II. Approval of minutes of previous meeting

III. Consideration of employee suggestions for approval

IV. Consideration of 1995 productivity bonus applications for approval

V. Consideration of matters relating to the 1995 productivity bonus applications for approval

VI. Election of vice chair

VII. Consideration of possible changes to the administration of the State Employee Incentive Program and Productivity Bonus Program

VIII. Report on administrative matters

IX. Adjournment

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: November 16, 1995, 9:08 a.m.

TRD-9514908

♦ ♦ ♦

Texas State Library

Thursday, November 30, 1995, 10:00 a.m.

Capitol Extension Building, Room E2.024, 1100 Congress Avenue

Austin

Texas State Library and Archives Commission Records Management Interagency Coordinating Council

AGENDA:

I. Welcome

II. Introduction of members

III. Review of committee statutory mandates

IV. Report on development of Government Information Locator Service

V. Discussion of current records management issues

A. Council on Competitive Government review of State Library and Archive Commission's records storage and microfilming operations

B. Management of email

C. Authentication of electronic documents

D. Cost recovery for records storage

VI. Other business

VII. Adjournment

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

Filed: November 15, 1995, 4:30 p.m.

TRD-9514896

♦ ♦ ♦

Texas Lottery Commission

Wednesday, November 22, 1995, 9:30 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

AGENDA:

According to the agenda summary, the Texas Lottery Commission will call the meeting to order; approval of minutes of the November 3, 1995 meeting; consideration and possible action, including proposal, on amendments to the following lottery rules: 16 TAC §§401.152, 401.153, §401.156, §401.157, §401.159, §401.301-401.304, §401.352; §401.355, §401.356, §401.358, §401.361-401.364, and §401.366; consideration and possible action on the renewal of the lottery operator contract; consideration and possible action on the appointment, employment or duties of the internal auditor; consideration and possible action on the assignability of prize winnings issue; commission may meet in executive session with its attorneys to receive legal advice regarding pending litigation pursuant to §551.071(1) of the Texas Government Code; to receive legal advice from its attorneys pursuant to §551.071(2) of the Texas Government Code; to deliberate the appointment, employment, or duties of the internal auditor pursuant to §551.074 of the Texas Government Code, and to deliberate the deployment, or specific occasions for implementation, of security personnel pursuant to §551.076 of the Texas Government Code; return to open session for further deliberation and possible action on any matter discussed in executive session; consideration of the status and possible entry of an order in any contested case if a proposal for decision has been received from the assigned administrative law judge and the time period has lapsed for the filing of exceptions and replies; report by the executive director and possible discussion on the financial status of the agency, the operation of the agency, and the proposed amendment to lease, creating a lease with option to purchase (Lottery headquarters).

Beginning at 12:00 p.m., report by the Bingo Advisory Committee and possible action on its activities; consideration and possible action, including proposal, on the following new rules: 16 TAC §§402.555, 402.556, 402.546, 402.541, 402.549, 402.553, 402.548, 402.547; consideration and possible action, including proposal, on amendments to rule 16 TAC §402.545 and §402.554; and adjournment.

For ADA assistance, call Michelle Guerrero at (512) 323-3791 at least two days prior to meeting.

Contact: Michelle Guerrero, 6937 North IH-35, Austin, Texas 78752, (512) 323-3791.

Filed: November 14, 1995, 2:32 p.m.

TRD-9514773

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Texas Council on Offenders with Mental Impairments

Friday, December 1, 1995, 11:00 a.m.

1900 American Drive

Lago Vista

Full Council Meeting

AGENDA:

I. Introductions/roll call

II. Public comments

III. Approval of minutes

IV. Review of TDCJ audit, and management response

Fiscal year 1996 budget

V. 1996 schedule for council meetings

Adjourn

Each item above includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406.

Filed: November 15, 1995, 4:01 p.m.

TRD-9514888

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Wednesday, December 6, 1995, 9:00 a.m.

TNRCC, 12124 Park 35 Circle, IH-35 North at Yager Lane, Building C, Room 308E

Austin

AGENDA:

On an assessment of administrative penalties and requiring certain actions of J. M. Craven, State Office of Administrative Hearings Docket Number 582-95-1632.

Contact: Raymond Winter, Mail Code 175, P.O. Box 13087, Austin, Texas 78711, (512) 239-0477.

Filed: November 15, 1995, 8:06 a.m.

TRD-9514783

Thursday, December 14, 1995, 1:30 p.m.

TNRCC Park 35 Office Complex, Building C, Room 131 E, 13100 North IH-35

Austin

Texas Groundwater Protection Committee

AGENDA:

The Texas Groundwater Protection Committee will meet to discuss: subcommittee reports from Agricultural Chemicals, data management and nonpoint source; Texas Generic State Management Plan for the Prevention of Pesticide Contamination of Groundwater, status update from CSGWPP development status, outreach efforts (abandoned well plugging educational initiative, SFTREG Water Quality Workgroup report, discussion of annual groundwater monitoring and contamination report preparation, 1996 water quality inventory report, draft Texas Ground Water Programs Directory, draft Texas State Management Plan for Prevention of Pesticide Contamination of Ground Water and options for state level concurrence on the generic SMP; announcements; and public comment.

Contact: Mary Ambrose, P.O. Box 13087, Austin, Texas 78701, (512) 239-4800.

Filed: November 15, 1995, 9:38 a.m.

TRD-9514802

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Texas Parks and Wildlife Department

Wednesday, November 29, 1995, 7:00 p.m.

Kokernot Lodge, Sul Ross University

Alpine

Parks and Wildlife Commission, Regulations Committee

AGENDA:

Opening marks and introduction of Regulatory Committee; presentation regarding regulatory process and "Sunset" process; public comment; closing remarks; and adjourn.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: November 15, 1995, 1:38 p.m.

TRD-9514882

♦ ♦ ♦

Public Utility Commission of Texas

Friday, December 1, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 14990-Application of Metro Connection, Inc. for a Service Provider Certificate of Operating Authority. This application was filed on November 14, 1995. Applicant plans to provide, on a resell basis, monthly recurring, flat-rate local exchange service including extended area service, toll restriction, call control options, tone dialing, custom calling services, Caller ID and any other services which are available on a resell basis from the underlying incumbent local exchange carrier or other certificated carrier within the service area of Metro Connection as a service provider pursuant to §3.2532 of the Public Utility Regulatory Act. Applicant plans to provide local exchange service in the geographic area which exactly follows the local exchange boundaries of the following underlying local exchange companies within the state of Texas: Southwestern Bell Telephone, GTE Southwest, Inc., Contel, Inc., United and any other electing local exchange company. Metro will obtain services under the resale tariffs ordered by the commission, except in certificated area of companies serving fewer than 31,000 access lines. Metro intends to offer services in major metropolitan area, such as Houston, Dallas-Fort Worth, Austin, Midland/Odessa and San Antonio. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by November 28, 1995.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 15, 1995, 9:39 a.m.

TRD-9514804

Friday, December 1, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 14991-Application of Resource Innovations Group, Inc. doing business as DFW-Direct for a Service Provider Certificate of Operating Authority. This application was filed on November 14, 1995. Applicant plans to provide, on a resell basis, monthly recovering, flat-rate local exchange service including extended area service, toll restriction, call control options, tone dialing, custom calling services, Caller ID and any other services which are available on a resell basis from the underlying incumbent local exchange carrier or other certificated carrier within the service area of Metro Connection as a service provider pursuant to §3.2532 of the Public Utility Regulatory Act. Applicant plans to provide local exchange service in the geographic area which exactly follows the local exchange boundaries of the following underlying local exchange companies within the state of Texas: Southwestern Bell Telephone, GTE Southwest, Inc., Contel, Inc., United and any other electing local exchange company. DFW-Direct intends to offer services in major metropolitan area, such as Houston, Dallas-Fort Worth, Austin, Midland/Odessa and San Antonio. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by November 28, 1995.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 15, 1995, 9:39 a.m.

TRD-9514805

Friday, December 1, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting at which the commissioners will set the rate of interest on deposits held by utilities for calendar year 1996, pursuant to Texas Civil Statutes, Article 1440a (Vernon Supplement 1995). In addition, the commission will set the interest rate to be applied in calendar year 1996 to overcharges and certain undercharges by a utility, pursuant to Public Utility Commission Substantive Rule 23.45(g).

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 14, 1995, 2:31 p.m.

TRD-9514769

Friday, December 1, 19 95, 10:05 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commissioners will have a work session at the above date and time for discussion and possible action on agency administrative procedures; project assignments and budget and fiscal matters. There will also be a discussion of electric industry competition issues and telecommunications industry competition issues.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 14, 1995, 2:31 p.m.

TRD-9514770

Friday, December 1, 1995, 10:30 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commission will hold a workshop in Project Number 15000 (electric industry restructuring); Project Number 15001 (stranded costs or excess costs over market) and Project Number 15002 (scope of competition in the electric industry in Texas). The commission may also discuss Project Number 14045 (rulemaking on transmission access and pricing and stranded investment).

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 14, 1995, 2:31 p.m.

TRD-9514771

Thursday, December 14, 1995, 9:00 a.m.

State Capitol, Capitol Extension, Room E.2016, Congress and 11th Street

Austin

AGENDA:

The commissioners will have a workshop with the commissioners from the Railroad Commission of Texas and representatives from electric, gas and propane industries on the impact of integrated resource planning and demand side management.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 14, 1995, 2:31 p.m.

TRD-9514772

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Railroad Commission of Texas

Thursday, December 14, 1995, 9:00 a.m.

1400 North Congress Avenue, Capitol Extension, Room E2.016

Austin

AGENDA:

The Texas Railroad Commission will sponsor a workshop on criteria for effective demand-side management programs. Participants will include Railroad commissioners, public utility commissioners, legislators, agency and legislative staff. The purpose of the workshop is to help inform key policymakers and start a dialogue between the two regulatory agencies in the interest of fostering a fair and open energy market in Texas.

Contact: Heather Ball, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7359.

Filed: November 15, 1995, 1:10 p.m.

TRD-9514878

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Structural Pest Control Board

Wednesday, November 29, 1995, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.120

Austin

Revised Agenda

Public Hearing and Regular Board Meeting

AGENDA:

I. Approval of board minutes of August 29, 1995.

Contact: Benny Mathis, 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: November 15, 1995, 8:25 a.m.

TRD-9514788

♦ ♦ ♦

Texas Department of Transportation

Wednesday, November 29, 1995, 1:00 p.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

1. (1:00 p.m.) Pursuant to Transportation Code, §201.602, a public hearing concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions.

2. (2:00 p.m.) Pursuant to Transportation Code, §362.0041 and 43 TAC §27.26, a public hearing concerning the proposed removal from the state highway system and transfer to the Texas Turnpike Authority of a portion of State Highway 190 right of way and infrastructure from State Highway 78 to Interstate Highway 635 in Dallas, Denton, and Collin counties for construction, operation, and maintenance of an express lane toll facility to be known as the President George Bush Turnpike.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: November 14, 1995, 1:24 p.m.

TRD-9514766

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University Interscholastic League

Wednesday, November 15, 1995, 9:00 a.m.

Doubletree Hotel, 6505 North IH-35

Austin

Emergency Meeting

AGENDA:

State Executive Committee

AA. Appeal of decision of District 4-AAAA Executive Committee ruling that a Big Spring High School student violation §401, Number of Contests Per Week, and causing Big Spring High School to forfeit a district football game

BB. Appeal of decision of District 6-AAAAA Executive Committee ruling Burleson High School student ineligible and causing Burleson High School to forfeit district football game

Reason for emergency: Challenge to student eligibility just received. Must determine eligibility prior to Thursday to advance to football bi-district game this Friday night. This applies to both cases.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: November 14, 1995, 3:39 p.m.

TRD-9514777

Wednesday, November 15, 1995, 10:45 a.m. (Rescheduled from November 15, 1995, 9:00 a.m.)

Doubletree Hotel, 6505 North IH-35

Austin

Emergency Revised Agenda

AGENDA:

State Executive Committee

AA. Appeal of decision of District 4-AAAA Executive Committee ruling that a Big Spring High School student violation §401, Number of Contests Per Week, and causing Big Spring High School to forfeit a district football game

BB. Appeal of decision of District 6-AAAAA Executive Committee ruling Burleson High School student ineligible and causing Burleson High School to forfeit district football game

CC. Appeal of decision of District Executive Committee ruling Richland Springs High School student ineligible and causing Richland Springs High School to forfeit district football games

Reason for emergency: Challenge to student eligibility just received. Must determine eligibility prior to Thursday to advance to football bi-district game this Friday night. This applies in all cases.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: November 15, 1995, 8:37 a.m.

TRD-9514790

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University of Texas Health Science Center at San Antonio

Wednesday, November 22, 1995, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

Austin

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of minutes
2. Protocols for review
3. Subcommittee reports

4. Other business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (210) 567-3717.

Filed: November 14, 1995, 2:41 p.m.

TRD-9514774

♦ ♦ ♦

Texas Council on Workforce and Economic Competitiveness

Friday, November 17, 1995, 8:30 a.m.

William B. Travis State Office Building, 1701 Congress Avenue, Room 1-104

Austin

Revised Agenda

AGENDA:

The following changes have been made to the agenda for the November 17 meeting: Two policy briefing items have been added (there will be no action on these items at this meeting) and several time changes have been made. 10:15 a. m.-Break; 10:30 a.m.-Action item; procedural policy for review and approval of waiver requests; 11:00 a.m.-Policy briefing item: Workforce Development Area Resignation Policy; Noon-Policy briefing item: Workforce Development Area designation for the Alamo areas; 12:15 p.m.-Policy briefing item: Workforce Development Area designation for the Coastal Bend areas.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 912-7150 (or Relay Texas 1-800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 76768, (512) 912-7158.

Filed: November 15, 1995, 10:50 a.m.

TRD-9514875

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Regional Meetings

Meetings Filed November 14, 1995

The Central Counties Center for MHMR Services (Revised Agenda.) met at the Stagecoach Inn, 1 Main Street, Salado, November 18, 1995, at 9:00 a. m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9514778.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2849 North Stemmons Freeway, Second Floor Community Room, Dallas, November 29, 1995, at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9514752.

The Limestone County Appraisal District Board of Directors will meet at 200 State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, November 21, 1995, at 9:30 a.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9514757.

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Meetings Filed November 15, 1995

The Cash Water Supply Corporation Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, November 20, 1995, at 7: 00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9514799.

The Deep East Texas Quality Work Force, Region XIV will meet at 2130 South First (Highway 59 South), Days Inn, Lufkin, November 29, 1995, at 8: 30 a.m. Information may be obtained from Jerry Whitaker, P.O. Box 1768, Lufkin, Texas 75902, (409) 633-5370. TRD-9514798.

The Education Service Center, Region VIII Board of Directors will meet at the Hot Biscuit Restaurant, 2502 West Ferguson Road, Mt. Pleasant, November 21, 1995, at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9514884.

The Education Service Center, Region XIII Board of Directors met at 5701 Springdale Road, Room H, Austin, November 20, 1995, at 12:30 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 919-5300. TRD-9514787.

The Edwards Aquifer Authority met at the San Antonio River Authority, 100 East Guenther, San Antonio, November 18, 1995, at 10:00 a.m. Information may be obtained from Janet Anderson, 300 Convent, Suite 1500, San Antonio, Texas 78205, (210) 270-0870. TRD-9514887.

The Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, November 21, 1995, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9514791.

The Johnson County Central Appraisal District Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, December 15, 1995, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9514885.

The North Texas Private Industry Council Nortex Regional Planning Commission will meet at 4309 Jacksboro Highway, Suite 200, Wichita Falls, November 29, 1995, at 12:15 p.m. Information may be obtained from Kelly Couch, 3917 Texas, Vernon, Texas 76384, (817) 322-5281. TRD-9514876.

The Northeast Texas Rural Rail Transportation District Board will meet at 1119 Alamo Street, Commerce, November 29, 1995, at 2:00 p.m. Information may be obtained from Sue Harting, P.O. Box 306, Commerce, Texas 75428-0306, (903) 450-0140. TRD-9514886.

The Pecan Valley MHMR Region Board of Trustees will meet at 104 Pirate Drive, Granbury, November 22, 1995, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9514795.

The Wood County Appraisal District (Emergency Revised Agenda.) Board of Directors met at 210 Clark Street, Quitman, November 16, 1995, at 1: 30 p.m. (Reason for emergency: Chief Appraiser contract must be approved.) Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9514789.

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Meetings Filed November 16, 1995

The Education Service Center, Region XI Board of Directors will meet at 3001 North Freeway, Fort Worth, November 28, 1995, at Noon. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9514917.

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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.

State Office of Administrative Hearings

Notice of Public Hearing Residential Property Insurance Benchmark Rate Setting and Catastrophe Property Insurance Association Rate Setting

Notice is hereby given of Continuance of Public Hearing under Docket Number 454-95-1280.G; Residential Property Insurance Benchmark Rate Setting and Catastrophe Property Insurance Association Rate Setting which appeared in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8531) and the November 14, 1995, issue of the *Texas Register* (20 TexReg 9485). The hearing will be held on Wednesday, December 20, 1995, at 9:00 a.m.

The location of the hearing has been changed from the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701 to the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, First Floor, Austin, Texas 78731.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514743 Shella Bailey Taylor
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings

Filed: November 14, 1995

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Texas Commission for the Deaf and Hard of Hearing

Notice of Board Vacancy

The Board for Evaluation of Interpreters (BEI) of the Texas Commission for the Deaf and Hard of Hearing is announcing the opening of three Board positions. To qualify applicants must have a Level III, IV, or V interpreter certification issued by the Commission; be a resident of the State of Texas; be an interpreter who has engaged in the profession of interpreting for people who are deaf, or must be actively engaged in the profession of providing interpreting services to people who are deaf at the time of appointment.

Interested individuals should submit a resume and letter of intent to David W. Myers, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711.

Applicants should be involved or willing to be involved with the Texas Commission for the Deaf and Hard of Hearing certification system, and be willing to attend regularly scheduled meetings of the Board for Evaluation of Interpreters. Board meetings are held approximately every two months.

This posting will remain open until all positions are filled.

Current Members-Residence-Term Expires

JoAnn Taylor, Vice Chair-Houston-March 31, 1997

Frederick Newberry, Secretary-Austin-March 31, 1997

Lauri Metcalf-San Antonio-March 31, 1998

vacant (unexpired)-March 31, 1998

vacant-March 31, 1998

vacant (appointment pending)-March 31, 1999

vacant (unexpired)-March 31, 1996

Issued in Austin, Texas, on November 8, 1995.

TRD-9514786 David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing

Filed: November 15, 1995

Interagency Council on Early Childhood Intervention

Request for Proposals

Description of Service The Interagency Council on Early Childhood Intervention (ECI) is soliciting proposals from Certified Public Accountants or Certified Internal Auditors with at least three years of auditing experience to provide internal auditing services to ECI. The Texas Internal Auditing Act, V.T.C.A., Government Code, §2102.001, which became effective September 1, 1989, details internal auditing responsibilities.

Closing Date All Request for Proposals (RFP's) to be considered must be received at ECI by 5:00 p.m. central standard time on December 21, 1995 or be postmarked by December 20, 1995.

Terms and Amount The contract will begin no later than February 1, 1996 and will continue through August 31, 1996.

Selection Criteria The Interagency Council on Early Childhood Intervention desires services which represent the best combination of price and quality. Selection will be based on the following: Knowledge of state government operations; Experience in auditing state government agencies; Approach to providing audit services, and Reasonableness of hourly fee and estimated number of hours.

Contact Person The RFP is available to all interested providers upon written request to Richard Parker,

Interagency Council on Early Childhood Intervention, 1100 West 49th Street, Austin, Texas 78756. A copy may also be obtained by calling (512) 502-4930, or by visiting the ECI office at 4412 Spicewood Springs Road, Building 600, Austin, Texas. Questions should be directed to Richard Parker at (512) 502-4930.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514830 Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention

Filed: November 15, 1995

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Texas Education Agency

Notice of Voluntary Assessment of Private School Students with the Texas Assessment of Academic Skills (TAAS) and Texas End-of-Course Tests

In accordance with the Texas Education Code, §39.033, the Texas Education Agency (TEA) will make available for administration to private and home schools the TAAS tests for Grades 3-8 and the exit level and the Texas end-of-course examinations for Algebra I and Biology I at a per-student cost that does not exceed the cost of administering the same test to a Texas public school student.

Each private and home school choosing to participate in this assessment will be required to sign an agreement with TEA in which it agrees to maintain security and confidentiality of the test instruments, test all eligible students at a particular grade level, follow all procedures specified in the applicable test administration materials, provide to the commissioner of education the information listed in the Texas Education Code, §39.051(b), and reimburse TEA for the cost of the assessment.

Private and home schools interested in participating in the spring 1996 assessment may obtain a copy of the agreement packet by contacting the Student Assessment Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9536. All required components of the agreement must be returned no later than January 12, 1996.

Additional information may be obtained from: Patricia S. Porter, Student Assessment Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9536.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514807 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: November 15, 1995

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Texas Department of Human Services

Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the Texas Commission for the Blind's proposed reimbursement for Case Management for Children who are Blind or Visually Impaired. The hearing is held in compliance with provisions of Senate Bill 487, which require a public hearing on proposed reimbursements for medical assistance programs. The public hearing will be held on December 1, 1995 at 9: 00 a.m. in room 410 on the fourth floor of the East Tower of the John H. Winters Center, 701 West 51st Street, Austin, Texas. If you are unable to attend the hearing, but wish to comment on the proposed reimbursement, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sonya Battle. Written comments may be mailed to the address noted, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 438-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement on or after November 15, 1995 by contacting Sonya Battle, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817. Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sonya Battle, (512) 438-4817 by November 27, 1995, so that appropriate arrangements can be made.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514755 Nancy Murphy
Section Manager for Media and Policy Services
Texas Department of Human Services

Filed: November 14, 1995

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Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request outside the promulgated flexibility band filed by Texas Farm Bureau Underwriters pursuant to Texas Insurance Code Annotated Article 5. 101, §3(g). In response to the Texas tort reform legislation, they are proposing a 73% flex rate for bodily injury for private passenger automobile that will result in a rate decrease of 4.9% when coupled with the benchmark rate change.

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, (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514858 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: November 15, 1995

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Texas Natural Resource Conservation Commission

Notice of Availability and Opportunity to Comment

The Texas Natural Resource Conservation Commission (commission) has produced a draft report *Edwards Aquifer Water Quality Protection Program, DRAFT 1994 Public Comment Report*. This report presents commission staff's preliminary analysis and response to public hearing comments received in 1994 on March 30, April 5, and June 2, in San Antonio, Austin, and Hondo, respectively on the protection of the Edwards Aquifer, related to commission rules (30 TAC Chapter 313 Edwards Aquifer Protection), and their implementation by the agency.

Section 26.046 of the Texas Water Code requires the commission to hold annual public comment hearings "to receive evidence from the public on actions the Commission should take to protect the Edwards Aquifer from pollution." This requirement recognizes the importance of the "Sole Source Aquifer" designation for the Edwards Aquifer underlying the San Antonio region pursuant to the federal Safe Drinking Water Act. This requirement also assists the commission in its shared responsibility with local governments such as cities and underground water conservation districts to protect the water quality of the aquifer.

Through this notice, opportunity for public comment on the draft report is being solicited prior to finalization of the report and submittal to the commission for its consideration and action. Copies of the draft report may be picked up at the commission District Offices in Austin located at 1921 Cedar Bend, Suite 150, (512) 339-2929, and San Antonio at 140 Heimer Road, Suite 360, (210) 490-3096 or from the commission Central Office Operators located in the Main Lobby, First Floor, Building C, located at 12100 Park 35 Circle, Austin, Texas, (512) 293-1000. In addition, the Edwards Underground Water District, P. O. Box 15830, San Antonio, Texas 78212, (800) 292-1047 or (512) 222-2204 has agreed to be a distribution point for the draft report. The document can also be obtained electronically through the commission's internet home page World Wide Web address at: http://www.tnrcc.state.tx.us/oprd/forum.html

Comments may be presented at this year's annual hearings on the Edwards Aquifer Water Quality Protection Program, to be held December 6, 1995, beginning at 7:00 p.m. at the San Antonio City Council Chambers, Municipal Plaza Building, Main and Commerce Streets, San Antonio, Texas or on December 12, 1995, beginning at 2:00 p.m. in Room 201S of the TNRCC, Building E, located at 12100 Park 35 Circle, Austin Texas. These hearings will be constructed for receipt of oral or written comments by interested persons, individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, a TNRCC staff member will be available to discuss the program 30 minutes prior to the hearings.

Persons with disabilities who have special communication or other accommodations needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Written comments on the draft report should mention the Edwards Aquifer Water Quality Protection program and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m., 60 days from the date of publication of this Notice of Availability and Opportunity to Comment in the *Texas Register*. For further information or questions concerning this draft report, please contact Mary Ambrose, Water Policy and Regulations Division, (512) 239-4813.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514800 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: November 15, 1995

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Clean Air Act (the Act), §382.096, Health and Safety Code, Chapter 382. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 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 December 20, 1995. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air 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 A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed below. Written comments about these AOs should be sent to the Staff Attorney 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 December 20, 1995. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-3434. The TNRCC Staff Attorneys are available to discuss the AO's and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) Company: Able Management Company, Formerly known as Able Services, and Heavenly Holdings Trust; Docket Number: 95-1058-AIR-E; Account Number: TA-2514-P; Location: Euless, Tarrant County, Texas; Type of Facility: apartment complex with a wood-fired water heater; Rule Violated: (a) TNRCC Rule 30 TAC §111.111(a)(1)(B) by causing, allowing, or permitting visi-

ble emissions from a stationary vent which exceeded 20% opacity as averaged over a six-minute period; and (b) TNRCC Rule 30 TAC §101.4 on March 27, 1993 and April 20, 1993. Penalty: $0; Staff Attorney: Greg Warmink, (512) 239-0612; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(2) Company: Apache Energy Resources Corporation; Docket Number: 96-0028-AIR-E; Account Number: EB-0031-T; Location: Odessa, Ector County, Texas; Type of Facility: tank battery; Rule Violated: TNRCC Rule 30 TAC §101. 4 and the Act, §382.085(a) and (b) for creating an odor nuisance condition on February 18, 1992, February 19, 1992, February 23, 1992, and January 31, 1994; TNRCC Rule 30 TAC §101.6 and the Act, §382.085(b) by failing to report upset conditions on two occasions; and TNRCC Rule 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b) by installing and operating a new flare without first obtaining a TNRCC permit or satisfying the conditions for a standard exemption. Penalty: $34,750; Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office: 2626 J. B. Shepperd Parkway Boulevard, Building B-101, Odessa, Texas 79761, (915) 362-6997.

(3) Company: Arco Permian (formerly Arco Oil and Gas Company); Docket Number: 96-0001-AIR-E; Account Number: YA-0050-L; Location: Denver City, Yoakum County, Texas; Type of Facility: Carbon Dioxide (CO_2) separation plant; Rule Violated: (a) TNRCC Rule 30 TAC §116.115 (formerly §116.4) and the Act, §382.085(b) by violating Special Provision Number 9 (now Special Condition Number 7) of TNRCC Permit Number 9649 by failing to maintain the required minimum sulphur dioxide (SO_2) emission reduction efficiency of 90% during May of 1993; and (b) TNRCC Rule 30 TAC §101.20(1), TNRCC Rule 30 TAC §116.115 (formerly §116.4) (Special Provision 4 (now Special Condition Number 2) of TNRCC Permit Number 9649), and §382.085(b) of the Act by violating applicable New Source Performance Standards (NSPS), promulgated by the Environmental Protection Agency (EPA) pursuant to the Federal Clean Air Act, §111 as amended. In particular, the Company is alleged to have violated 40 CFR Part 60, Subpart LLL (Standards of Performance for Onshore Natural Gas Processing: SO_2 Emissions), §60.646(a)(1), by failing to employ a method designed to measure the accumulation of sulphur product to an accuracy of +/- 2.0% over any 24-hour period. Penalty: $3,875; Staff Attorney: William C. Foster, (512) 239-3407; Regional Office: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(4) Company: Big Tex's Auto Mart; Docket Number: 96-0002-AIR-E; Account Number: DB-3958-T; Location: Garland, Dallas County, Texas; Type of Facility: used car sales lot; Rule Violated: TNRCC Rule 30 TAC §114.1(c)(1) and the Act, §382.085(b) offering for sale in the state of Texas a motor vehicle with faulty or missing emission control equipment or devices with which the vehicle was originally equipped. Penalty: $250; Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(5) Company: Byford's Used Cars; Docket Number: 96-0003-AIR-E; Account Number: DB-2796-F; Location: Seagoville, Dallas County, Texas; Type of Facility: used car dealership; Rule Violated: TNRCC Rule 30 TAC §114.1(c)(1) and §114.1(c)(3), and the Act, §382.085(b) by offering for sale in the state of Texas a motor vehicle with faulty or missing emission control equipment or devices with which the vehicle was originally equipped, and by failing to display notice stating that state law prohibits the sale of motor vehicles not equipped with all emission control systems or devices in good operable condition. Penalty: $1,000; Staff Attorney: Patricia Hershey, (512) 239-0587; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(6) Company: The Carpark In Arlington; Docket Number: 96-0004-AIR-E; Account Number: TA-3008-F; Location: Arlington, Tarrant County, Texas; Type of Facility: used car sales lot; Rule Violated: TNRCC Rule 30 TAC §114.1(c)(1) and the Act, §382.085(b) offering for sale in the state of Texas a motor vehicle with faulty or missing emission control equipment or devices with which the vehicle was originally equipped. Penalty: $250; Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(7) Company: Champion International Corporation; Docket Number: 96-0005-AIR-E; Account Number: AC-0017-B; Location: Lufkin, Angelina County, Texas; Type of Facility: Paper mill plant; Rule Violated: TNRCC Rule 30 TAC §101.4 and the Act, §382.085(a) and (b) by emitting one or more air contaminants, or combinations thereof (odors), during planned maintenance on the shutdown of the lime kiln. Penalty: $9,600; Staff Attorney: Greg Warmink, (512) 239-0612; Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) Company: Clarke Products, Incorporated; Docket Number: 96-0006-AIR-E; Account Number: TA-0671-M; Location: Grand Prairie, Tarrant County, Texas; Type of Facility: an acrylic tub manufacturing plant; Rule Violated: TNRCC Rule 30 TAC §116.115, Texas Air Control Board Agreed Board Order Number 89-09(e), and the Act, §382.085(b) by violating TNRCC Permit Number 19462: Special Provision 9A-not maintaining proper records of daily resin, acetone, and acetone replacement usage in pounds, and not maintaining proper records of actual hours of operation of the chopper guns; Special Provision 9B-failing to compile weekly and monthly usage and emission reports as required; and Special Provision 9C-failure to compile annual usage and emissions reports as required. Penalty: $0 (Small Business Minor Source Policy); Staff Attorney: Walter Ehresman, (512) 239-0573; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(9) Company: Compuroute, Inc.; Docket Number: 95-1522-AIR-E; Account Number: DB-3666-M; Location: Dallas, Dallas County, Texas; Type of Facility: circuit board manufacturing operation; Rule Violated: TNRCC Rule 30 TAC §116.110(a) and the Act, §382.085(b) by failing to obtain a permit or satisfy the conditions for an exemption prior to initiating the construction of a circuit board manufacturing facility that may emit air contaminants into the air of the state. Penalty: $0; Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(10) Company: Delhi Gas Pipeline Corporation; Docket Number: 96-0007-AIR-E; Account Number: FI-0028-G; Location: Streetman, Freestone County, Texas; Type of Facility: Sulphur Recovery Unit plant; Rule Violated: (a) TNRCC Rule 30 TAC §101.7(a) and the Act, §382.085(b)

by failing to maintain abatement equipment in good working order; (b) TNRCC Rules 30 TAC §101.20(3) and §116.115 and the Act, §382.085(b) by failing to meet Special Provision 2 of TNRCC Permit Number 8988/PSD-TX-470, which dictate a 99.8% sulfur recovery efficiency; and (c) TNRCC Rules 30 TAC §101.20(3) and §116.115 and the Act, §382.085(b) by exceeding allowable quantities for SO_2 and H_2S under TNRCC Permit Number 8988/PST-TX-470. Penalty: $0; Staff Attorney: Paul Sarahan, (512) 239-3422; Regional Office: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(11) Company: Discount Motors; Docket Number: 96-0008-AIR-E; Account Number: TA-1125-0; Location: Arlington, Tarrant County, Texas; Type of Facility: used car sales lot; Rule Violated: The following violations were received by the company on September 2, 1995. TNRCC Rule 30 TAC §114.1(c)(1) and the Act, §382.085(b) offering for sale in the state of Texas a motor vehicle with faulty or missing emission control equipment or devices with which the vehicle was originally equipped. Penalty: $250; Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(12) Company: Golden Touch; Docket Number: 96-0009-AIR-E; Account Number: DB-3509-G; Location: Irving, Dallas County, Texas; Type of Facility: chrome and gold plating plant; Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b) by constructing and operating the plant, which may emit air contaminants into the air of the state, without first obtaining a permit or qualifying for a standard exemption. Penalty: $2,000; Staff Attorney: William C. Foster, (512) 239-3407; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(13) Company: H. L. Merrill and Son Construction Company, Incorporated; Docket Number: 96-0010-AIR-E; Account Number: 90-9742-I; Location: Flower Mound, Denton County, Texas; Type of Facility: an air curtain trench burner; Rule Violated: TNRCC Rule 30 TAC §116.115, TNRCC Agreed Order Docket Number 94-0547-AIR-E and the Act, §382.085(b) by violating TNRCC Permit Number T-9742; Special Provision 8--exceeding the opacity limitation of 20%; and Special Provision 13-not having operating instructions posted at the site. Penalty: $1,500; Staff Attorney: Walter Ehresman, (512) 239-0573; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(14) Company: Intercontinental Terminals Co.; Docket Number: 96-0011-AIR-E; Account Number: HG-0403-N; Location: Deer Park, Harris County, Texas; Type of Facility: bulk liquid handling and storage plant; Rule Violated: Alleged to have violated: (a) TNRCC Rule 30 TAC §101.20(2) and the Act, §382.085(b) by: (i) failed to have identifying marks on Valves V-4, V-7, V-10 and V-13; (ii) failed to provide accurate drawings of the valves; (iii) failed to identify on 1-inch valve that could not be located on the master log; and (iv) failed to properly tag Valves V-11 and V-12 (tags were reversed). (b) TNRCC Rule 30 TAC §115.112(a)(2)(A) and the Act, §382.085(b) by having an open manway/ladder entry hatch on the internal floating roof of Tank 12-18 when the device was no in use and the tank was full of ioprene. (c) TNRCC Rule 30 TAC §116.115 and the Act, §382.085(b) by storing ethyl alcohol, a chemical not authorized by TNRCC under permit for Tank 50-1. (d) TNRCC Rule 30 TAC §101. 20(1) and §115.112(a)(2)(A), the Act, §382.085(b) by having open sample well hatches on the internal floating roofs of Tanks 80-31,80-32, and 80-33. Penalty: $7,600; Staff Attorney: Greg Warmink, (512) 239-0612; Regional Office: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(15) Company: J. R. Sales; Docket Number: 96-0012-AIR-E; Account Number: HK-0082-S; Location: Buda, Hays County, Texas; Type of Facility: fiberglass manufacturing plant; Rule Violated: TNRCC Rule 30 TAC §116.110(a), the Act, §382.0518(a) and §382.085(b) by owning and operating the Plant, without first obtaining a permit or qualifying for standard exemption. Penalty: $0; Staff Attorney: Lisa Uselton Dyar, (512) 239-5692; Regional Office: 1921 Cedar Bend, Suite 150, Austin, Texas 78758, (512) 339-2929.

(16) Company: Landmark Auto Sales and Service; Docket Number: 96-0013-AIR-E; Account Number: TA-2975-V; Location: Arlington, Tarrant County, Texas; Type of Facility: used car lot; Rule Violated: The following violations were received by the company on August 20, 1995. TNRCC Rule 30 TAC §114.1(c)(1) and the Act, §382.085(b) offering for sale in the state of Texas a motor vehicle with faulty or missing emission control equipment or devices with which the vehicle was originally equipped. Penalty: $0; Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office:6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116 (817) 732-5531.

(17) Company: Mesquite Products of Texas, Inc.; Docket Number: 96-0014-AIR-E; Account Number: CS-0087-F; Location: Bulverde, Comal County, Texas; Type of Facility: sawmill and woodworking plant; Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a) by constructing and operating the plant without first obtaining a TNRCC permit or qualifying for a standard exemption. Penalty: $0; Staff Attorney: Lisa Newcombe, (512) 239-2269; Regional Office: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(18) Company: Muenster Milling Company, Inc.; Docket Number: 96-0015-AIR-E; Account Number: CV-0021-H; Location: Muenster, Cooke County, Texas; Type of Facility: grain handling and feed mill operation; Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §101.4 and §116.211(d), and the Act, §382.085(a) and (b) by odors. Penalty: $1,000; Staff Attorney: Thomas Corwin, (512) 239-5915; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(19) Company: Occidental Chemical Corporation; Docket Number: 96-0016-AIR-E; Account Number: BL-0113-I; Location: Alvin, Brazoria County, Texas; Type of Facility: petrochemical manufacturing plant; Rule Violated: TNRCC Rule 30 TAC §101.20(1) and the Act, §382.085(b) by failing to test Flare Number 318Z3 within 180 days after the October, 1992 startup of Tower Number 82D4 in the MTBE Unit; by failing to install flow indicators in the vent stream from each distillation unit to record flow in the vent stream leading to the flare in the methanol stripper column (Tower Number 82D4) of the MTBE Unit; and by failing to maintain up-to date, readily accessible records of the flow indication specified in 40 CFR §60.663(b)(2) and records of all periods when the vent stream was diverted from the control device or had no flow rate; TNRCC Rule 30 TAC §115.112(a)(3) and the Act, §382.085(b) by failing to use a vapor recovery system that maintains a control efficiency of at least 90% on Tank

Number T233-1, from August 1, 1992 through February 22, 1994; TNRCC Rule 30 TAC §115.116(a)(3)(B) and the Act, §382.085(b) by failing to continuously monitor and record the inlet and outlet gas temperatures of the condenser serving as the vapor control device for Tank Number T233-1, from 1988 to February 22, 1994; and TNRCC Rule 30 TAC §101.20(1) and §101.20(2), and the Act, §382.085(b) by failing to install a liquid-mounted primary seal and a rim-mounted secondary seal on Oily Waste Water Tank T-3 (Tank Number 320T3) from April, 1993, to October 13, 1994, in violation of 40 CFR §60.112b(a)(2)(i) and §61.351(a)(2). Penalty: $56,800; Staff Attorney: Lisa Uselton Dyar, (512) 239-5692; Regional Office: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(20) Company: Price Construction, Inc.; Docket Number: 96-0017-AIR-E; Account Number: 923282S (Formerly HT-0024-H); 907901D; and 905828C; Location: Garden City, Glasscock County, Texas/Big Spring, Howard County, Texas; Type of Facility: Alleged to have violated: (a) With respect to Account Number 923282S (formerly HT-0024-H), TNRCC Rule 30 TAC §111.111(a)(1)(A) and §116.110 (formerly §116.1) and the Act, §382.0518(a) and §382.085(b). Specifically, on June 23, 1993, the Company: (i) exceeding the opacity limits of its dryer stack by 329% of allowable, and the opacity limits of its shaker screen area by 191% of allowable at Plant One; and (ii) Plant One was operated for more than 30 days after its permit, Texas Air Control Board (TACB) (now TNRCC) Permit Number 335T, had expired on December 6, 1992; (b) With respect to Account Number 907901D, TNRCC Rule 30 TAC §101.20(1) and §116.115 (formerly §116.4), and the Act, §382.085(b) by allegedly violating 40 CFR Part 60 [New Source Performance Standards (NSPS)], Subpart I, on May 19, 1993, the Company is alleged to have violated: (i) 40 CFR §60.92(a)(2), which limits opacity to less than 20%. An opacity evaluation for that day found 100% opacity; and (ii) TNRCC Rule 30 TAC §116.115 (formerly §116.4) and the Act, §382.085(b) when the Company violated Texas Air Control Board (TACB) (now TNRCC) Permit Number R-7901, Special Provision Number 2 because excessive visible dust emissions were observed when: (A) the drum mix asphalt plant was operated without water for the venturi scrubber; and (B) plant roads were not being adequately watered as required; and (c) With respect to Account Number 905828C, TNRCC Rule 30 TAC §116.115 (formerly §116.4), TACB Agreed Board Order (ABO) Number 93-03(e), and the Act, §382.085(a) and (b) by violating TACB (now TNRCC) Permit Number R-5828, Special Provisions Numbers 3 and 4. Specifically, the Company allegedly committed these violations on May 27, 1993, when a dust plume (visible for several miles) was created when Rock Crusher Number 3 was operated without water sprays at each material transfer point, and when the Company failed to adequately water plant roads and aggregate stockpiles as required under TNRCC Permit Number R-5828. Penalty: $7,000; Staff Attorney: Thomas Corwin, (512) 239-5915; Regional Office: 2626 J.B. Shepperd Parkway Boulevard, Building B-101, Odessa, Texas 79761 (915) 362-6997.

(21) Company: River Trails Land & Cattle Company; Docket Number: 96-0018-AIR-E; Account Number: TA-2570-F; Location: Fort Worth, Tarrant County, Texas; Type of Facility: housing development construction site; Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §101.4 and the Act, §382.085(a) and (b) by discharging one or more air contaminants (dust) or combinations thereof, in such concentration and of such duration as were or tended to be injurious to or adversely affect human health or welfare, animal life, vegetation or property or as to interfere with the normal use and enjoyment of animal life, vegetation or property. Penalty: $6,000; Staff Attorney: Thomas Corwin, (512) 239-5915; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(22) Company: Sterling Chemicals, Inc.; Docket Number: 96-0019-AIR-E; Account Number: GB-0060-B; Location: Texas City, Galveston County, Texas; Type of Facility: chemical manufacturing plant; Rule Violated: TNRCC Rule 30 TAC §101.20(1) and the Act, §382.085(b) by violating applicable Federal New Source Performance Standards (NSPS)by failing to use standby monitoring systems, Method 7, Method 7A, or other approved reference methods to provide nitrogen oxide emissions data for a minimum of 75% of the operating hours in each steam generating unit operating day, and at least 22 out of 30 successive steam generating unit operating days, when nitrogen oxide emissions data was not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments. TNRCC Rule 30 TAC §116. 115 and the Act, §382.085(b) by: (1) failing to maintain the exit cooling temperature of condensers serving tanks Numbers 15T1 and 15T2 at 50 degrees or colder, as required by TNRCC Permit Number C-19491, Special Provision 9; (2) violating TNRCC Permit Number 1272A, Special Provision 11, which requires that the in-stack oxygen concentrations for the loading incinerator and WOB-A boiler be continuously monitored and recorded; and (3) violating, TNRCC Permit Number C-19491, Special Provisions 5B and 5D by not calibrating the monitors, correcting the drift, and maintaining records for the in-stack nitric oxide (NO) continuous emission monitoring system for Boilers 954H9 and 954H3; and TNRCC Rule 30 TAC §101.4 and the Act, §382.085(a) and (b) on May 8, 1994, by discharging on one day an air contaminant so as to cause a condition of air pollution, which is defined as the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property or as to interfere with the normal use and enjoyment of animal life, vegetation, or property. Penalty: $30,000; Staff Attorney: Walter Ehresman, (512) 239-0573; Regional Office: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(23) Company: Texas Lime Company; Docket Number: 96-0031-AIR-E; Account Number: JH-0045-I; Location: Cleburne State Park, Cleburne, Johnson County, Texas; Type of Facility: lime manufacturing plant; Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §§101.10(1), 116.110, and 116.115, the Act, §382.085(b) TNRCC Permit Numbers 5999, 24213, and 20519, and Texas Air quality Control Board Agreed Board Order Number 89-04(u). Penalty: $0; Staff Attorney: Thomas Corwin, (512) 239-5915; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(24) Company: W. R. Meadows of Texas, Inc.; Docket Number: 96-0020-AIR-E; Account Number: TA-1014-B; Location: Fort Worth, Tarrant County, Texas; Type of Facility: concrete additives manufacturing plant; Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §116.110 and the Act, §382.085(b) and §382.0518(a) by

failing to obtain a permit or qualify for a standard exemption. Penalty: $400; Staff Attorney: Greg Warmink, (512) 239-0612; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(25) Company: West Pallet Company Docket Number: 96-0021-AIR-E Account Number: MB-0285-B Location: West, McLennan County, Texas; Type of Facility: wooden pallet repair and sale operation Rule Violated: Alleged to have violated TNRCC Rule 30 TAC §111.101, and the Act, §382.085 by unauthorized outdoor burning of scrap pallet materials. Penalty: $2,250 Staff Attorney: Thomas Corwin, (512) 239-5915; Regional Office: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335

(26) Company: White's Motor Company Docket Number: 96-0022-AIR-E Account Number: TA-1176-U Location: Fort Worth, Tarrant County, Texas; Type of Facility: used car sales lot Rule Violated: The following violations were received by the company on September 2, 1995. TNRCC Rule 30 TAC §114.1(c)(1) and the Act, §382.085(b) offering for sale in the state of Texas motor vehicles with faulty or missing emission control equipment or devices with which the vehicles were originally equipped. Penalty: $250 Staff Attorney: Peter Gregg, (512) 239-0450; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514792 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: November 15, 1995

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Notice of Public Comment Opportunity and Hearings

The Texas Natural Resource Conservation Commission (commission) will conduct two hearings to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under §26.046 of the Texas Water Code. This requirement recognizes the importance of the "Sole Source Aquifer" designation for the Edwards Aquifer underlying the San Antonio region pursuant to the federal Safe Drinking Water Act. This requirement also assists the commission in its shared responsibility with local governments such as cities and underground water conservation districts to protect the water quality of the aquifer.

This year's annual hearings on the Edwards Aquifer Water Quality Protection Program and the commission's rules addressing water pollution abatement plans for regulated development over the designated recharge and transition zones of the Edwards Aquifer, pursuant to 30 TAC §313, will be held on December 6, 1995, beginning at 7:00 p.m. at the San Antonio City Council Chambers, Municipal Plaza Building, Main and Commerce Streets, San Antonio, Texas and on December 12, 1995, beginning at 2:00 p.m. in Room 201S of the commission, Building E, located at 12100 Park 35 Circle, Austin Texas. These hearing will be constructed for receipt of oral or written comments by interested persons, individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however a TNRCC staff member will be available to discuss the program 30 minutes prior to the hearings. Persons with disabilities who have special communication or other accommodations needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

At these hearings, the commission is requesting comment on a draft staff report *Edwards Aquifer Water Quality Protection Program, DRAFT 1994 Public Comment Report*. This report presents commission staff's preliminary analysis and response to public hearing comments received in 1994 on March 30, April 5, and June 2, in San Antonio, Austin, and Hondo, respectively on the protection of the Edwards Aquifer, related to commission rules (30 TAC Chapter 313 Edwards Aquifer Protection), and their implementation by the agency. Through this notice, opportunity for public comment on the draft report is being solicited prior to finalization of the report and submittal to the commission for its consideration and action.

Copies of the draft report may be picked up at the commission District Offices in Austin located at 1921 Cedar Bend, Suite 150, (512) 339-2929, and San Antonio at 140 Heimer Road, Suite 360, (210) 490-3096 or from the commission Central Office Operators located in the Main Lobby, First Floor, Building C, located at 12100 Park 35 Circle, Austin, Texas, (512) 293-1000. In addition, the Edwards Underground Water District, P.O. Box 15830, San Antonio, Texas 78212, (800) 292-1047 or (512) 222-2204 has agreed to be a distribution point for the draft report. The document can also be obtained electronically through the commission's internet home page World Wide Web address at: http: www.tnrcc.state.tx.usoprdforum.html

Written comments should mention the Edwards Aquifer Water Quality Protection program and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 pm, 60 days from the date of publication of this Notice of Public Hearings in the *Texas Register*. For further information or questions concerning these hearings, please contact Mary Ambrose, Water Policy and Regulations Division, (512) 239-4813.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514801 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: November 15, 1995

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Notice of Public Hearing Cancellation

The Texas Natural Resource Conservation Commission announces the cancellation of the public hearing concerning proposed revisions to Chapter 321 and Chapter 330, as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9499).

A new public hearing on proposed revisions to Chapter 330 has been scheduled for December 12, 1995 at 10:00 a.m. in Room 254 of TNRCC Building E, located at 12100 North IH-35, Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearing; how-

ever, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing should mention Rule Log Number 95150-330-WS95151-330-WS and may be submitted to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087. Comments must be received by 5:00 p.m., 30 days from the date of publication of the proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Douglas S. McArthur, Municipal Solid Waste Division, at (512) 239-6705.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514803 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: November 15, 1995

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North Central Texas Council of Governments

Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to retain the services of a consultant to conduct an assessment and update of Dallas Area Rapid Transit's (DART) regional ride match computer database system. The consultant will update DART's current RideStar database to ensure quality match lists and recommend procedures to periodically update the database system. The consultant will also train DART telemarketing representatives to update the database and will document all procedures.

Due Date. Proposals must be submitted no later than 5 p.m., Thursday, April 13, 1995, to Lynn Hayes, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P. O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 695-9243.

Contract Award Procedures. The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue contract awards.

Regulations. NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

Issued in Arlington, Texas, on November 10, 1995.

TRD-9514741 Mike Eastland
Executive Director
North Central Texas Council of Governments

Filed: November 14, 1995

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Public Utility Commission of Texas

Questions Concerning Proposed Amendments to Public Utility Commission Substantive Rule 23.59

The Public Utility Commission of Texas requests interested parties to comment on whether the commission should make changes to the nuclear decommissioning trust investment restrictions contained in Public Utility Commission Substantive Rule 23.59. Interested parties may obtain a copy of the rule by contacting Thomas L. Brocato, at the Public Utility Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0372.

The commission requests that interested persons respond to the questions that are set forth and any other issue raised by the rule. Comments that are longer than ten pages should include an executive summary. Interested persons should file fifteen copies of their comments with the commission's Secretary, Paula Mueller, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days of the publication of this notice in the *Texas Register*. Comments should refer to project number 14908. This notice is not a formal notice of proposed rulemaking, but the comments assist the commission in the rulemaking project concerning proposed amendments to Public Utility Commission Substantive Rule 23.59 (Project Number 14908).

(1) Are mutual funds an appropriate type of investment for decommissioning trust funds? In your response, please explain how mutual funds are consistent with the investment goals specified in Substantive Rule §23. 59(c). Specifically, these goals are:

(a) Trust funds should be invested with the goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the trust.

(b) In keeping with prudent investment practices, the portfolio of securities held in the decommissioning trust shall be diversified to the extent reasonably feasible given the size of the trust.

(2) What types of mutual funds are appropriate?

(3) Are there mutual funds available that have been specifically created for decommissioning trust funds? If so, please identify and describe them.

(4) Are there some types of mutual funds that are too risky for use as decommissioning trust investments and should not be allowed? If so, please identify or describe them.

(5) Many funds state in their prospectus that a certain percentage of the fund may be invested, at the fund

manager's discretion, in various financial instruments (options, futures contracts, junk bonds, etc.) that are fundamentally different from the fund's major investment emphasis. What safeguards or limitations on funds can be used to protect against any unacceptable risk resulting from this practice?

(6) Should a fund's historical performance record meet some minimum standard? If so, what is the appropriate time frame (one year, three years, five years, etc.) that should be used to determine this appropriate standard? Should the standard vary depending on the fund type?

(7) Should investments in mutual funds be limited to "no-load" funds"? If not, should a limitation be placed on the percentage amount or the timing ("front-end" or "back-end") of "load" a fund charges?

(8) Should a maximum acceptable level of management fees (expense ratios) be set on mutual fund investments?

(9) Are there any quality or safety rankings (e.g., Morningstar) on mutual funds that could assist the Commission in determining the appropriateness of various mutual funds?

(10) Are there any bond funds available that are comprised of companies that meet the restrictions specified in 23.59(c)(2)(B)? If so, please identify ones you are aware of. (Specifically, this subsection limits investments to corporate and municipal debt securities that have investment grade bond ratings.)

(11) Are there any equity funds available that are comprised of companies that meet the restrictions specified in 23.59(c)(2)(C)? If so, please identify ones you are aware of. (Specifically, this subsection limits equity investments to companies that either have investment grade bond ratings, or have capitalization greater than $100 million and have paid common dividends for at least five years.)

(12) Should the Commission allow an equity fund that is indexed to the market (such as the S&P 500) even though such a fund will necessarily contain securities of companies with below investment grade ratings? Please explain.

(13) Other than considering specific guidelines on mutual funds, are there any other modifications to 23.59(c) regarding trust investments that should be made? If so, please explain.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514715 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 13, 1995

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Notice of Workshop

The staff of the Public Utility Commission of Texas (PUC) will conduct a workshop on Tuesday, November 28, 1995, at 1:00 p.m. in Hearing Room A regarding current and public interest uses of N11 dialing codes. The purpose of this workshop will be to gather information on the appropriate uses of N11 dialing codes. This project has been assigned Project Number 12853. One or more Commissioners may be present at this workshop. Persons who plan to attend the workshop should register with Laura Velasquez at (512) 458-0370. A list of questions regarding issues to be discussed at the workshop will be available after November 17, 1995. Parties should be prepared to discuss their responses to the questions at the workshop. For further information, contact Candice Clark at (512) 458-0310 or Ann M. Coffin at (512) 458-0365.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514714 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 13, 1995

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