TEXAS REGISTER

IN THIS ISSUE

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Volume 19, Numbers 28, Part I

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Texas Register

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How to Use the Texas Register

Information Available: The 10 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

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.

Proposed Sections

Council on Competitive Government

Administration

Texas State Library and Archives Commission

General Policies and Procedures

Texas Racing Commission

General Provisions

Licenses for Pari-mutuel Racing

Operation of Racetracks

Conduct and Duties of Individuals

Officials and Rules of Horse Racing

Pari-mutuel Wagering

Texas State Board of Plumbing Examiners

Administration

Texas State Board of Examiners of Professional Counselors

Professional Counselors

Texas Department of Health

Purchased Health Services

Utilization Review

Texas Natural Resource Conservation Commission

Municipal Solid Waste

Comptroller of Public Accounts

Funds Management (Fiscal Affairs)

Texas Department of Public Safety

Drivers License Rules

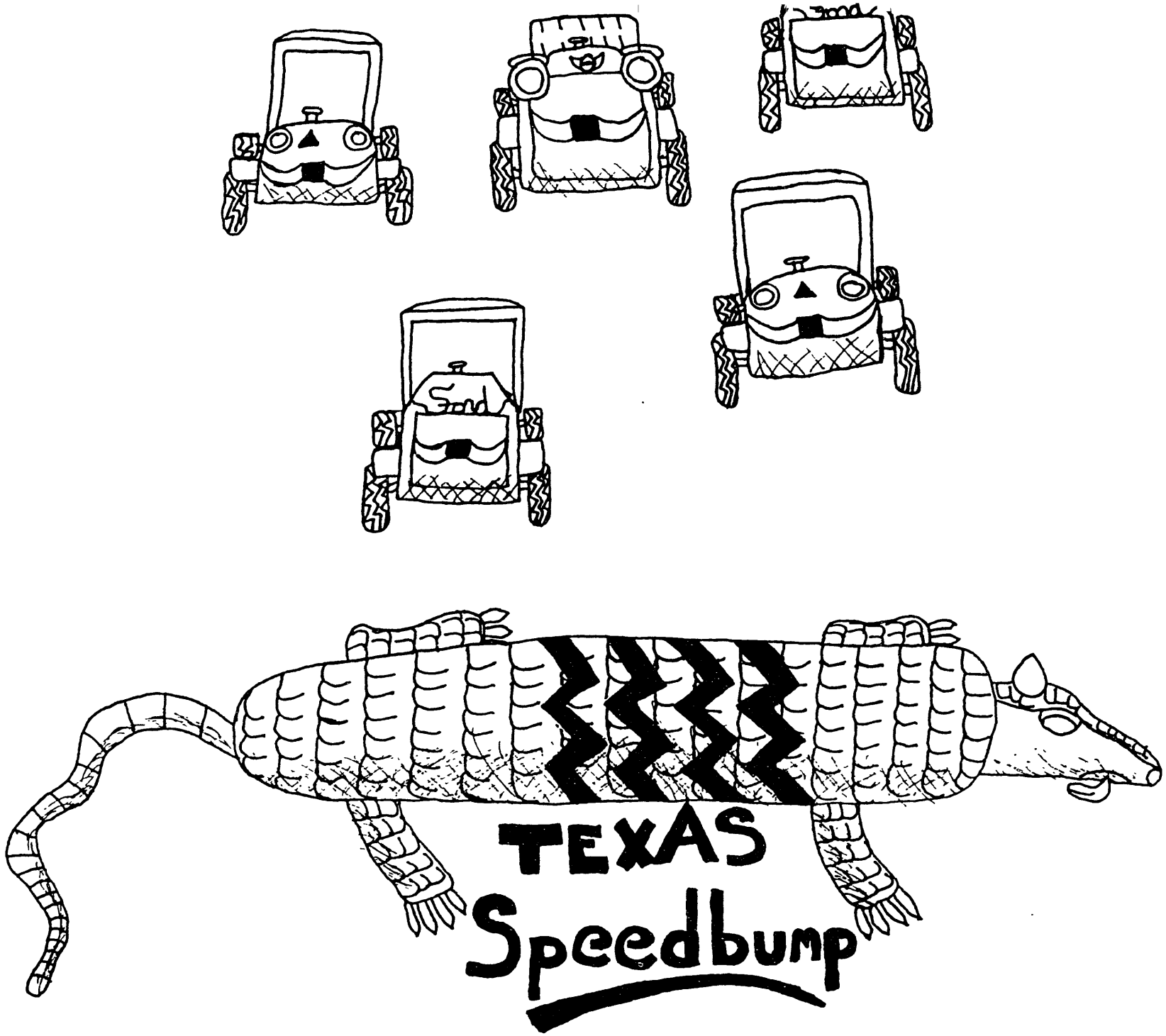
Texas Youth Commission

Treatment

Commission on Jail Standards

Medical Services in County Jails

Fees and Payments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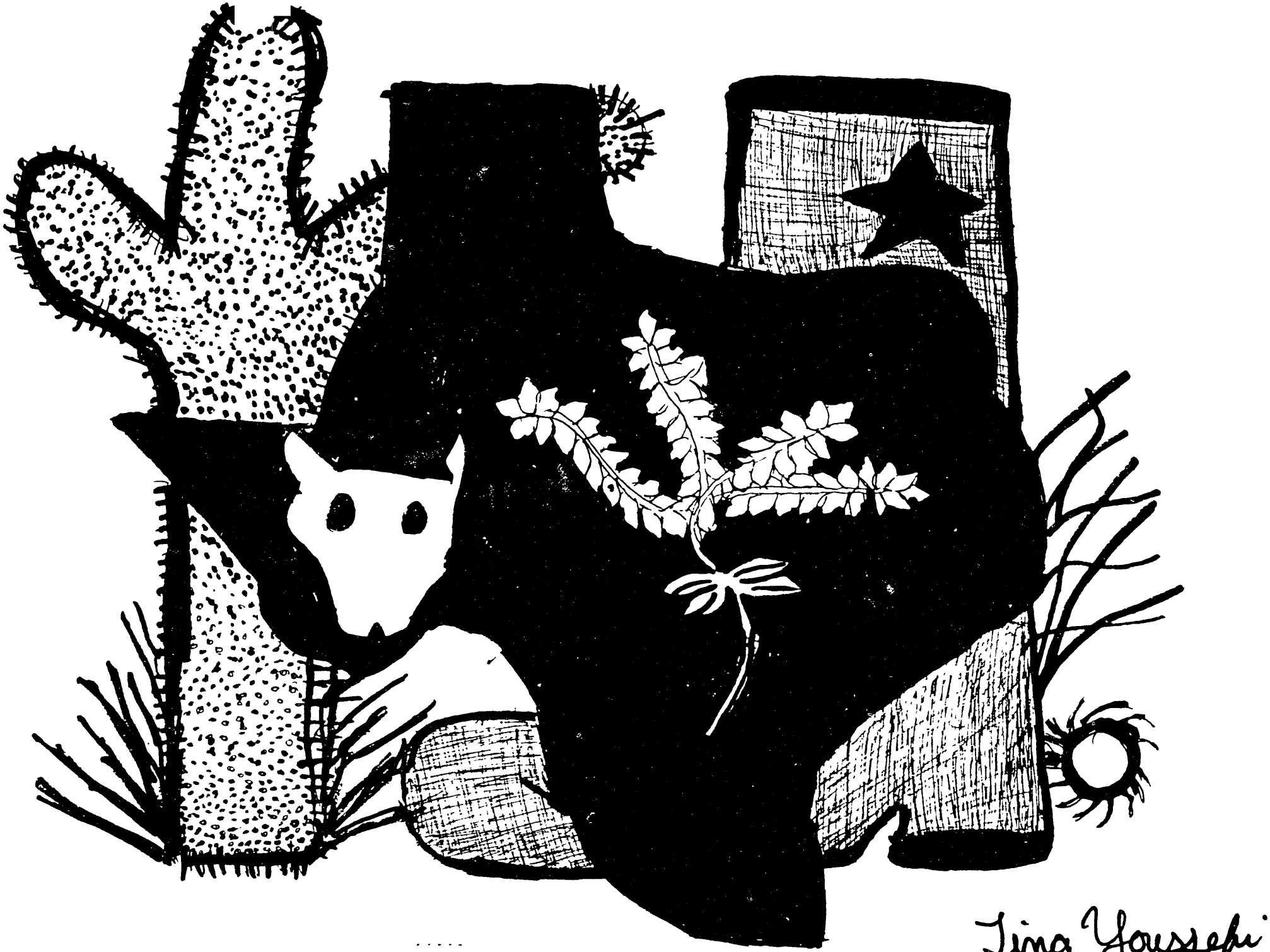
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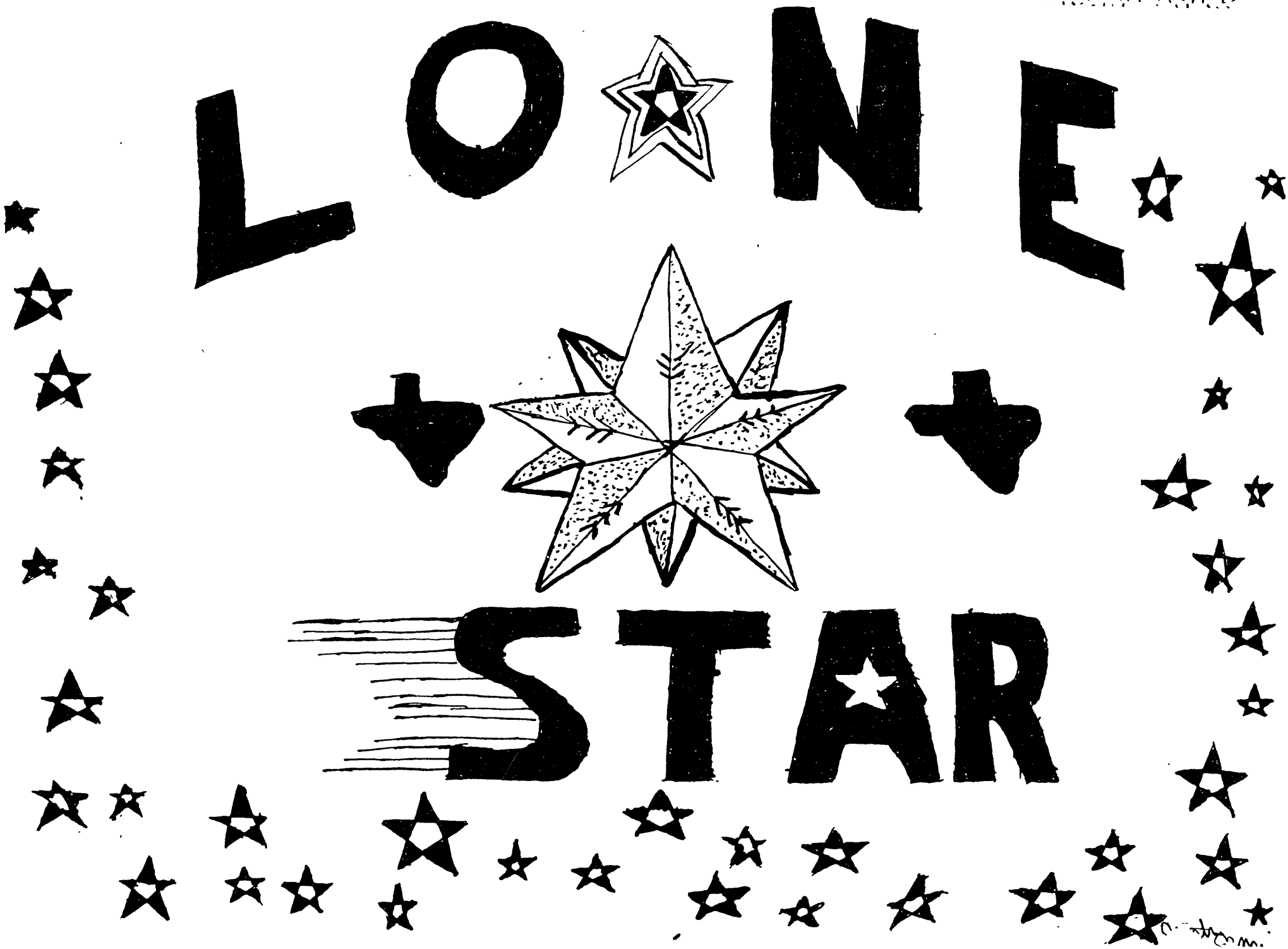
SAXEH
Brady Harris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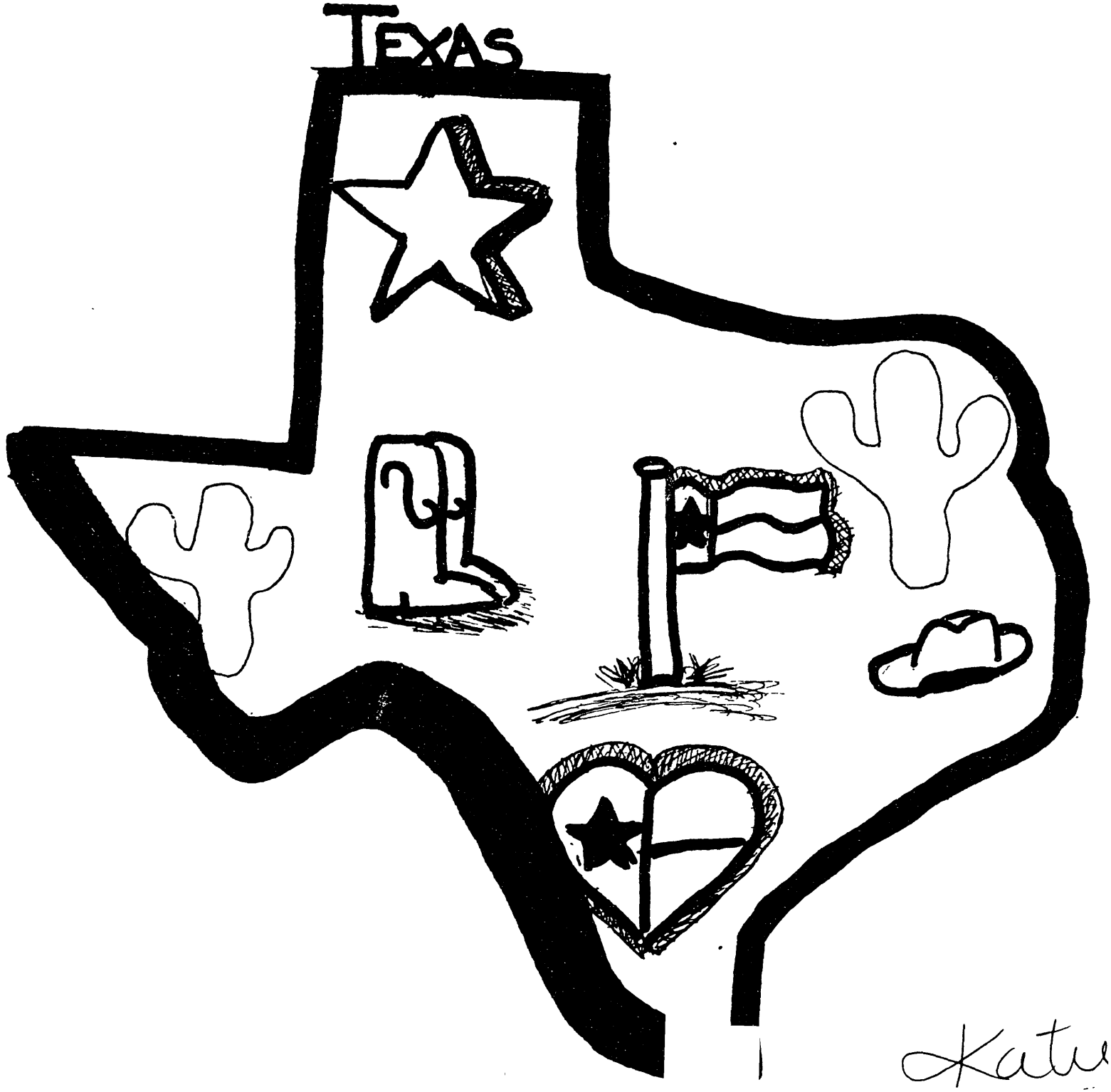
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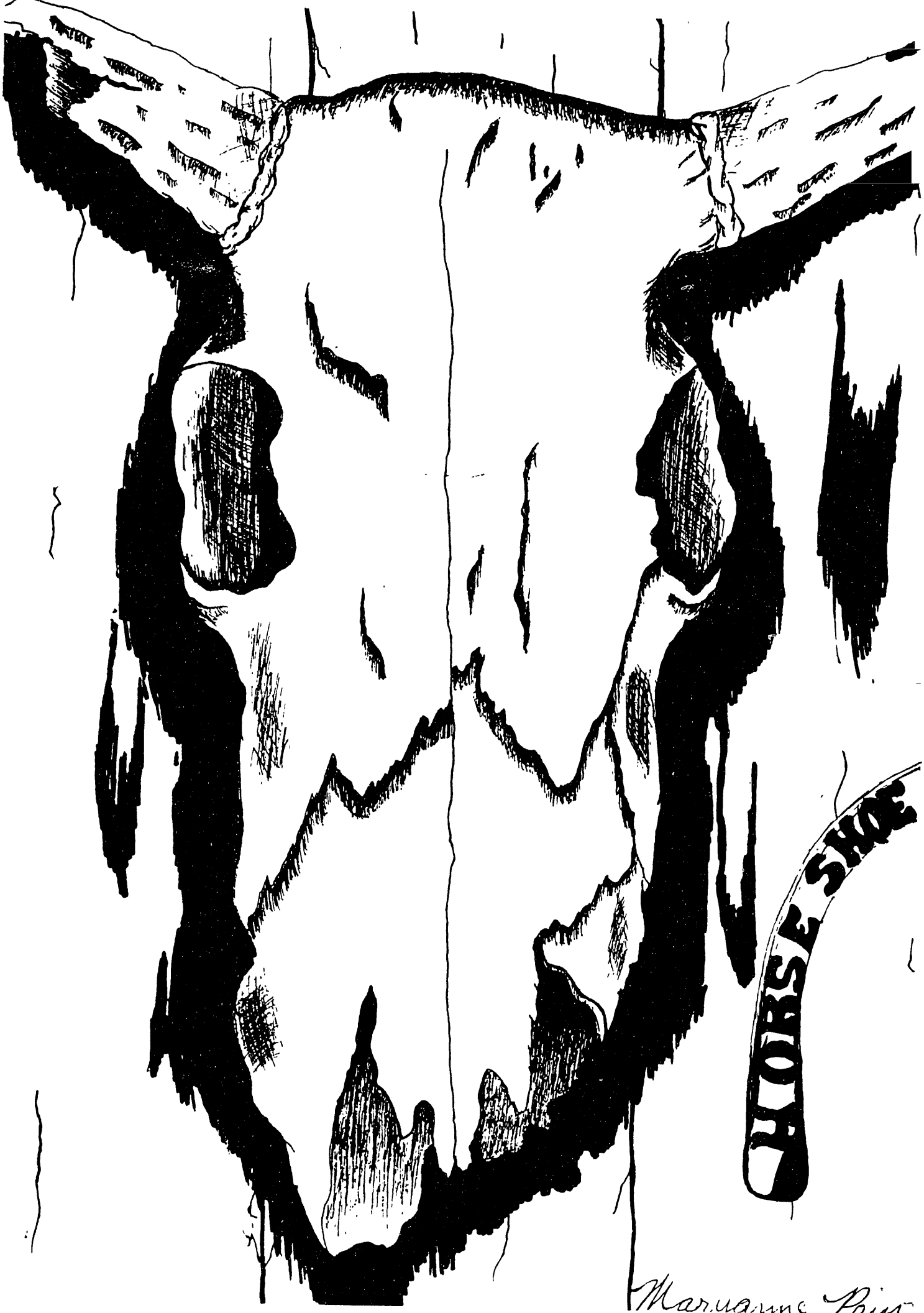
HORSE SHOE

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made April 1, 1994

To be **Judge of the 288th Judicial District Court, Bexar County**, until the next General Election and until his successor shall be duly elected and qualified: Don McManus, 8810 Spanish Moss, San Antonio, Texas 78239. Mr. McManus will be replacing Judge Raul Rivera of San Antonio, who retired.

Appointments Made April 5, 1994

To be a member of the **State Board of Barber Examiners** for a term to expire January 31, 1999: Alan E. Warrick, 6926 Country Dawn, San Antonio, Texas 78240-4440. Mr. Warrick will be replacing Santa Robles Morales of Brownsville, whose term expired.

To be a member of the **Texas Cosmetology Commission** for a term to expire December 31, 1999: Robin Denise Crump, 1314 Paseo Del Cobre, Temple, Texas 76502. Ms. Crump will be replacing Evelyn Hunter of Dallas, whose term expired.

To be **Chairman of the General Services Commission** for a term at the pleasure of the Governor: Parker C. Folse III of Houston. Mr. Folse will be replacing Ronald Kirk of Dallas, who is no longer a member of the commission.

To be **Chairman of the Texas Racing Commission** for a term at the pleasure of the Governor: A. L. Mangham, Jr. of Nacogdoches. Mr. Mangham will be replacing Pat Pangburn, who has resigned as chair but will remain on the commission.

Issued in Austin, Texas on April 8, 1994.

TRD-9438833 Ann W Richards
Governor of Texas

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Appointments Made April 12, 1994

To be a member of the **State Board of Examiners for Speech Language Pathology and Audiology** for a term to expire August 31, 1999. Jon K. Ashby, Ph.D., 866 Canyon Court, Abilene, Texas 79601. Dr. Ashby will be replacing Susan Gay Dorsett of Stephenville, whose term expired.

To be a member of the **State Board of Examiners for Speech Language Pathology and Audiology** for a term to expire August 31, 1999: Deloris Marie Johnson, 3525 Attucks Street, Houston, Texas 77004 Ms. Johnson will be replacing Saundra Carson Waters of Houston, whose term expired

To be a member of the **State Board of Examiners for Speech Language Pathology and Audiology** for a term to expire August 31, 1999: Teri Mata-Pistokache, P.O. Box 720256, McAllen, Texas 78504. Ms. Mata-Pistokache is being reappointed

To be a member of the **State Board of Examiners for Speech Language Pathology and Audiology** for a term to expire August 31, 1999: Peter S Roland, M.D., 2117 Clearspring Drive South, Irving, Texas 75063. Dr. Roland will be filling the unexpired term of Dr. Drew Sawyer of Austin, who resigned.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire August 31, 1999. Thelma Sanders Clardy, 1117 Bluffview Drive, DeSoto, Texas 75115. Ms. Clardy will be replacing Mary Scruggs of Plano, whose term expired.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire August 31, 1999: J. Randolph Burton, 18418 Snowwood Drive, Spring, Texas 77388. Mr Burton will be replacing Edward turner of Amarillo, whose term expired.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire August 31, 1999. Sylvia A. Martinez-Flores, 1107 65th Street, Lubbock, Texas 79412. Ms Martinez-Flores will be replacing Don T. O'Bannon, Jr of Dallas, whose term expired.

To be a member of the **Angelina and Neches River Authority Board of Directors** for a term to expire September 5, 1999: Janelle C. Ahsley, 4319 Mystic Lane, Nacogdoches, Texas 75961. Dr. Ashley will be replacing Joyce Swearingen of Nacogdoches, whose term expired

To be a member of the **Angelina and Neches River Authority Board of Directors** for a term to expire September 5, 1999: Martin Heines, 419 Stanford, Tyler, Texas 75701. Mr Heines will be replacing John Phillip Friesen of Lufkin, who resigned.

To be a member of the **Guadalupe-Blanco River Authority Board of Directors** for a term to expire February 1, 1999: T. L Walker, 310 Lakeview Terrace, New Braunfels, Texas 78130 Mr. Walker will be filling the unexpired term of Olga Lara, who resigned.

Issued in Austin, Texas on April 13, 1994

TRD-9439064 Ann W Richards
Governor of Texas

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TEX
DISNEYLAND
HOUSTON OILERS
SPRAY PAIN BLAST
HOLLYWOOD

TEXAS ETHICS COMMISSION

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

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

Texas Ethics Commission

Opinions

EAO-186. Concerning whether a recent amendment to the Penal Code, §36.10, will make a city's provision of free parking to a member of the legislature permissible under the Penal Code, §36.08, and if so, whether there are any applicable reporting requirements. (AOR-191).

Summary of Opinion. After September 1, 1994, a city's provision of free parking for legislators on any property or at any facility "owned, leased, or operated" by the city will not be prohibited by the Penal Code, §36.08(f) . Legislators are not required to report a city's provision of free parking on a personal financial statement filed under the Government Code, Chapter 572.

EAO-187. Concerning whether it is permissible for Texas Department of Criminal Justice employees to accept gratuities from communities or community groups in which department facilities are located. (AOR-207).

Summary of Opinion. The gift prohibitions in the Penal Code, §36. 08, are applicable to gifts from cities and counties. Those prohibitions do not apply to gifts routinely given to new residents of the city or county by a community group such as a chamber of commerce.

EAO-188. Concerning whether a legislative advertising disclosure statement is required in particular circumstances. (AOR-210).

Summary of Opinion. A photocopy or reprint of a newspaper editorial supporting, opposing, or proposing legislation does not need to include a legislative advertising disclosure statement. The legislative advertising disclosure requirement is triggered whenever legislative advertising is printed, published, or broadcast pursuant to a contract or other agreement, regardless of the amount of consideration offered or received in connection with the agreement. A legislative advertising disclosure is required only for communications that support, propose, or oppose specific legislation, communications that merely support or oppose a general point of view on a given topic do not need to carry the disclosure. The disclosure may be required on communications whether or not the legislature is currently in session.

EAO-189. Concerning whether the exception to the definition of political expenditure in the Election Code, §251.008, is applicable to certain expenditures made by a political club. (AOR-212).

Summary of Opinion. For purposes of the Election Code, §251.008, expenses "in connection with" a speaker's appearance before a club include expenditures for meals, a meeting room, insurance for the meeting, decorations, food, advertising, and travel expenses. If the speaker makes use of the travel provided by the club to engage in other campaign activity, a reasonably apportioned amount of the travel expenses would be a campaign contribution to the candidate.

EAO-190. Concerning whether a member of the state legislature may ask state employees to prepare and mail Christmas cards to constituents. (AOR-213).

Summary of Opinion. A member of the legislature may not use the work time of state employees to prepare and mail Christmas cards to the legislator's constituents. A member of the legislature may use political contributions to purchase, prepare, and mail Christmas cards

EAO-191. Concerning whether a member of the state legislature may accept a loan of computer equipment from a private company. (AOR-215).

Summary of Opinion. A legislator may accept a loan of computer equipment from a private company only if acceptance is permissible under the Penal Code, §36.10 and Election Code, §253.094.

A legislator may accept as an officeholder contribution a loan of computer equipment to be used to train constituents to obtain government information. A legislator may not, however, accept an officeholder contribution from a corporation State resources may not be used in connection with computer training unless the training constitutes a state purpose Equipment accepted as an officeholder contribution may not be converted to personal use.

EAO-192. Concerning whether a state employee may accept outside employment with a private company to consult with and assist the company in developing training programs and materials. (AOR-216)

Summary of Opinion. In addition to agency policy and laws applicable to specific agencies, the Penal Code, §36 07 and §36.08 and the Government Code, Chapter 572, may restrict outside employment by state employees.

EAO-193. Concerning whether a member of the legislature may use state resources to perform "routine [legislative] duties" for constituents in a geographical area that will become part of his district in 1995. (AOR-217).

Summary of Opinion. A member of the legislature may use state resources to provide the type of legislative assistance he provides to residents of his current district to a person who lives in a geographical area that will become part of the legislator's district in 1995

EAO-194. Concerning whether a legislator who has either a "controlling interest or substantial interest in a broker-dealer" may represent the broker-dealer before a state agency even if the legislator is not paid specifically for that representation (AOR-218)

Summary of Opinion. Whether a particular situation involves compensation for representation before a state agency for purposes of the Government Code, §572 052, depends on the exact nature of a specific financial arrangement

EAO-195. Concerning whether a local elected official may reimburse his personal funds from political contributions (AOR-219).

Summary of Opinion. An elected official may use political contributions to reimburse his personal funds for officeholder expenditures if the elected official reported the expenditures in accordance with the Election Code, §253.035(h).

EAO-196. Concerning whether a person appointed by a judge to perform the duties of a district attorney under Local Government Code, §87 017(a), and who is a candidate for that office, may describe himself as the holder of the office of district attorney in campaign literature. (AOR-221).

Summary of Opinion. Under Election Code, §255.006, a candidate appointed pursuant to Local Government Code, §87.017(a), to perform the duties of a district attorney may not describe himself in campaign literature as the holder of the office of district attorney.

EAO-197. Concerning whether a former supervisor of hearings examiners for a state agency may represent parties in administrative hearings before the agency. (AOR-222)

Summary of Opinion. A former state agency employee subject to §572.054(b) may represent a person before his former agency so long as he does not work on a matter in which he participated or for which he had responsibility as a state employee. Further, a former employee may work on matters that are similar to matters he worked on as a state employee, and he may work for a person or entity that he dealt with as a state employee, as long as he does not work on a matter he worked on as a state employee or a matter over which he had responsibility as a state employee.

EAO-198. Concerning whether a corporation may make expenditures to communicate various types of information concerning an election to its employees, retirees, and their family members (AOR-223).

Summary of Opinion. A corporation is prohibited by Election Code, §253.094 from making expenditures to communicate with its employees, retirees and their families about an election only if the communication "expressly advocates" the defeat or election of an identified candidate, as that term has been used by the United States Supreme Court. The inclusion of words such as "vote for," "elect," "support," "defeat," "reject," or "Smith for Senate" would clearly constitute express advocacy. Whether communications including candidates' voting records and positions on issues, poll results, and third-party endorsements constitute express advocacy would depend on the precise language of the communication.

EAO-199. Concerning whether a retiring judge may use political contributions to pay for a portrait of himself to be hung in the county courthouse. (AOR-224).

Summary of Opinion. A retiring judge may use political contributions to pay for a portrait of himself to be hung in the county courthouse.

EAO-200. Concerning whether contributions to a political committee for a seminar to help women develop influencing skills are political contributions and whether expenditures for the seminar are political expenditures for purposes of the Election Code, Title 15. (AOR-225).

Summary of Opinion. A contribution to a political committee given with the restriction that it be used to conduct a seminar unrelated to candidates or measures is not a political contribution. Similarly, expenditures for such a seminar would not be political expenditures.

EAO-201. Concerning whether it would be a violation of any of the laws interpreted by the Texas Ethics Commission for a member of the legislature to be a stockholder/owner of a home-health care agency that seeks Medicare, but not Medicaid, reimbursement. (AOR-226).

Summary of Opinion. The statutes within the Ethics Commission's jurisdiction do not prohibit a legislator from owning any particular kind of business. There could be a situation in which a legislator's interest in a home health care agency would require the legislator to abstain from voting on a measure.

EAO-202. Concerning whether reasonable reliance on a rule adopted by the Texas Ethics Commission has the same effect as reliance on an advisory opinion (AOR-229).

Summary of Opinion. A person acting in reasonable reliance on a rule adopted by the Ethics Commission may rely upon such a rule as if it were an advisory opinion

EAO-203. Concerning whether the Texas Board of Nursing Facility Administrators is a major state agency. (SP-2).

Summary of Opinion. The Texas Board of Nursing Facility Administrators is a major state agency for purposes of the Government Code, Chapter 572.

The Texas Ethics Commission is authorized by the Government Code, Chapter 571, Subchapter D, §1.29, to issue advisory opinions in regard to the following statutes. (1) the Government Code, Chapter 572, Subchapter D, (2) Government Code, Chapter 302; (1) Government Code, Chapter 305; (3) Election Code, Title 15; (5) Penal Code, Chapter 36, and (6) Penal Code, Chapter 39.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on April 5, 1994.

TRD-9438800

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: April 7, 1994

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PROPOSED RULES

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

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part XVI. Council on Competitive Government

Chapter 401. Administration

Subchapter B. Council Meeting Guidelines and Requirements

• 1 TAC §401.22

The Council on Competitive Government proposes an amendment to §401. 22(a), concerning council members' designees. The amendment widens and diversifies the pool of potential individuals that may serve as designees and act on behalf of the members of the council.

John Pouland, clerk of the council on competitive government, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Pouland also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be council members being able to appoint designees from a wider and more diverse pool of candidates There will be no effect on small businesses

Comments on the proposal may be submitted to John Pouland, Clerk of the Council on Competitive Government, Care of the General Services Commission, P. O Box 13047, Austin, Texas 78711-3047 Comments must be received no later than 30 days from the date of publication of the proposed change in the *Texas Register*

The amendments are proposed under Texas Civil Statutes, Article 601b, §15. 06, Subsection(1), which invest the Council on Competitive Government with the authority to promulgate rules necessary to administer its functions under Texas Civil Statutes, Article 601b, Article 15.

§401 22. Designees.

(a) Council members may designate **individuals** [staff from their respective agencies or offices] to act on their behalf Council members shall notify the clerk in writing of designated **individuals** [staff] authorized to act and vote on the member's behalf in connection with council business and deliberations.

(b)-(c) (No change)

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

Issued in Austin, Texas, on April 7, 1994

TRD-9438797 John Pouland
Clerk
Council on Competitive Government

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 463-3448

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 2. General Policies and Procedures

• 13 TAC §§2.11, 2.51, 2.52

The Texas State Library and Archives Commission proposes new §§2.11, 2. 51, and 2.52, concerning fees for providing copies of public records and other services, registration requirements for customers, and the provisions under which services are provided The fee schedule adopted is consistent with guidelines for fees to provide public records proposed by the General Services Commission to implement the provisions of House Bill 1009, Acts 73 Legislature except the charge for over-size paper copies is less The new sections set related fees for services other than the provision of public records The sections also describe who is eligible for specific services and under what conditions service would be denied

Raymond Hitt, Assistant State Librarian, has determined that for the first five-year period the sections are in effect there will be an estimated revenue loss of $1,925 in 1994 and $7,700 for each year between 1995 and 1999 for state government. There is no effect on local government or small businesses as a result of enforcing or administering the sections.

Mr. Hitt also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the more consistent implementation of the Open Records Act throughout state government at slightly reduced costs for copies of public documents There is no additional anticipated economic cost to persons who are required to comply with these sections as proposed.

Comments on the proposal may be submitted to Raymond Hitt, Assistant State Librarian, Texas State Library, P.O Box 12927, Austin, Texas 78711-2927

The new sections are proposed under the Government Code, §441.006 and §603 004(b), which provide the Texas State Library and Archives Commission with the authority govern the State Library and to establish copy fees

The following are the statutes that are affected by these sections. Texas Government Code, §§441 006, 552 261, and 603.004(b), Chapter 428, Acts, 73 Legislature, Regular Session (1993)

§2 11 Definitions The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise

Library-The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the Commission responsibilities.

Loan Period-A period of time beginning with the date the Library delivers or mails an item to a customer and ending with the date that the customer returns it to the Library.

Over-size paper copy-Any printed impression on paper larger than 8 1/2 inches by 14 inches. Each side of a piece of paper is counted as a single-copy A piece of paper that is printed on both sides is counted as two copies

State Archives–A non-circulating collection of Texas state government records, private papers, maps, photographs, newspapers, and published materials that document the history of the State of Texas and the growth and actions of its government.

§2.51. Public Record Fees.

(a) Charges for Public Records. The Library will charge for reproductions of materials from its collections of library and archival materials that are maintained for public reference, for copies of public records of other agencies stored in the State Records Center, and for records of the Texas State Library and Archives Commission as follows:

(1) standard-size paper copy is $ 10 per page;

(2) over-size paper copy is $.30 per page;

(3) diskette is $1.00 each;

(4) magnetic tape is $10.00 each,

(5) VHS video cassette is $2.50 each;

(6) audio cassette is $1 00 each;

(7) standard-size paper copy from microfiche or microfilm is $.10 per page,

(8) over-size paper copy from microfiche or microfilm is $0.30,

(9) midsize computer resource is $3 00 per minute;

(10) personal computer resource is $.50 per minute;

(11) programming is $26.00 per hour;

(12) local fax is $.10 per page,

(13) long distance fax, same area code, is $ 50 per page;

(14) long distance fax, different area code, is $1.00 per page;

(15) certification of copies is $1 00 per instrument, which may include several pages with certification required only once;

(16) if a customer requests reports printed from digital information resources, the reports will be billed at the page rate for paper copies.

(17) the Library will rent 4 x 5 inch transparencies for a 90 day period for the purpose of publication or color reproduction. The Library will charge $30.00 per transparency;

(18) supplies, postage, shipping, and other expenses are billed at actual costs;

(19) the Library will arrange for the duplication of photographic images in its archival collections for $5.00 per image plus commercial photo reproduction costs and postage;

(20) third party fees. A customer will be billed for third party access or use charges. Examples of services where use charges might occur include:

(A) digital information resources available through online services, bulletin boards, or data bases, etc.;

(B) document delivery or interlibrary loan services for providing materials or copies;

(21) minimum fee. The minimum charge for any service requiring preparation of an invoice is $1.00.

(b) Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).

(c) Labor Charges. The Library will not charge for labor or overhead to retrieve materials or records or research questions. If computer programming is necessary, the Library will charge for labor to retrieve digital information in response to an information request.

(d) Copies for Official Business. There will be no charge for one copy of any document or public record requested by an officer or employee of the state in the performance of their duties. There will be no charge for persons affiliated with agencies of local governments or public or private libraries or schools of library and information science.

(e) Charges to Blind and Physically Disabled Persons. There will be no charge for copying and mailing materials to registered customers of the Talking Book Program

(f) Records of Third Parties The Library will not provide copies of or access to the records of other agencies housed in the State Records Center without written permission of the agency.

§2.52. Customer Service Policies

(a) Registration.

(1) Texas state employees and persons affiliated with state or local governments in Texas, staff of public, academic, special, or school libraries, and faculty or students of graduate schools of library and information science in Texas must register each year in person, by telecommunications or mail. Registration includes providing the following information:

(A) place of employment or study, address and telephone number;

(B) home address and telephone number; and

(C) driver's license or date of birth.

(2) Others must register each year in person, presenting current photo identification with an address, sign a registration agreement, and provide the information detailed in subsection (a)(1) of this section. The signed registration is kept on file.

(3) No corporations, libraries, or groups may register; only individuals who are 16 years or older may register. However, persons under age 16 are welcome to use the services if supervised by a registered customer. Persons age 12 or younger are not admitted in the State Archives reference room; however, they may use other services and facilities of the Library under supervision of an adult.

(4) Customers without acceptable photo identification or other information may be registered temporarily for supervised use of materials at the Library; however, customers without a work or home address in Texas may not check out circulating materials.

(b) Loan Periods.

(1) Loans of circulating items are 4 weeks with the following exceptions:

(A) current issues of journals and newspapers are loaned for two hours during periods of low demand, and library science journals are loaned for four weeks; otherwise journals do not circulate;

(B) video materials are loaned for three weeks;.

(C) materials are loaned to other libraries for five weeks;.

(D) collection development materials are loaned for eight weeks.

(2) Renewal of Loans.

(A) Loans may be renewed twice for two weeks each time if there are no reserves on the item.

(B) Customers may renew loans in person, by telecommunications or mail

(C) Libraries may renew interlibrary loans once if there are no reserves on the item.

(D) Overdue materials may be renewed.

(3) Number of Items Per Customer.

(A) The number of circulating items that may be borrowed at one time is not limited, except that a customer may only borrow 6 reels of microfilm at one time.

(B) Additional restrictions apply to the State Archives. Only one box, one pension application, case file, bill file, or map may be used at a table at a time. No more than five volumes may be on a table at a time. Only one folder may be removed from a box at a time. Added materials may be requested and kept on a book truck or at a research assistants' desks.

(c) Overdue and Lost Items

(1) Each customer is responsible for items checked out in their name until they are returned to the circulation desk of the collection from which they were borrowed. Items may be returned by either of the following.

(A) U.S. mail services to Texas State Library, Box 12927, Austin, Texas 78711-2927;

(B) Interagency mail or commercial delivery services to Texas State Library, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin, Texas 78701-1938.

(2) There is no fine for overdue items

(3) The costs of replacement are assessed for lost items

(4) An invoice for the value of an item is sent when it is six weeks overdue

(5) For government publications the replacement cost is the current price or $0 10 per page.

(d) Exhibition of State Archives. No achival material, historical items, artifacts, or museum pieces will be loaned for public exhibition except that items may be temporarily loaned to the State Preservation Board for display in the Capitol Complex Visitors Center under conditions specified in writing by the Director and Librarian.

(e) Services Requiring Registration. Customers must be registered to check out materials, request interlibrary loans of materials, use password services, or receive services for fees.

(f) Password Services. Some information services provided by telecommunications are limited to state employees or to staff of participating libraries and require a valid password for access.

(g) Suspension of Service.

(1) Borrowing privileges may be suspended permanently for failures to return materials on time more than four times a year

(2) Services at the Library may be suspended for six months for smoking in a facility of the Commission or eating or drinking in a reading or reference room.

(3) Services at the Library may be suspended for behavior that is threatening, harassing, or obscene toward staff or other customers If the service can be provided though an alternate method that eliminates the problem behavior, for example mail instead of telephone or telephone rather than at the Library, the service will be provided.

(4) Theft or destruction of state resources or property will result in suspension of all services immediately.

(5) Prior to a permanent suspension of service, a customer will be notified in writing of the problem and provided an opportunity to respond by a certain date if the customer has a known mailing address

(h) Confidential Records. Records that identify a person who requested, obtained, or used an library item or service are confidential under the Texas Open Records Act (Texas Civil Statutes, Article 6252-17A).

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 April 7, 1994

TRD-9438827 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption May 20, 1994

For further information, please call: (512) 463-5460

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter F. Licensing Persons with Criminal Backgrounds

- **16 TAC §303.202**

The Texas Racing Commission proposes an amendment to §303.202, concerning guidelines for licensing persons with criminal backgrounds. The amendment adds offenses to the list of crimes the Commission finds directly relate to the types of occupational licenses issued by the Commission and revises the chart that correlates the various types of licenses to the offenses.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of licensees, patrons, and race animals will be secure. There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before call May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §7.02, which authorizes the Commission to adopt rules specifying the qualifications and experience required for licensing, and Texas Civil Statutes, Article 6252-13d, which requires the Commission to adopt guidelines relating to criminal offenses and occupational licenses. The proposed rule implements Texas Civil Statutes, Article 6252-13d as it relates to the Texas Racing Commission

§303.202 Guidelines

(a) In accordance with state law, the commission has developed guidelines relating to the suspension, revocation, or denial of occupational licenses based on criminal background The offenses that the commission has determined are directly related to the occupational licenses issued by the commission are

(1) (No change)

(2) an offense relating to racing, pari-mutuel wagering, [or] gambling , **or prostitution,**

(3) **a felony offense of assault, such as those described by Penal Code, Chapter 22** [an offense involving moral turpitude],

(4)-(11) (No change)

(b) (No change)

(c) Based on the factors described in subsection (b) of this section, the commission has determined that the offenses described in subsection (a) of this section are directly related to the following occupa-

tional licenses. (An "X" on the chart means the offense directly relates to the license.)

	Pony Person	Racing Industry Representative	Security Officer	Stable Foreman	Tattooer	Test Technician	Tooth Floater	Tote Technician	Trainer	Valet	Vendor/ Concessionaire	Vendor/Concess. Employee	Veterinarian	Veterinarian's Assistant								
Offense for which fraud, dishonesty, or deceit is an essential element.		X	X	X	X	X		X	X	X	X	X	X	X								
Offense under law of Texas or another state relating to racing, pari-mutuel wagering, gambling, or prostitution	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Felony assault	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Criminal homicide	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Burglary	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Robbery	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Cruelty to Animals	X	X	X	X	X	X	X		X				X	X								
Theft	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Possession, delivery or manufacture of a controlled substance, dangerous drug, or abusable glue	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Arson	X	X	X	X	X	X	X	X	X	X	X	X	X	X								
Felony Driving While Intoxicated	X		X	X		X			X				X									

	Admissions Person	Adoption Program Personnel	Announcer	Apprentice Jockey	Association - Office Staff	Association - Other	Association Chaplain	Association Judge/Steward	Association Asst. Mgt Personnel	Association Mgt Personnel	Association Officer/Director	Association Veterinarian	Asst. Starter	Asst. Trainer	Asst. Trainer/ Owner	Authorized Agent	Box Person	Cool-Out	Entry Clerk	Exercise Rider	Farrier/Plater Blacksmith
Offense for which fraud, dishonesty, or deceit is an essential element.	X		X	X		X		X	X	X	X	X	X	X	X	X	X		X		
Offense under law of Texas or another state relating to racing, pari-mutuel wagering, gambling, or prostitution	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Assault	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Criminal homicide	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Burglary	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Robbery	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cruelty to Animals		X		X		X		X		X	X	X	X	X	X		X	X		X	X	X
Theft	X			X		X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Possession, delivery or manufacture of a controlled substance, dangerous drug, or abusable glue	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Arson	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Driving While Intoxicated				X				X		X		X	X	X	X		X			X	X	X

	Farrier/Plater	Blacksmith's Asst.	Food Service	Groom	Jockey	Jockey Agent	Kennel Helper	Kennel Owner	Kennel Owner/ Owner	Kennel Owner/ Owner/Trainer	Kennel Owner/ Trainer	Leadout	Maintenance	Marketing Staff	Medical Staff	Mutuel- Other	Mutuel Clerk	Official	Outrider	Owner	Owner/Trainer	Parking Attendant
Offense for which fraud, dishonesty, or deceit is an essential element				X	X		X	X	X	X	X				X	X	X		X	X	X
Offense under law of Texas or another state relating to racing, pari-mutuel wagering, gambling, or prostitution	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Assault	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Criminal homicide	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Burglary	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Robbery	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cruelty to Animals	X		X	X	X	X	X	X	X	X	X						X	X	X	X		
Theft	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X
Possession, delivery or manufacture of a controlled substance, dangerous drug, or abusable glue	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Arson	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Driving While Intoxicated			X	X	X	X	X	X	X	X		X		X			X	X	X	X	X	X

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 April 8, 1994

TRD-9438910 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call (512) 794-8461

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Chapter 305. Licenses for Pari-mutuel Racing

Subchapter B. Indiviudal Liceneses for Pari-mutel Racing

Specific Licenses

• 16 TAC §305.43

The Texas Racing Commission proposes an amendment to §305.43, concerning lessees and lessors of race animals The amendment deletes the requirement that a lease for a race animal be in a format subject to Commission approval

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

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the Commission's occupational licensing program will be more efficient. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §7 02, which authorizes the Commission to adopt rules specifying the qualifications and experience required for licensing

The proposed rule implements Texas Civil Statutes, Article 179e

§305.43. Lessee/Lessor

(a) A race animal may be raced under lease provided a completed [Texas Racing Commission, breed registry, or other] lease form [acceptable to the commission] is attached to the registration certificate and is on file with the commission. A copy of the lease must be provided to the stewards, racing judges, or their designee at the time of application for an owner's license.

(b) (No change.)

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 April 8, 1994.

TRD-9438909 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call. (512) 794-8461

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Chapter 309. Operation of Racetracks

Facilities for Horses

• 16 TAC §309.152

The Texas Racing Commission proposes an amendment to §309 152, concerning the isolation area at pari-mutuel horse racetracks The amendment decreases from eight to four the minimum number of stalls required in the isolation area of a Class 1 racetrack

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

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that horses racing at Class 1 facilities will have quality care at an economical cost. There will be fiscal implications for Class 1 racetracks. The cost of building an isolation area should decrease because of the decrease in the number of stalls The exact amount of savings cannot be determined, however, because of the numerous variables involved in constructing an isolation area. There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O. Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety

§309.152. Isolation Area.

(a) (No change.)

(b) The isolation area must have stalls constructed of concrete block or masonry with a concrete floor for proper cleaning and disinfection. Each stall must have a floor area of at least 144 square feet and be at least 12 feet wide The isolation area must have[:]

[(1) at a Class 1 racetrack, at least eight stalls; and

[(2) at a Class 2 or 3 racetrack,] at least four stalls.

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

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

Issued in Austin, Texas, on April 8, 1994

TRD-9438899 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 794-8461

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Chapter 311. Conduct and Duties of Individuals

• 16 TAC §311.1

The Texas Racing Commission proposes an amendment to §311.1, concerning the applicability of Chapter 311 of the Commission's rules The amendment expands the group of people to whom the provisions in Chapter 311 apply to include patrons and other people on the grounds of pari-mutuel racetracks.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses. There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06,

which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety; and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race. The proposed rule implements Texas Civil Statutes, Article 179e.

§311.1. Applicability. This is chapter applies to:

(1) all persons [individuals] licensed by the commission , either in an occupational capacity or by virtue of the person's ownership in a racetrack licensee; and

(2) all persons, whether or not licensed by the commission, whose actions may affect the outcome of a pari-mutuel race, the payout of a pari-mutuel pool, or the health, safety, or welfare of individuals on association grounds

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 April 8, 1994

TRD-9438908 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 794-8461

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• 16 TAC §311.2

The Texas Racing Commission proposes an amendment to §311 2, concerning the use of best effort in pari-mutuel races The amendment expands the group of people to whom the section applies to include patrons and other people on the grounds of pari-mutuel racetracks and clarifies its applicability to pari-mutuel races

Paula Cochran Carter, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race The proposed rule implements Texas Civil Statutes, Article 179e

§311.2. Best Before

(a) (No change)

(b) A person [licensee] may not

(1) instruct a licensee [person] to use less than the licensee's [person's] best efforts to win a pari-mutuel race; or

(2) handle a horse or greyhound in a manner that would cause the horse or greyhound to use less than its best efforts to win a pari-mutuel race.

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 April 8, 1994

TRD-9438907 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 794-8461

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• 16 TAC §311.4

The Texas Racing Commission proposes an amendment to §311 4, concerning prohibition of bribes relating to pari-mutuel racing The amendment expands the group of people to whom the section applies to include patrons and other people on the grounds of pari-mutuel racetracks

Paula Cochran Carter, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14 03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race The proposed rule implements Texas Civil Statutes, Article 179e

§311.4 Bribes Prohibited

(a) A person [licensee] may not

(1) directly or indirectly offer or give a bribe to another [a] person to violate the Act or a rule of the commission, or

(2) solicit or accept a bribe from another [a] person to violate the Act or a rule of the commission

(b) (No change)

(c) A person [licensee] may not offer, give, solicit, or accept a bribe to purchase or cash a mutuel ticket for another person

(d) A licensee shall notify the commission immediately if the licensee knows that a person [another licensee] has violated this section

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 April 8, 1994

TRD-9438906 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 794-8461

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• 16 TAC §311.5

The Texas Racing Commission proposes an amendment to §311 5, concerning illegal wagering at pari-mutuel racetracks and pari-mutuel wagering by certain licensees The amendment expands the group of people to whom the prohibition of illegal wagering applies to include patrons and other people on the grounds of pari-mutuel racetracks The amendment also deletes references to racetrack and association officials to be consistent with other Commission rules

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms Carter also has determined that for each of the first five years the section is in effect

the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, §11 04, which authorizes the Commission to adopt rules regulating wagering by occupational licensees; and §14 03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race The proposed rule implements Texas Civil Statutes, Article 179e

§311 5 Wagering

(a) A person [licensee] other than an association may not solicit or accept wagers from the public on the outcome of a pari-mutuel horse or greyhound race

(b) (No change)

(c) The following licensees are prohibited from wagering in the state of Texas during the term of their license

(1) all [racetrack and association] officials, and

(2) (No change)

(d) (No change)

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

Issued in Austin, Texas, on April 8, 1994

TRD-9438905 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 794-8461

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• 16 TAC §311.6

The Texas Racing Commission proposes an amendment to §311 6, concerning the prohibition against improperly influencing the outcome of a race The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

Paula Cochran Carter, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14 03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race The proposed rule implements Texas Civil Statutes, Article 179e

§311 6 Influence of Race Prohibited

(a) A person [licensee] may not improperly influence or conspire or attempt to improperly influence the results of a race

(b) A person [licensee] may not possess on association grounds or use a device designed to increase or decrease the speed of a horse other than an ordinary riding whip

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 April 8, 1994

TRD-9438904 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 794-8461

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• 16 TAC §311.8

The Texas Racing Commission proposes an amendment to §311 8, concerning the prohibition against giving false information regarding a race animal's performance or eligibility The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

Paula Cochran Carter, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14 03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race The proposed rule implements Texas Civil Statutes, Article 179e

§311 8 Performance [False] Information A person [licensee] may not give false or misleading information about the performance of a horse or greyhound for publication in a printed program or racing publication or for purposes of establishing eligibility or fitness to race

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 April 8, 1994

TRD-9438903 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 794-8461

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• 16 TAC §311.9

The Texas Racing Commission proposes an amendment to §311 9, concerning the prohibition against giving false information to the commission or its agents The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

Paula Cochran Carter, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal

implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure. There will be no effect on small businesses. There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and Government Code, §2001.004, which authorizes the Commission to adopt rules of practice for all formal and informal procedures. The proposed rule implements Government Code, Chapter 2001.

§311.9. Information to Commission.

(a) A **person** [licensee] may not **make a** [give] false statement, **whether oral or written, to** [under oath in a proceeding before] the commission, the executive secretary, **the stewards or racing judges,** or an examiner appointed by the commission or, except in exercising a legal privilege, refuse to testify before the commission, the executive secretary, **the stewards or racing judges,** or an examiner appointed by the commission.

(b) (No change.)

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 April 8, 1994.

TRD-9438902 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call. (512) 794-8461

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• 16 TAC §311.10

The Texas Racing Commission proposes an amendment to §311.10, concerning the conduct of individuals on association grounds. The amendment expands the group of people to whom the requirements apply to include patrons and other people on the grounds of pari-mutuel racetracks.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure. There will be no effect on small businesses. There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety; and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race. The proposed rule implements Texas Civil Statutes, Article 179e.

§311.10 Conduct.

(a) A **person** [licensee] shall behave [at all times] in an orderly manner **while on association grounds.**

(b) A **person** [licensee] may not use offensive, obscene, or threatening language or gestures to **an** [a racetrack or association] official, representatives of the [racing] commission, **or any other person while on association grounds** [another licensee, or a patron].

(c) (No change)

(d) A **person** [licensee] may not enter, [or] attempt to enter, **or assist or attempt to assist another person in entering** the stable or kennel area except through the designated entrances and on showing a valid license badge **or visitor's pass** [A licensee may not assist or attempt to assist another person in entering the stable or kennel area except through the designated entrances and on showing a valid license badge or temporary pass.]

(e) A **person** [licensee] may not interfere with, attempt to interfere with, or conspire with another to interfere with any decision-making process of the stewards or racing judges including, but not limited to, formal and informal disciplinary hearings

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 April 8, 1994.

TRD-9438901 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call: (512) 794-8461

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• 16 TAC §311.11

The Texas Racing Commission proposes an amendment to §311.11, concerning the prohibition against possessing weapons on association grounds. The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

Paula Cochran Carter, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety; and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race. The proposed rule implements Texas Civil Statutes, Article 179e

§311 11. Weapons Prohibited

(a) Except as otherwise provided by this section, a **person** [licensee] may not possess a deadly weapon on association grounds

(b) (No change.)

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 April 8, 1994

TRD-9438900 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call. (512) 794-8461

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Subchapter B. Specific Licensees

Licensees for Horse Racing

• 16 TAC §311.157

The Texas Racing Commission proposes an amendment to §311.157, concerning the procedure for appointing a substitute trainer. The amendment requires the substitution to be approved by the Commission.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure There will be no effect on small businesses. There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety. The proposed rule implements Texas Civil Statutes, Article 179e.

§311.157. Trainer Absent If a trainer must be absent because of illness or any other cause, the trainer shall appoint another licensed trainer to fulfill his or her duties, and promptly report the appointment to the stewards for approval. The absent trainer and substitute trainer have joint responsibility for the condition of the horses normally trained by the absent trainer.

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 April 8, 1994

TRD-9438898 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption. May 20, 1994

For further information, please call: (512) 794-8461

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Chapter 313. Officials and Rules of Horse Racing

Subchapter A. Officials General Provisions

• 16 TAC §313.1, §313.2

The Texas Racing Commission proposes amendments to §313.1 and §313.2, concerning the officials at horse racetracks. The amendments eliminate the distinction between racetrack and association officials, thereby making all officials racetrack officials.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the Commission's rues are consistent with state law, are more easily understood by licensees, and are more effectively enforced. There will be no effect on small businesses There is no economic cost to persons required to comply with the sections as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O. Box 12080, Austin, Texas 78711.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.02, which authorizes the Commission to adopt rules specifying the authority and duties of each official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety. The proposed rules implement Texas Civil Statutes, Article 179e.

§313.1. Racetrack [and Association] Officials.

(a) Except as otherwise provided by this section, the following [racetrack] officials must be present at each horse race conducted in this state:

(1)-(8) (No change.)

(9) a horseshoe inspector; [and]

[(10) any other officials having responsibilities to the commission.

[(b) Except as otherwise provided by this section, the following association officials must be present at each horse race conducted in this state:]

(10)[(1)] a director of racing;

(11)[(2)] a racing secretary and handicapper;

(12)[(3)] an assistant racing secretary;

(13)[(4)] a mutuel manager;

(14) [(5)] a horse identifier;

(15)[(6)] a track superintendent;

(16)[(7)] a jockey room custodian;

(17)[(8)] a stable superintendent;

(18)[(9)] at least one morning clocker; **and**

(19)[(10)] a horsemen's bookkeeper.[; and

[(11) any other officials having responsibilities to the association.]

(b)[(c)] A patrol judge is not required for a race meeting at a Class 2 or Class 3 racetrack.

§313.2. Duties.

(a) **An** [A racetrack] official **shall diligently perform all duties prescribed by the commission for the official** [is directly responsible to the commission for the performance of the official's duties and shall exercise due diligence in the performance of those duties.

[(b) An association official is directly responsible to the association for the performance of the administrative duties and shall exercise due diligence in the performance of those duties.]

(b)[(c)] An official shall promptly report to the stewards or the commission any observed violation of the Act or a rule of the commission.

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 April 8, 1994.

TRD-9438897 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 794-8461

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Duties of Other Officials

• 16 TAC §313.41

The Texas Racing Commission proposes an amendment to §313.41, concerning the duties of the racing secretary. The amendment deletes the reference to "association official" to

remain consistent with other Commission rules.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the Commission's rules are internally consistent. There will be no effect on small businesses. There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racetrack officials; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety The proposed rule implements Texas Civil Statutes, Article 179e.

§313.41. Racing Secretary

(a) The racing secretary [is an association official who] shall supervise the operations of the racing office and its employees. The racing secretary shall.

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

(b)-(c) (No change)

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

Issued in Austin, Texas, on April 8, 1994

TRD-9438896 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call. (512) 794-8461

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Chapter 321. Pari-mutuel Wagering

Subchapter C. Simulcast Wagering

Simulcasting at Horse Racetracks

• 16 TAC §321.234

The Texas Racing Commission proposes an amendment to §321.234, concerning the allocation of purses and funds from simulcast wagering for Texas Bred Incentive programs The amendment requires an association that sells a simulcast signal to an out-of-state receiving location to set aside for Texas Bred Incentive programs at least 10% of the gross amount paid for the signal

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section. Although the racetracks will initially pay the funds set aside under the section to the Commission, the Commission will pay all those funds to the official breed registries, so the net fiscal implications for state government will be zero

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the horse breeding industry in Texas will be enhanced, thereby enhancing all supporting and collateral agricultural industries There will be fiscal implications for small businesses. A racetrack that sells a simulcast signal of races it conducts will be required to set aside a portion of the proceeds from the sale for Texas bred programs. Because the price of a simulcast signal is typically calculated as a percentage of the total amount wagered on the signal, the amount set aside will vary depending on the amount wagered Therefore, the exact fiscal implications cannot be determined at this time. There is no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O. Box 12080, Austin, Texas 78711

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering, and §11.011, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races. The proposed rule implements Texas Civil Statutes, Article 179e

§321 234. Allocation of Purses and Funds for Texas Bred Incentive Programs

(a)-(b) (No change)

(c) An association shall set aside for the Texas Bred Incentive program at least 10% of the gross amount paid by an out-of-state receiving location to receive simulcasts of the association's races. An association shall allocate funds set aside under this subsection to the various breed registries in accordance with subsection (a) of this section. A breed registry shall distribute funds received under this subsection in the same manner as funds received pursuant to the Act, §6.08(f) .

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 April 8, 1994.

TRD-9438895 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption May 20, 1994

For further information, please call· (512) 794-8461

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• 16 TAC §321.235

The Texas Racing Commission proposes an amendment to §321.235, concerning the priority of simulcast signals that may be received by Texas horse racetracks. The amendment restructures the priority for receiving simulcast signals at the various classes of horse racetracks.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section

Ms Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the economic benefits from simulcast wagering to the racetracks, the state, and the horse owners and breeders will be maximized There will be no fiscal implications for small businesses There is no economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted on or before May 27, 1994, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P O Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, §11 01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering, and §11.011, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races The proposed rule implements Texas Civil Statutes, Article 179e.

§321 235 Priority of Signals

(a) On any day, a Class 1 racetrack shall not offer wagering on a simul-

cast race originating outside Texas, other than a race of national or historic interest, unless:

(1) the racetrack also offers wagering on all live races conducted at and simulcast by Texas Class 1 racetracks on that day; and

(2) all Texas Class 1 racetracks conducting and simulcasting live races on that day agree to the out-of-state signal.

(b) On any day, a Class 2, Class 3, or Class 4 racetrack shall not offer wagering on a simulcast race originating outside Texas, other than a race of national or historic interest, unless:

(1) the racetrack also offers wagering on all live races conducted at and simulcast by Texas Class 1 and Class 2 racetracks on that day; and

(2) all Texas Class 1 and Class 2 racetracks conducting and simulcasting live races on that day agree to the out-of-state signal.

[(a) A Class 1 racetrack may offer wagering only on a race simulcast from another Class 1 Texas racetrack on dates when such a signal is made available pursuant to a contract between the sending track and receiving location and approved by the commission If no such signal is available, a Class 1 racetrack may provide wagering on races originating from other racetracks in Texas or another jurisdiction, subject to the approval of the commission

[(b) A Class 2 racetrack may offer wagering only on a race simulcast from Class 1 Texas racetrack on dates when such a signal is made available pursuant to a contract between the sending track and receiving location and approved by the commission If no such signal is available, a Class 2 racetrack may offer wagering only on a race simulcast from another Class 2 Texas racetrack on dates when such a signal is made available pursuant to a contract between the sending track and receiving location and approved by the commission If no such signal is available, a Class 2 racetrack may provide wagering on races originating in another jurisdiction, subject to the approval of the commission]

(c) A Class 3 or 4 racetrack may not conduct a simulcast race meeting. [A Class 3 or 4 racetrack may conduct wagering on simulcast races on dates when live racing is conducted at the racetrack only on races simulcast from a Class 1 Texas racetrack If no such signal is available, a Class 3 or 4 racetrack may provide wagering on simulcast races originating at any racetrack in Texas or another jurisdiction, subject to the approval of the commission.]

(d) (No change.)

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 April 8, 1994.

TRD-9438894 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 794-8461

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TITLE 22. EXAMINING BOARDS

Part XVII. Texas State Board of Plumbing Examiners

Chapter 361. Administration

General Provisions

• 22 TAC §361.26

The Texas State Board of Plumbing Examiners proposes an amendment to §361.26, concerning consumer interest information that shall be contained in the written contracts for services between a licensed plumber and any other individual.

Dr. Douglas A Beran, chief fiscal officer/office manager, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Beran also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced public health, safety, and welfare by ensuring each individual who receives contracted services from a plumber licensed by the Texas State Board of Plumbing Examiners is informed of the Board's name, address, and telephone number should the recipient of the plumber's services desire to file a complaint against the contracting plumber with the Board

There is no effect on small businesses

The anticipated economic cost to persons who are required to comply with the rule as proposed will be contingent upon the costs encountered by the licensed plumber to ensure the Board's name, address, and phone number are contained in the contract for services between the plumber and the individual receiving the services

Comments on the proposal may be submitted in writing to Dr. Beran at the Texas State Board of Plumbing Examiners, P O. Box 4200, Austin, Texas 78765

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law

The proposed amendment does not affect other statutes, articles, nor codes.

§361.26. Contested Cases: Investigations.

(a) The board may investigate complaints regarding any licensed or unlicensed person who engages in plumbing as defined in Texas Civil Statutes, Article 6243-101, §3.

(b) Each written contract for services agreed upon by a licensed plumber and any other person shall contain the [license's] name and mailing address and the telephone number of the board.

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 April 7, 1994.

TRD-9438796 Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 458-2145

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681. 40, 681.52, 681.81-681.84, 681.92, and 681.94 concerning licensing and regulation of professional counselors (LPC).

The amendments clarify the requirements for advertising and announcements; require supervisors to state on board forms any reservations a supervisor may have about an intern; allow interns to count supervised experience hours accumulated after January 1, 1994 if the hours were obtained in a setting exempt under Vernon's Texas Civil Statutes, §3; ensure that LPC interns receive quality supervision; ensure that appropriate relationships are established and maintained between supervisors and interns; and clarify language concerning examination process.

Kathy Craft, executive secretary, has determined that there will be no fiscal implications as a result of enforcing or administering the sections. There will be no fiscal implications for local government as a result of enforcing or administering the section and there will be no effect on local employment.

Ms Craft has also determined that for each of the first five years the sections are in effect as proposed the public benefit anticipated as a result of enforcing the sections, will be to assure the regulation of licensed professional

counselors continues to identify competent practitioners by updating and clarifying the rules. There will be costs to small businesses. There will be no anticipated cost to persons required to comply with the sections.

Comments on the proposal may be submitted to Kathy Craft, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6658. Comments will be accepted for 30 days after the proposal has been published in the *Texas Register*.

Subchapter C. Code of Ethics

• 22 TAC §681.40

The amendment is proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.40. Advertising and Announcements

(a) Information used by a licensee in any advertisement or announcement [of counseling services] shall not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

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

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

Issued in Austin, Texas, on April 13, 1994

TRD-9439051 James O Mathis, Ed D
Chair
Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption. May 20, 1994

For further information, please call: (512) 834-6658

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Subchapter D. Application Procedures

• 22 TAC §681.52

The amendment is proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

§681 52. Required Application Materials

(a)-(b) (No change)

(c) Supervised experience documentation form if applying for a regular license. The supervised experience documentation form must be completed by the applicant's supervisor and contain

(1)-(7) (No change.)

(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice, **including any reservations about the applicant held by the supervisor,**

(9)-(10) (No change.)

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 April 13, 1994

TRD-9439052 James O Mathis, Ed D
Chair
Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 834-6658

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Subchapter E. Experience Requirements for Examination and Licensure

• 22 TAC §§681.81-681.84

The amendments are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.81 Temporary License

(a) (No change.)

(b) In Texas, a person must obtain a temporary license before the person begins an internship **or continues an internship**. Hours obtained [after January 1, 1994,] by an unlicensed person in any setting shall not count toward the supervised experience requirements **except as follows**

(1) If a person applied for a temporary license prior to January 1, 1994, the hours from January 1, 1994, to the issuance of the temporary license shall be counted for supervised experience if all other requirements are met.

(2) Hours obtained prior to June 1, 1994, in a setting under which the person is exempt from licensure requirements shall be counted if all other supervised experience requirements are met.

(c)-(g) (No change)

§681 82 Experience Requirements (Internship)

(a)-(e) (No change)

(f) The applicant must have received direct supervision consisting of a **minimum of** [at least] one hour a week of face-to-face supervision in individual or group settings with no more than one half of the total hours of supervision having been received in group supervision

(g) -(h) (No change.)

§681 83 Supervisor Requirements

(a) A supervisor acceptable to the Texas State Board of Examiners of Professional Counselors (board) must be one of the following

(1) (No change)

(2) a person licensed or certified by this state or any other state in a profession that provides counseling **and** with the academic training and experience to supervise the counseling services offered by the intern In Texas this person must be a licensed psychologist, a licensed physician with board certification as a psychiatrist, or a licensed master social worker with a clinical social work specialty, or a licensed marriage and family therapist The person may be required to submit to the board proof of licensure and certification, official graduate transcripts, and other appropriate documentation, or

(3) (No change)

(b) A supervisor under subsection (a)(1) or (2) of this section must have met the following requirements

(1) (No change)

(2) A person who begins the supervision of an LPC intern on or after January 1, 1995, shall meet the requirements stated in paragraph (1) of this subsection and must have **successfully** completed one of the following

(A) [a successful completion of] an examination offered for certification as a counselor supervisor or current certification as a counselor supervisor by a nationally recognized counseling association acceptable to the board,

(B) 40 clock-hours of training in the supervision of counseling or mental health services through one or a combination of the following

(i) a graduate course in **counselor supervision** taken for credit at an accredited college or university,

(ii) (No change)

(iii) clinical supervision of the proposed supervisor by a person **who has already met the requirements of this**

subsection or if from another state who would be acceptable under subsection (a)(2) or (3) of this section;[:]

[(I) licensed by the board or as a counselor in another state; or

[(II) licensed or certified by this state or another state as a mental health professional that would be acceptable under subsection (a)(2) of this section;]

(C)-(D) (No change.)

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

(c) A supervisor shall maintain and sign a record(s) to document the date of each supervision conference of a minimum of one hour a week of face-to-face supervision in individual or group settings and to document the LPC intern's total number of hours of supervised experience accumulated up to the date of the conference.

§681.84 Other Conditions for Supervised Experience

(a) (No change.)

(b) In Texas, a person must obtain a temporary license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting shall not count toward the supervised experience requirements except as follows [After January 1, 1994, an LPC intern must hold a temporary license No hours will be counted toward the supervised experience except those accumulated during the time the LPC intern is licensed. If the applicant applied prior to January 1, 1994, for a temporary license, the hours from January 1, 1994, shall be counted].

(1) If a person applied for a temporary license prior to January 1, 1994, the hours from January 1, 1994, to the issuance of the temporary license shall be counted for supervised experience if all other requirements are met.

(2) Hours obtained prior to June 1, 1994, in a setting under which the person is exempt from licensure requirements shall be counted if all other supervised experience requirements are met.

(c) A supervisor may not be in the employ of the **licensed professional counselors (LPC)** [LPC] intern; **however, the LPC intern may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.**

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

(f) The full professional responsibility for the counseling activities of an LPC intern shall rest with the intern's official supervisor.

(1) The supervisor shall ensure that the LPC intern is aware of and adheres to Subchapter C. Code of Ethics of this chapter.

(2) A dual relationship between the supervisor and the LPC intern that impairs the supervisor's objective, professional judgement shall be avoided.

(3) A procedure for contacting the supervisor, or an alternate person, to assist in a crisis situation shall be established.

(g)-(j) (No change.)

(k) When the LPC intern is employed in the supervisor's private practice, billing for the LPC intern's services shall reflect that the LPC intern holds a temporary license from the board and is under supervision.

(l) At any time during the supervised experience and for any reason, if a supervisor determines that the LPC intern may not have the counseling skills or competence to practice counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC intern.

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 April 13, 1994.

TRD-9439053 James O Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 834-6658

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Subchapter G. Licensure Examinations

• 22 TAC §681.92, §681.94

The amendments are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.92. Applying for Licensure Examination.

(a) Before taking an examination, a person must apply for licensure in accordance with §681.51 of this title (relating to General) and §681.52 of this title (relating to Required Application Materials) The Texas State Board of Examiners of Professional Counselors (board) shall notify an applicant whose application has been approved in writing or by telephone and forward an examination registration form to each approved applicant as soon as the application **for examination** has been approved.

(b) An applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board with the required fee postmarked at least 30 days prior to the date of the examination. In cases where the date of approval of an application **for examination** necessitates that the applicant be notified by telephone, the applicant must forward the required fee with a postmark of at least 30 days prior to the date of the examination; however, the registration form can be submitted following the 30-day deadline.

§681.94. Failures.

(a) An applicant who fails the **first** licensure examination may reapply for examination and take either of the next two scheduled examinations. If, without documented medical or other reasons acceptable to the Texas State Board of Examiners of Professional Counselors (board), the applicant does not take either of the next two examinations, his or her approval to take the examination will be voided and the applicant will be required to submit another application for **examination** [licensure].

(b)-(d) (No change)

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

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Chair
Texas State Board of Examiners of Professional Counselors

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For further information, please call: (512) 834-6658

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter G. Hospital Servies

• 25 TAC §29.609

On behalf of the State Medicaid Director, the Texas Department of Health (department)

proposes an amendment to §29.609, concerning reimbursement methodology for the disproportionate share hospital program.

This amendment is being proposed to clarify rules in response to questions from the public and as a result of the department's experience in operating the new program. The amendment includes changes and expansions in definitions and in the conditions of participation. Also, the amendment includes guidelines for use when disproportionate share hospitals merge. Current administrative practices relating to low income utilization rate have been expanded. The section concerning the review of agency determination has been expanded to cover the possibility that data changes can cause changes in a hospital's eligibility after it has been tentatively notified by the state before the beginning of the state fiscal year. The section has also been expanded to cover the closure and loss of licensure/certification of a disproportionate share hospital.

Gary Bego, health care financing director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bego also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased understanding of the program by the general public and provider. There will be no costs to small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Henry Welles, Reimbursement Analysis Unit, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 764-6858. Public comments will be accepted for 30 days after publication of the section in the *Texas Register*.

This amendment is proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

§29.609. Additional Reimbursement to Disproportionate Share Hospitals.

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital fund. The single state agency or its designee establishes each hospital's eligibility for and amount of reimbursement as specified in this section. For purposes of Medicaid disproportionate share eligibility determination, a multisite hospital is considered as one provider unless it has separate Medicare cost reports for each site. **To verify data referred to in this section, hospitals must allow state personnel access to the hospital and its records.**

(b) Definitions. For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

[(2) Charity charges (excluding bad-debt charges)-Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a cost reporting period. The total inpatient and outpatient charity charges attributable to charity care do not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as, but not limited to, Health Maintenance Organizations (HMOs), Medicare, or Blue Cross. The amount of total charity charges must be consistent with the amount reported on the Texas Department of Health's (TDH's) annual hospital survey.]

(2) [(3)] Cost-to-charge ratio-Hospital's overall inpatient cost-to-charge ratio, as determined from its Medicare cost report it submitted for its fiscal year ending in the previous calendar year

(3)[(4)] Financially indigent-Uninsured or underinsured patients accepted for care with no obligation or a discounted obligation to pay for services based on the hospital's formal eligibility system, which may include income levels and means-testing (indexed to an accepted standard such as the federal poverty guidelines), or other criteria for determining a patient's inability to pay that are consistent with the hospital's mission and established policy.

(4)[(5)] Gross inpatient revenue-Amount of gross inpatient revenue (charges) reported by the hospital in the appropriate part of the Medicare cost report it submitted for its fiscal year ending in the previous calendar year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, [and] other long- term care facilities, **and other revenue that is unidentified**

(5)[(6)] Hospital eligibility criteria-Financial and other criteria used by the hospital to determine if a patient is eligible for charity care.

(6)[(7)] Low-income days-Number of days derived by multiplying a hospital's total inpatient census days by its low-income utilization rate

(7)[(8)] Low-income utilization rate-The result of the following computation: ((Title XIX inpatient hospital payments plus total state and local revenue) divided by (gross inpatient revenue multiplied by cost-to-charge ratio)) plus ((total inpatient charity charges minus total state and local revenue) divided by (gross inpatient revenue)).

(8)[(9)] Medicaid inpatient utilization rate-Title XIX inpatient days divided by total inpatient census days.

(9)[(10)] Medically indigent-Patients who are responsible for their other living expenses but whose medical and hospital bills, after payment by third-party payers, where applicable, exceed a specified percentage of the patients' annual gross income (catastrophic medical expenses) according to the hospital's eligibility system in such instances where payment would require liquidation of assets critical to living or earning a living or other criteria for determining patient's inability to pay that are consistent with the hospital's mission and established policy.

(10) [(11)] Medicare inpatient utilization rate - Medicare inpatient days divided by total inpatient census days.

(11) [(12)] Rural area-Area outside a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA) MSA and PMSA are defined by the Office of Management and Budget.

(12)[(13)] Total inpatient census days-Total number of a hospital's inpatient census days during its fiscal year ending in the previous calendar year

(13)[(14)] Total inpatient charity charges (excluding bad debt charges)-Total amount of the hospital's charges for inpatient hospital services attributed to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period The total inpatient charges attributable to charity care will not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan), that is, reduction or discounts, in charges given to other third-party payers such as but not limited to HMOs, Medicare, or Blue Cross **The amount of total inpatient charity charges must be consistent with the amount reported on department's annual hospital survey.**

(14)[(15)] Total Medicaid inpatient days-Total number of billed Title XIX inpatient days based on the latest available state fiscal year data for patients entitled to Title XIX benefits. **Total Medicaid inpatient days includes days with dates of**

admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for 10 months after the end of the fiscal year (June 30).

(15)[(16)] Total Medicaid inpatient hospital payments-Total amount of Title XIX funds, excluding Medicaid disproportionate share funds, a hospital received for admissions during the latest available state fiscal year for inpatient services. **Total Medicaid inpatient hospital payments includes payments associated with dates of admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for 10 months after the end of the fiscal year (June 30).**

(16)[(17)] Total operating costs-Total inpatient operating costs of a hospital during its fiscal year ending in the calendar year before the start of the current federal fiscal year, according to the hospital's Medicare cost report (tentative, or final audited cost report, if available).

(17) [(18)] Total state and local revenue-Total amount of state and local revenue a hospital received for inpatient care, excluding all Title XIX payments, during its fiscal year ending in the previous calendar year. Sources of state and local revenue include but are not limited to County Indigent Health Care, Chronically Ill and Disabled Children, Kidney Health Care, Maternal and Infant Health Improvement Act, and tax funds. Sources of revenue that are not included in state and local inpatient revenue are but are not limited to Office of Substance Abuse Program, Ryan White Title II, Ryan White Title III, State Legalization Impact Assistance Grant, Civilian Health and Medical Program of the Uniformed Services, Medicare, and Medicare/Medicaid contractual funds and allowances. The department calculates inpatient tax revenues for hospital districts using generally accepted accounting principles. Hospitals that report total state and local revenue, without specifying that it is inpatient, will have their inpatient revenue determined by the department

(18)[(19)] Urban-Area inside an MSA or PMSA.

(19)[(20)] Weighted low-income days-Low-income days multiplied by an appropriate weighting factor.

(20) [(21)] Weighted Medicaid days-Medicaid days multiplied by an appropriate weighting factor.

(c) Conditions of participation Before the beginning of each state fiscal year, which begins September 1, the single state agency or its designee surveys Medicaid hospitals to determine which hospitals meet the state's conditions of participation. Hospitals must allow state personnel access to the hospital and its records to ensure compliance with the conditions of participation. Failure to meet all of the conditions of participation results in ineligibility for participation in the program. These conditions of participation do not apply to state-owned teaching hospitals as specified in §29.610 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals). The conditions of participation are as follows.

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

(5) Community health care assessment. Each hospital must annually furnish to the state Medicaid director a copy, developed at the direction of the hospital's governing board, of its assessment of the health care needs of its community. **The assessment must contain a socioeconomic and demographic description of the hospital's service area and an assessment of the service area's existing health care resources.** The assessment must demonstrate how the hospital is using its disproportionate share funds to address its community health needs. Exceptions: State mental hospitals and state chest hospitals are exempt because their expenditures are governed by state law.

(6) Alternative access to primary care. Each hospital must annually report to the state Medicaid director the availability of alternative access (other than emergency care) to primary care in its community. **Alternative access to primary care includes but is not limited to primary care physician offices, minor emergency centers, and primary care clinics.** Hospitals must have plans to arrange for nonemergency patients to receive care that is not in their emergency rooms, unless they can demonstrate that there is no feasible alternative in the community. **This kind of plan includes but is not limited to a hospital-based clinic for nonemergent patients referred to after triage.** Hospitals also must report their progress in treating nonemergency patients apart from their emergency rooms. Exceptions: The following hospitals are exempt from this condition: State mental and state chest hospitals; psychiatric hospitals licensed by the **Texas Department of Mental Health and Mental Retardation (TXMHMR)** [(TXMHMR)]; and certain hospitals licensed as "special" by the **Texas Department of Health (department)** [(department)] (i.e., long-term care hospitals, ventilator hospitals, burn institutes, and alcohol-chemical dependency hospitals); rehabilitation hospitals; maternity hospitals; college infirmaries; contagious disease hospitals; and hospitals for the terminally ill.

(7) -(9) (No change.)

(d) Qualifying formulas for determining disproportionate share status. The single state agency or its designee identifies the qualifying Medicaid disproportionate share providers from among the hospitals that meet the two-physician requirement and the state's conditions of participation, as specified in subsection (c)(1)-(8) of this section, by using the following formulas. **In the case of hospitals that have merged to form a single Medicaid provider, the single state agency or its designee aggregates the data points from the individual hospitals that now make up the single provider to determine whether the single Medicaid provider qualifies as a Medicaid disproportionate share hospital. Medicaid disproportionate share hospitals receive payments if they merge with other hospitals during the fiscal year, if they continue meet the two-physician requirement, and if they meet the other conditions of participation.** Children's hospitals that do not otherwise qualify as disproportionate share hospitals are deemed disproportionate share hospitals. The formulas are as follows.

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

(e) (No change.)

(f) Reimbursing Medicaid disproportionate share hospitals. The single state agency reimburses Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Payments will be made in the following manner.

(1) (No change.)

(2) For the remaining hospitals, payments will be based on both weighted inpatient Medicaid days and weighted low income days. The single state agency weights each hospital's total inpatient Medicaid days and low income days by the appropriate weighting factor. The state defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. **For reimbursement purposes, a disproportionate share hospital's low income utilization rate cannot exceed 100%.** Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs would receive weights based proportionally on the MSA population according to the 1990 United States census. MSAs with populations greater than or equal to 150,000, according to the 1990 census, are considered

as the "largest MSAs " Children's hospitals also receive weights because of the special nature of the services they provide. All other hospitals receive weighting factors of 1.0 The inpatient Medicaid days of each hospital will be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund is divided into two parts. Two-thirds of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days One-third of the available fund will reimburse each qualifying hospital by its percent of the total low income days Reimbursement for the remaining hospitals is determined monthly as follows,

(A)-(C) (No change.)

(g) Review of agency determination The single state agency or its designee notifies hospitals of their **tentative** eligibility or ineligibility and the estimated amount of payment before the beginning of the state fiscal year The actual amount of payment may vary if a successful review request by one or more hospitals necessitates an adjustment in the amount of payments to the other hospitals in the program. **Because of the state's ongoing review of data elements used in the formulas before the first monthly payment, it is possible that a hospital may either gain or lose eligibility after receiving tentative notification. Any hospital, including those hospitals that do not qualify or that contend the amount of payment is incorrect, is allowed to request a review by the single state agency or its designee.** Hospitals that do not qualify or that believe the amount of payment is incorrect may request a review by the single state agency or its designee

(1)-(3) (No change)

(h) Disproportionate share funds held in reserve

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

(4) If a hospital that is already receiving Medicaid disproportionate share funds closes, loses its license, loses its Medicare or Medicaid eligibility, that hospital's disproportionate share funds are reallocated among the remaining disproportionate share hospitals. If the hospital reopens, as the same hospital type, and regains similar licensure or Medicare and Medicaid eligibility, that hospital receives monthly disproportionate share checks for the months in the state fiscal year that it reopened.

(i) (No change)

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 April 6, 1994

TRD-9438726 Susan K Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption May 20 ,1994

For further information, please call (512) 794-6858

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Chapter 41. Utilization Review

Waiver for Utilization Review Procedures

• 25 TAC §41.102, §41.104

On behalf of the State Medicaid Director, the Texas Department of Health (department) proposes amendments to §41 102 and §41 104, concerning Waiver for Utilization Review Procedures Specifically, the sections cover the case selection process and the Texas Medical Review Program, and §41 104, concerning the diagnosis-related group assignment for secondary diagnoses in newborns

These amendments are being proposed to include Texas Medical Review Program cases for review where admission denials for a given diagnosis-related group are 5.0% or greater The second change is proposed to more closely follow Coding Clinic Guidelines published First Quarter 1994 by the American Hospital Association This change allows, for diagnosis-related group assignment, the use of newborn secondary diagnoses that the physician deems to have clinically significant implications for future health care needs. The current rules only allow secondary diagnoses which affect the current hospital stay. Normal newborn conditions or routine procedures are not considered as complications or comorbidities for diagnosis-related group assignment

Mr Gary Bego, health care financing budget director, has determined that for the first five-year period the sections as proposed will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections

Mr Bego also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the improvement of the sampling methodology for utilization review, and to uniformity with the guidelines of the American Hospital Association There will be no costs to small business There is no anticipated economic cost to persons who are required to comply with the sections as proposed

Comments on the proposal may be submitted to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521 Comments will be accepted for 30 days after publication in the *Texas Register*

These amendments are proposed under the Human Resources Code, §32 021 and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

§41.102. Case Selection Process. Selection of cases for review includes, but is not limited to:

(1) Texas Medical Review Program (TMRP) cases:

(A) (No change.)

(B) additional cases, up to 100% for any provider or DRG, if:

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

(iii) admission denials for a given DRG are **5%** [10%] or greater; or

(iv)-(vi) (No change.)

(2) (No change.)

§41.104. Texas Medical Review Program (TMRP) Review Process.

(a) For all Medicaid admissions identified for review, the TMRP review process consists of the following three major components:

(1) (No change.)

(2) **diagnosis-** [diagnostic] related group (DRG) validation, which consists of a determination that the critical elements necessary to assign a DRG are present in the medical record. Those elements are age, sex, discharge status, principal diagnosis, principal procedures, and any complications or comorbidities. This process is also a determination that the principal and secondary diagnoses and procedures are sequenced correctly. The principal diagnosis is the diagnosis (condition) established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care. The secondary diagnoses are conditions that affect the patient care in terms of requiring: clinical evaluation, therapeutic treatment, diagnostic procedures, extended length of hospital stay, or increased nursing care and/or monitoring, **or in case of a newborn, one which the physician deems to have care clinically significant implications for future health care needs. Normal newborn conditions or routine procedures are not to be considered as complications or comorbidities for DRG assignment.** If the principal diagnosis, secondary diagnoses, or procedures are not substantiated in the medical record, are not sequenced correctly, or have been omitted, codes may be changed, added, or

deleted When it is determined that the diagnoses and procedures are substantiated and sequenced correctly, the information will be entered into the applicable version of the Grouper software for a DRG determination. The Health Care Financing Administration (HCFA) approved DRG Grouper software considers each diagnosis and procedure and the combination of all codes and makes a determination of the final DRG assignment;

(3) (No change)

(b)-(d) (No change)

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

Issued in Austin, Texas, on April 6, 1994

TRD-9438725 Susan K Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption May 20, 1994

For further information, please call (512) 338-6521

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

Subchapter R. Management of Whole Used or Scrap Tires

- **30 TAC §§330.801, 330.802, 330.805-330.809, 330.811-330.817, 330.821-330.827, 330.831-330.835-330.838, 330.840, 330.843, 330.845-330.848, 330.851-330.857, 330.861-330.863, 330.865-330.868, 330.870-330.874, 330. 876-330.878, 330.885, 330.886, 330.888, 330.889**

The Texas Natural Resource Conservation Commission (TNRCC) proposes the repeal of Subchapter R, §§330 836, 339 851-330 857 and 330 875, and new Subchapter R, §§330 803, 330.851-330 858, 330 875, 330 879, 330 880-330 883, and new Subchapter X, §§330 900-330 909, 330 910-330 917, 330 920-330.930, and 330.931-330 939, and amendments to Subchapter R, §§330 801, 330 802, 330 805-330 809, 330 811-330 817, 330 821-330 827, 330 831-330 835, 330 837-330 838, 330 840-330 843, 330 845-330 848, 330 861-330 863, 330,865-330 868, 330 870-330 874, 330 876-330 878, 330 885, 330 886, 330 888, and 330 889, concerning the Waste Tire Recycling Fund Program These sections will replace the management of whole used or scrap tires published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2609)

Pursuant to Senate Bill 1340, the Waste Tire Recycling Fund was created The intent of the fund was to clean up existing illegal waste tire dumps throughout the state and to insure no new illegal dumps were created by collecting new waste tires free of charge at the point of generation The issue and concerns associated with the elimination of illegal tire dumps across the state has existed for many years because tire dumps pose an imminent peril to the public health, safety, and welfare of citizens and the environment in the State of Texas The repealed, new and amended rules will ensure the TNRCC's ability to adequately administer the Waste Tire Recycling Fund Program and facilitate clean up of illegal waste tire dumps The rules will also improve management and oversight of the regulated community operating under the fund and seeking reimbursement from the fund The rules will clarify existing confusion regarding program guidance and incorporate extensive modifications that have been made in program operation since program implementation occurred on April 1, 1992 and reflected in the legislation adopted by the 73rd legislature in Senate Bill 1051 The rules also contain financial assurance requirements and guidance in calculating that financial responsibility to ensure funds exist to clean up a registered processor or storage site should the owner/operator be financially incapable of performing the clean up independently

The proposed repealed sections deal with the requirements for waste tire monofills, the operation of waste tire monofills, the storage of waste tires in waste tire monofills, the closure of waste tire monofills, and the shipping, record keeping and requests for reimbursements within the waste tire recycling fund program The purpose for the repeal of these sections deals with statutory changes contained in Senate Bill 1051 from the 73rd legislative session which prohibits the use of waste tire monofills in the waste tire recycling fund program as a means of storage of reimbursed shredded waste tires

The new sections proposed for adoption deal with Waste Tire Recycling Fund (WTRF) program definitions moved from 30 Texas Administrative Code, Chapter 330, Subchapter A, the registration, operation and record keeping requirements for waste tire baling facilities, the conditions regarding confidentiality for registered processors in the WTRF program, the restrictions for individuals or companies seeking reimbursement under the WTRF program, the appeals process for monthly reimbursement vouchers under the WTRF program, the registration, operation and record keeping requirements for waste tire recycling facilities, for waste tire energy recovery facilities, for transfer stations or recycling collection centers, and for transportation facilities, the conditions for registration and operation within the Useful Product Reimbursement Program, the guidance for financial and program audits performed by the TNRCC for the WTRF program, and the conditions guiding the use, implementation and operation of the allocation system The purpose for the creation of these sections deals with statutory changes contained in Senate Bill 1051 that occurred during the 73rd legislative session and that required the development and implementation of rules addressing each of the items

Specifically addressing the conditions guiding the use, implementation and operation of the allocation system, the Commission is inviting comments relating to the effects of setting the end use factor to 35% the first fiscal year the rules are in effect, for possibly readjusting the end use factor to between 15 and 50% the first fiscal year the rules are in effect, and for possibly readjusting the end use factor to between 65 and 75% the second fiscal year the rules are in effect Correspondingly, the other three weighting factors will be adjusted to accommodate modifications in the end use factor should the Commission choose a percent weighting other than the 35% contained in the proposed rules.

The proposed amendments deal with general changes including the replacement of Texas Water Commission with Texas Natural Resource Conservation Commission, the change from district office to region office, the use of the federal tax identification number to determine what constitutes a change in ownership in all registration programs, the registration fee for new, renewal or amended applications in all registration programs, the change from disposal of whole used or scrap tires to recycling, reuse and energy recovery of same tires, the inclusion of waste tire baling facilities, waste tire recycling facilities, waste tire energy recovery facilities, transfer stations or recycling collection centers, and transportation facilities in appropriate sections of the existing rules to ensure adequate application of the rules for all individuals or companies regulated by the WTRF program, and the expansion of existing rules to include in-state and out-of-state processing and/or baling where appropriate Also, the sections contain amendments that clarify confusing requirements and/or correct errors in the existing rules Finally, many of the minor amendments are the result of amendments to Subchapter P of the Texas Health and Safety Code required by Senate Bill 1051 adopted during the 73rd legislative session

Specifically, minor amendments, some of which are required by Senate Bill 1051, are in §§330 805-330 809, relating to generators of whole used or scrap tires, these include inclusion of automotive dismantlers as a generator, controlling the sale of tires for resale, removal of tires from the rim prior to transport, prohibiting generator remuneration for scrap tires Also, the method of generator record keeping has been expanded to include methods other than manifests and the number of tires allowed to be held at a generator site in containers has been increased

Specifically, minor amendments, one of which is required by Senate Bill 1051, are in §§330 811-330 815 and 330 817, relating to transporters of whole used or scrap tires, these include the change in rim diameter to determine eligible tires, the charging for transportation of ineligible tires, and the manifesting requirements for tires intended for beneficial reuse

Specifically, minor amendments, required by Senate Bill 1051, are in §§330 821-330 827, relating to mobile tire processors of whole used or scrap tires, these include TNRCC approval authority for legitimate end users proposed by the processor, semiannual reports to the TNRCC by the processor identifying their reuse, recycling and/or energy recovery activities and the information that report shall contain, the requirement to identify recycling, reuse or energy recovery activities in an initial application after January 1 1996 Other minor amendments to improve the monthly voucher confirmation process include scale requirements for the weighing of tire shreds, identification of the weigh scale if located off site, and records that track the transportation of tire shreds off site to each off site location To ensure adequate storage capacity, confirmation, on a monthly basis, of adequate storage capacity prior to approval of registration is required Two additional amendments include conditions that allow the TNRCC to pursue suspension or revocation of registration for failure to commence facility operation within 180 days after receipt of registration and for failure to comply with out-of state shredding requirements when such become effective

Specifically, minor amendments, required by Senate Bill 1051, are in §§330 831-330 835, 330 837, 330 838 and 330 840, relating to the storage of whole used or scrap tires, these include semiannual reports to the TNRCC by the storage owner/operator identifying their reuse, recycling and/or energy recovery activities and the information that report shall contain, and requirements for storage of and ineligibility of out-of-state tires Other minor amendments to improve program operation include inspection of facilities prior to approval to ensure compliance with program requirements, and oversize tire storage and eligibility requirements

Specifically, minor amendments, required by Senate Bill 1051, are in §§330 841-330 843 and 330 845-330 848, relating to waste tire facility processors of whole used or scrap tires, these include TNRCC approval authority for legitimate end users proposed by the processor, semiannual reports to the TNRCC by the processor identifying their reuse, recycling and/or energy recovery activities and the information that report shall contain, and the requirement to identify recycling, reuse or energy recovery activities in an initial application after January 1, 1996 Other minor amendments to improve the monthly voucher confirmation process include scale requirements for the weighing of tire shreds, identification of the weigh scale if located off site and records that track the transportation of tire shreds off site to each off site location To ensure adequate storage capacity, confirmation, on a monthly basis, of adequate storage capacity prior to approval of registration is required and the inspection of facilities prior to initial approval is required to ensure compliance with program requirements Two additional amendments include conditions that allow the TNRCC to pursue suspension or revocation of registration for failure to commence facility operation within 180 days after receipt of registration and for failure to comply with out-of-state shredding requirements when such become effective

Specifically, minor amendments, required by Senate Bill 1051, are in §§330 861-330 863, 330 865-330 868 and 330 870, relating to the Priority Enforcement List (PEL), these include PEL requirements when the number of tires on the list exceeds or falls below 500,000 for more than 30 consecutive days, procedure and requirements for implementation of the Request For Proposal method of PEL site assignment, minimum and maximum percentage of PEL tires shredded monthly, conditions and notice requirements allowing the TNRCC to access illegal waste tire sites, and cost recovery clean up requirements An additional minor amendment to eliminate the processor's requirement to complete a report at the conclusion of a PEL site clean up was made because it was determined that such a report was no longer needed

Specifically, minor amendments, required by Senate Bill 1051, are in §§330 871 330 874 and 330 876-330 878, relating to the Waste Tire Recycling Fund (WTRF), these include processor requirements to maintain compliance at existing facilities prior to final operational approval of a new facility a $3 50 fee for truck tires (rim diameter equal to or greater than 17 5 inches but less than 25 inches), a statement that the fund balance shall not fall below $500,000, the requirement to suspend the PEL minimum monthly shredding percentage if payment would result in the fund balance falling below $500,000 and TNRCC notification of nonpayment for any tires shredded in excess of that amount subsequent to such notification from the Comptroller, conditions under which processor reimbursement will be withheld, TNRCC requirement to perform biennial capacity assessment, controlling the sale of tires for resale, tires eligible for fee assessment based on rim diameter, minimum and maximum percentage of PEL tires shredded monthly, acceptable formats for reimbursement vouchers, maximum reimbursement rates for waste tire baling, types of rubber ineligible for fund reimbursement, reimbursement for the production of useful products (not to exceed $0 25), eligibility requirements for reimbursing for the baling of waste tires and subsequent confirmation that those baled tires have been delivered to an energy recovery facility, and the maximum amount of reimbursement an individual or company may receive from the fund Other amendments to improve program operation include TNRCC inspection time requirement for monthly reimbursement vouchers, a registered facility's requirement to publish notice of intent to operate if facility intends to store tires, and the processor's requirement to provide a manifest with each load of tires transported from the project site to execute a community clean up project

Specifically, several minor amendments are in §§330 885, 330 886 and 330 888, relating to Cost Estimate for Closure in order to improve program operation These include the procedure for estimating and calculating a facility's clean up and closure costs for financial assurance, the requirement to ensure existing financial assurance amounts are adequate by including additional factors that will be considered in the initial closure cost calculations, and the conditions under which the TNRCC may decide to withhold reimbursement (for shredding or baling) if the processor fails to increase the monthly cumulative cost estimate at the required frequency. Further minor amendments required by Senate Bill 1051 include the requirements for financial assurance for baling facilities, the financial requirements for waste tire recycling facilities, waste tire energy recovery facilities and transportation facilities holding a less than or greater than 30 day supply of in-state tires shreds or out-of-state whole used or scrap tires, the financial assurance requirements if the facility is located out-of-state, the requirement that processors making the initial reimbursement request after September 1, 1993, shall provide all financial assurance for closure and clean up of the facility(ies) based on the full cost estimate, and the financial test for self-insurance for publicly owned facilities

Specifically, one minor amendment in §330 889, relating to Beneficial Use of Whole Used or Scrap Tires This amendment requires the review and approval of all beneficial use projects prior to executing the beneficial use to ensure the project is consistent with currently accepted means of disposing of waste tires

Stephen Minick, division of budget and planning, has determined that for the first five years the proposed rules are in effect there will be fiscal implications as a result of enforcement and administration of the rules The effect on state government will be an increase in cost of $24,900 in fiscal year 1994, $120,700 in fiscal year 1995 and $104,900 in each of the fiscal years 1996-1998 Revenues to state government will increase by approximately $10,000 per year over the same five-year period These effects on state government do not include potential cost savings from proposed provisions relating to financial assurance requirements and possible costs of reprocessing oversized shredded tire pieces There will potentially be effects on local governments that are also generators of waste tires or which elect to establish tire recycling centers The potential effects would be equivalent to those applicable to other generators or recycling center operators The fiscal implications of the proposed rules will be reflected in the added costs of engineering and site construction required of processors, balers, storage facilities, and energy recovery facilities seeking reimbursement from the waste tire recycling fund Other costs to operators are associated with additional recordkeeping, reporting and operating requirements to ensure proper documentation of facility operations and the verification of reimbursable activities These costs can only be determined on a case-by-case basis and will vary considerably with each specific site and its actual or proposed uses In addition, an application fee of $500 will be collected from owner/operators for new, renewal or amended applications for processing, baling or storage facilities No more than 20 operators are anticipated to be subject to the application fee in any year

These proposed rules, at §330 885(a)(2), require that registered waste tire processors that shred, outside the state, tires generated in Texas for reimbursement must provide financial responsibility in an amount twice the

amount that would be required of an in-state processor These financial assurance costs can only be determined on a case-by-case basis, however it has been estimated that per waste tire equivalent, the impact could vary from $0 05 to $0 10 Sections 361 479(d)(2) and 330 886(a), as proposed, require processors that have not received reimbursement prior to September 1, 1993 to provide financial responsibility in full to receive registration These provisions, combined with the capacity assessment requirements (§330 871(c)) and the limitations on allocations from the waste tire recycling fund located in Subchapter X of this title (§330 920) will result in higher up front capital requirements for new facilities

Proposed §330 885(a)(1)(E) will require that processors that have produced or are producing shredded tire pieces over 4 square inches will have to provide financial assurance for the cost of re-shredding this material to a minimum of 4 square inches It is anticipated that it will cost approximately $0 50 per waste tire equivalent to reprocess oversized shredded tire pieces to a size of 2" times 2" The current estimate of the total pounds of shredded tire pieces greater than 2" times 2" size that would have to be reshred is 618, 400,996 pounds which is equal to 33,069,572 waste tire equivalents At an estimated unit cost of $0 50 per waste tire equivalent, the fiscal impact to date on tire processors storing tire shreds greater than 2" times 2" size would be $16 5 million The provision of financial assurance for these costs will reduce potential liabilities to the state for cleanup of facilities without adequate funding for reprocessing and site closure In addition to financial assurance costs for shredded tire pieces in storage, there may also be additional future costs to tire processors related to changes in operations to produce shredded tire pieces which will qualify for reimbursement These costs could include equipment replacement or modification and additional operating requirements These costs have not been determined

The amendments to statutory authority which require these rules will have further fiscal implications which may be referenced in these rules, but are not modified by them These effects include the additional costs to consumers, including businesses, of the increases in tire fee assessments for the sale of larger tires In addition, statutory requirements related to management and control of the waste tire recycling fund, including limitations on disbursements under certain conditions, will have potential fiscal implications for processors and other operators with claims for reimbursement or future business costs to be covered by revenues from reimbursable activities. The proposed rules will have effects on small businesses which should be equivalent to those effects on larger concerns The effects on small businesses will vary proportionally with the volumes of raw recycling material maintained on site regardless of the size of the business, number of employees or gross income

Mr Minick also has determined that for the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcement of and compliance with the rules will be improvements in the state's ability to meet the goals of minimizing the land disposal of solid waste, increases in the recycling of and recovery of energy from the municipal solid waste stream, increased protection of human health and safety and control of risks from waste tire storage and processing sites, improvements in the oversight and management of the waste tire recycling program and enhancements to audit and other financial control activities to ensure the most efficient use of state funds There are no anticipated costs to any persons required to comply with these rules as proposed except those costs identified previously as costs to a consumer or regulated facility owner/operator

A public hearing on this proposal will be held from 9 00 a m until Noon, in Room 564, on May 16, 1994, in Building F, at 12015 Park 35 Circle, Austin, Texas

Comments on the proposal may be submitted to Jennifer A Sidnell, Manager, Tire Recycling and Cleanup Section, P O Box 13087, Texas Natural Resource Conservation Commission, Austin, Texas 78711-3087 Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*

The amendments and new sections are proposed under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1051, Act of the 73rd Legislature, 1993, which provides the Texas Natural Resource Conservation Commission with the authority to establish the rules necessary to adequately administer the Waste Tire Recycling Fund, and implement the activities necessary to insure prompt and accurate pay out from the fund, and to register and monitor the activities of waste tire generators, transporters, fixed and mobile processors, and storage and disposal facility owners or operators, and under the Texas Water Code, §5 103, which gives the Texan Natural Resource Conservation Commission the powers, duties and responsibilities

The amendments implement the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992)

§330 801. Purpose The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing and **recycling, reuse or energy recovery** [disposal] of whole used or scrap tires, **scrap tire pieces** or shredded tire pieces

§330 802 Applicability

(a) The sections in this subchapter are applicable to persons that are involved in the generation, transportation, processing, storage, **recycling, reuse or energy recovery** [disposal and recycling] of whole used or scrap tires **or scrap tire pieces** that are classified as municipal solid waste and regulated by the **Texas Natural Resource Conservation Commission** [Texas Water Commission] (commission or **TNRCC** [TWC]) pursuant to §330 3 of this title (relating to Applicability) The sections in this subchapter are not applicable to whole used or scrap tires that are classified as industrial solid waste

(b) A tire becomes a whole used or scrap tire and is eligible for reimbursement under the Waste Tire Recycling Fund (WTRF) when it is discarded by a person after it has been utilized for its intended purpose A used tire that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire is not subject to the requirements of this subchapter, except as noted in **§330.807 of this title (relating to Generator Record Keeping) and** §330 889 of this title (relating to the Beneficial Use of Whole Used or Scrap Tires) A whole used tire that cannot be reused for or **legally modified to be reused for its original intended** [any other] purpose is a scrap tire and is subject to the requirements of this subchapter

(c) Whole used or scrap tires that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire are exempted from the requirements to be split, quartered, or shredded at processing sites All discarded used tires will be subject to manifesting by registered generators in accordance with the requirements in §330 807 of this title (relating to **Generator Record Keeping** [Generators of Whole Used or Scrap Tires]) Tire stockpiles being held for adjustment by the manufacturer must be classified by the manufacturer for reuse or disposal within 90 days Used tires being held for resale that are stockpiled shall receive appropriate vector control made at a frequency based upon weather conditions and other applicable local ordinances

(d) A solid or non-pneumatic whole used or scrap tire may be disposed of in a municipal or industrial solid waste **or facility** provided there is no other available means to reduce the tire into recyclable material.

(e) (No change)

(f) Large whole used or scrap tires that are 25 [26] inches or more in rim diameter or that weigh a minimum of 500 pounds are exempt from the requirements to be split, quartered or shredded at a storage site or a permitted landfill The large whole used or scrap tires[,] specified in this subsection **may** [, shall not be disposed of in a landfill and shall] be either recycled or stored at a registered waste tire storage facility Adequate vector control shall be maintained at the registered waste tire storage facility that is storing these tires.

(g) Large whole used or scrap tires that are 25 [26] inches or more in rim diameter or that weigh a minimum of 500 pounds [and are capable of being shredded

into pieces less than nine square inches in diameter] will not be eligible for reimbursement from the WTRF unless they come from PEL sites.

(h) No more than 500 scrap tires or that equivalent in shredded tire pieces shall be stored at a facility that is not registered with the commission.

(i) Waste tire baling facilities as registered under §§330.851-330.858 of this title (relating to Waste Tire Baling Registration) shall be considered waste tire facilities and required to comply with all applicable requirements contained in this subchapter relating to waste tire facilities.

(j) Mobile tire processors and waste tire facilities located out-of-state shall comply with all requirements contained in this subchapter currently applicable to in-state mobile tire processors and waste tire facilities.

(k) The commission shall appoint to the Municipal Solid Waste Management and Resource Recovery Advisory Council, one registered fixed waste tire processor and one registered mobile tire processor pursuant to the Texas Health and Safety Code, §363.041 (relating to Composition of Advisory Council).

§330.803 Definitions The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise Other definitions, pertinent to specific sections, are contained within the appropriate sections

Baled tire-A tire that is, by mechanical process, compressed with other tires and maintained in that compressed state by wire straps for the purpose of transportation to individuals or companies that intend to use the baled tires for energy recovery purposes.

Commission-Texas Natural Resource Conservation Commission Executive director-Executive Director of the Texas Natural Resource Conservation Commission

Facility-All contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storage, recycling, reuse, energy recovery, or disposal of whole used or scrap tires or shredded tire pieces

Fleet operator-An individual or company that owns or operates more than 15 vehicles and generates 30 or more whole used or scrap tires per quarter

Generator-An individual(s) or company(ies) that accepts whole used or scrap tire for storage, is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, or retreader

Green tire The casing form of a tire that has not been cured or does not have a tread or marking of any kind

Manufacturer reject tire A tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase

Mobile tire processor An individual(s) or company(ies) registered as a mobile facility at which whole used or scrap tires or tire pieces are collected and shredded for delivery to a waste tire storage facility, or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces

Monthly cumulative closure cost estimate The accumulated total of financial assurance as approved by the executive director in the registration of facilities regulated by this subchapter and requiring financial assurance

Operator The person responsible for the overall operation of the facility

Owner The person or company who owns the facility or part of a facility

Postconsumer waste A material or product that has served its intended use and has been discarded after passing through the hands of a final user For the purpose of this subchapter, the term does not include industrial or hazardous waste

Recyclable material Material that has been recovered or diverted form the solid waste stream for purposes of reuse, recycling, energy recovery, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials Recyclable material is not solid waste However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material

Shredding -The mechanical reduction of a whole used or scrap tire or scrap tire pieces to pieces that are less than nine square inches in size

Shredded tire piece-A particle of a used or scrap tire or scrap tire piece that has been split, quartered, or shredded to less than nine square inches in size

Tire piece-A portion of a waste tire such as the sidewall, tread, bead, etc generally though not necessarily disposed of by a business that uses some other part of the waste tire to make a product The discarded portion of the waste tire, whether located on a PEL site, a generator site, or a special authorization site can be shredded for reimbursement from the WTRF and shall be addressed in any PEL site clean-up plan

Tire recycling collection center-A site receiving whole used or scrap tires or scrap tire pieces from the general public or a specifically designated generator for shipment to a registered mobile tire processor, waste tire facility, waste tire baling facility, waste tire energy recovery facility, or waste tire recycling facility

Tire shredder A piece of equipment used to split, shred, or quarter tires which is either stationary or bolted in place and cannot be transported from one area to another, or a piece of equipment used to split, shred or quarter tires which is mounted on wheels or is skid mounted and is hauled from one location to another within the state

Tire transfer station A site receiving whole used or scrap tires or scrap tire pieces from the general public or a specifically designated generator for shipment to a registered mobile tire processor, waste tire facility, waste tire baling facility, waste tire energy recovery facility, or waste tire recycling facility

Transportation facility A facility owned and/or operated by an individual(s) or company(ies) that stores baled or loose whole used or scrap tires or scrap tire pieces for periods longer than 30 consecutive calendar days at marine terminals, rail yards or trucking facilities

Useful product A useful product is a recycled product that is made from whole used or scrap tires or scrap tire pieces or shredded tire pieces, is in a marketable form, has a contract for sale of a minimum of 75% of the product made on a calendar quarterly basis, is available for immediate sale upon completion of the processing, and the contracted product is removed from the waste tire recycling facility during that calendar quarter

Useful product reimbursement program (UPRP)-A program that manages a schedule of reimbursement to registered waste tire recyclers that process weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products

Waste tire-A scrap tire that has been disposed of and can no longer be used for the purpose for which it was originally intended

Waste tire baling facility An individual(s) or company(ies) that bale tires for the purpose of energy recovery A waste tire baling facility shall be a fixed and permanent facility

Waste tire energy recovery facility-An individual(s) or company(ies) that utilize whole used or scrap tires or scrap tire pieces as tire derived fuel or fuel supplement for energy recovery purposes

Waste tire facility-A registered fixed processing facility at which whole used or scrap tires or tire pieces are collected and shredded for delivery to a waste tire storage facility, or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces

Waste tire recycling-Any process(es) in which all or part of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces are utilized either alone or in conjunction with other

materials to make a product(s) (including energy recovery) which has a commercial market verifiable by the executive director or which has been otherwise approved as a site specific beneficial use by the executive director

Waste tire recycling facility-An individual(s) or company(ies) that utilize shredded tire pieces of less than nine square inches from registered WTRF processors as raw material for the purpose of manufacturing useful products, or utilize whole used or scrap tires or scrap tire pieces and convert either all or a portion thereof by any means including, but not limited to mechanical, chemical, or thermal processes in order to obtain a useful product(s)

Waste tire recycling fund (WTRF)-The fund into which tire fees collected on new tires that are sold in Texas are deposited

Waste tire storage facility A registered facility at which whole used or scrap tires or shredded tire pieces are collected and stored (before being offered as material) to facilitate the future extraction of useful material for recycling, reuse, or recovery The term does not include a marine dock, rail yard, or trucking facility used to store tires that are awaiting shipment to a person for recycling, reuse, or energy recovery for 30 days or less

Waste tire transporter-A registered individual or company that collects and transports whole used or scrap tires, or tire pieces or shredded tire pieces for storage, processing, or disposal

Weighed tire-A unit of weight for shredded whole used or scrap tires that is equal to 18 7 pounds

§330.805. Generators of Whole Used or Scrap Tires

(a) Applicability The regulations contained in these sections establish standards applicable to the generators of whole used or scrap tires For the purpose of this subchapter, a generator shall be a person that accepts whole used or scrap tires for storage, is a fleet operator, **is an automotive dismantler,** or is a whole new or used tire retailer, wholesaler, manufacturer, or retreader

(b) Responsibility Each generator shall be responsible for ensuring that [whole used or] scrap tires are transported by a registered transporter Each generator shall ask the transporter where **their** [his whole used or] scrap tires are being delivered to, and may designate the destination of the [whole used or] scrap tires that they generate

(c) Generator. A generator **shall** [may] not place a whole used or scrap tire or split, quartered, or shredded tire pieces in a dumpster for pickup by a collection vehicle that has an enclosed packer unit attached or that is used on a routine and/or regular collection route All whole used or scrap tires and shredded tire pieces transported from a generator's location shall be transported and manifested in a separate, identifiable load

(d) Invoices. Whole used tires sold as good used vehicle tires shall be invoiced according to §330.807 of this title (relating to Generator Record Keeping).

(e) Remuneration. A generator may not receive remuneration in exchange for scrap tires.

(f) Resale. A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall accept from customers, without charge, used tires of the type and in a quantity at least equal to the number of new tires purchased.

(g) Rim removal. Generators shall arrange to remove scrap tires from the rim prior to transport to a waste tire facility or mobile tire processor, or waste tire recycling facility.

§330.806 Generator Registration

(a) **Individuals** or **companies** [Tire generators] that regularly dispose of whole used or scrap tires **and are therefore designated as generators** shall obtain a registration number from the executive director. The generator must contact the executive director, identify **the** [himself/herself or his/her] business as a **regular volume or large volume** whole used or scrap tire generator, provide the business name, **business tax identification number or social security number,** mailing address, street address, or physical location, and the city and/or county in which the business [he/she] is located.

(1) A regular volume generator is one that stores a maximum of one totally enclosed and lockable container.

(2) A large volume generator is one that stores a maximum of three totally enclosed and lockable containers.

(b) Registration numbers will be issued for each [separate] business [location] collecting whole used or scrap tires.

(c) The recipient of a generator registration number shall notify the executive director within 15 days, in writing, of any changes to generator information contained in commission records. §330 807. Generator Record Keeping.

(a) Maintenance of records. **Originals** [Copies] of manifests, **work orders, invoices** [daily logs,] or other documentation used to support activities related to the accumulation, handling, and shipment of whole used or scrap tires shall be retained by the generator [at the facility site] for a period of three years. All such records shall be made available to the executive director upon request.

(b) Manifest. Generators shall initiate and maintain a record of each individual load of whole used or scrap tires hauled off-site from their business location The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the following information on the manifest

(1) name and address of the person who generated the whole **used** or scrap tires and the type of generator,

(2) **generator's** [generator] commission registration number;

(3)-(9) (No change)

(c) **Completed manifest** A generator shall obtain [a copy of] the completed manifest within three months after the [whole used or] scrap tires were transported off-site by the transporter

(d) **Uncompleted manifest** The generator shall notify the appropriate TNRCC [TWC] **regional** [district] office of any transporter, mobile or fixed tire processor or storage site owner who fails to complete the manifest, **who alters the generator portion of the manifest** or fails to return [a copy of] the manifest within three months after the off-site transportation of the whole used or scrap tires.

(e) Records. Generators shall maintain a record of whole used tires sold as good used vehicle tires and hauled off-site from their business location. The record shall be in the form of a manifest completed in accordance with subsection (b) of this section or a work order or invoice which includes the following information:

(1) name and address of the person who sold the whole used tires;

(2) date of the off-site shipment;

(3) number and the type of whole used tires sold; and

(4) name and address of the person or business who purchased the whole used tires. The generator shall retain the records for a period of three years and the records shall be made available to the executive director for review upon request. [Generator's log. Any whole used or scrap tire generator shall maintain a log showing the date, number, type and method of transporting the whole used or scrap tires off-site. The generator shall retain this log for a period of three years and the log shall be available to the executive director for review upon request.]

(f) Notice. The generator shall maintain a copy of the commission notice confirming the status as a registered generator and the notice shall be made available to the executive director for review upon request.

§330.808 On Site Storage

(a) Generators of whole used or scrap tires may store those same tires at the location where they are generated for a period not greater than 90 days. Whole used or scrap tires stored at the generator's site must be transported off-site within 90 days of their accumulation. Tires stored **outside** [out of doors] in an uncontrolled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(b) Whole used or scrap tires generated by and stored at a generator's location may be collected in a transportable collection container that is mobile, completely enclosed, and lockable for a period of not greater than 90 days. **The collection container shall be secured when it is unattended.** The entire container shall be hauled from the site by a registered transporter, taken to a registered tire processing or storage facility, and shall be manifested.

(c) **Regular volume generators** [Generators] of whole used or scrap tires may store those same tires at the location where they are generated provided the number of whole used or scrap tires does not exceed 500 on the ground or **2,000** [1,500] in a totally enclosed and lockable container. **Large volume generators may store those same tires at the location where they are generated provided the number of whole used or scrap tires does not exceed 500 on the ground or 2,000 in each of three totally enclosed and lockable containers.** Whole used or scrap tires stored **outside** [out of doors] in a controlled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(d) Generators of whole used or scrap tires shall only allow the accumulation of tires that were generated on-site to be stored at that same site. No whole used or scrap tires from separately owned places of business shall be transferred to, accepted, or located at, a site where they were not generated, **unless the site is registered with the commission as a large volume generator in accordance with §330.806 of this title (relating to Generator Registration) or a transfer station in accordance with §330.937 of subchapter X of this title (relating to Registration for a Transfer Station or Recycling Collection Center).** Generators of whole used or scrap tires with multiple places of business may consolidate and store the whole used or scrap tires from several business locations to one location providing the number of whole used or scrap tires does not exceed 500 on the ground or 2,000 [1,500] in a totally enclosed and lockable container. Whole used or scrap tires stored **outside** [out of doors] in a controlled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(e) Retailers and wholesalers who sell whole used [or scrap] tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, **or has been designated on the manifest as removed for reuse by a registered transporter.** Used tires that are to be resold as commodities, but are not **sorted, marked, classified, and arranged in an organized manner for sale to the consumer** [handled as described in this subsection], shall be considered as stockpiled whole used or scrap tires and the site shall be subject to registration as a waste tire storage facility, if the number of whole used or scrap tires at the generator site exceeds 500 on the ground or 2,000 [1,500] in a totally enclosed and lockable container.

§330.809 Transportation Requirements

(a) A generator shall initiate the manifest required in §330.807(b) of this title (relating to Generator Record Keeping) for each shipment of whole used or scrap tires transported off-site.

(b) A generator may designate the destination of all [whole used or] scrap tires generated at **the business** [his/her] location.

(c) A generator may transport **their** [his/her own whole used or] scrap tires to a waste tire facility or mobile tire processor, provided a tire transporter registration has been obtained from the executive director. Generators who do not transport their [own] tires shall only use a tire transporter who is registered by the executive director.

(d) A waste tire transporter or a mobile tire processor shall not charge a fee on or after April 1, 1992, to the wholesale or retail dealer of new tires for collecting whole used or scrap tires for delivery to a waste tire facility or for collecting or shredding whole used or scrap tires accepted for temporary storage from purchasers of new tires. This prohibition does not apply to the transportation of whole used or scrap tires classified as reusable under §330.808(e) of this title (relating to On Site Storage). This prohibition also does not apply to manufacturers, retreaders, fleet operators, **automotive dismantlers,** owners or operators of storage sites that contain whole used or scrap tires, and wholesale and retail dealers of used tires. This prohibition also does not apply to the transportation of whole used or scrap tires that are being disposed of in a permitted landfill [or tire monofill].

(e) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment, **destination** and the number of tires in each shipment. These records shall be made available to the executive director for review upon request.

(f) (No change.)

§330.811 Transporters of Whole Used or Scrap Tires

(a) Applicability. The regulations contained in these sections establish standards applicable to transporters collecting and hauling whole used or scrap tires or shredded tire pieces. [Methods of transportation shall include, but are not limited to, measures utilizing roadway, rail, and water facilities.] These sections are applicable to waste tire transporters and other tire transporters who transport whole used or scrap tires or shredded tire pieces **to or** from a registered generator, **waste tire facility, mobile tire processor, registered waste tire storage site, waste tire recycling facility, waste tire energy recovery facility, transfer station,** or Priority Enforcement List (PEL) site.

(b) Responsibility. Transporters shall maintain records using a manifest system as provided in §330.815 of this title (relating to Transporter Record Keeping). Each transporter shall be responsible for ensuring that [whole used or] scrap tires or shredded tire pieces are transported to a waste tire facility, a registered **waste tire** storage site, a **waste tire recycling facility, waste tire energy recovery facility, transfer station,** a permitted landfill [or monofill], a **recycler of** whole used or scrap **tires** [tire] or shredded tire pieces [recycler], or a retreader.

(c) Prohibition. A waste tire transporter may not charge a fee to a wholesale or retail dealer of new tires for collecting [for delivery to a waste tire facility or for collecting and shredding] **whole** used or scrap tires **that have a rim diameter of 12 inches but less than 25 inches and are** accepted for temporary storage by the dealer from purchasers of new tires.

(d) A registered waste tire transporter may charge a collection and/or transportation fee to a generator that accepts whole used or scrap tires for storage, is a fleet operator, is a wholesale dealer of used tires, is a retail dealer of used tires, is a manufacturer, is **an automotive dismantler** or is a retreader. Additionally, a transporter

may charge a generator (as defined in §330 805

(a) of the title (relating to Generators of Whole Used or Scrap Tires)) a collection and/or transportation fee for tires that are not transported to a waste tire facility, a mobile tire processor, [or] **a waste tire storage facility, a waste tire energy recovery facility, or a waste tire recycling facility. Also, a transporter may charge a generator (as defined in §330.805**

(a) of this title) a collection and/or transportation fee for tires that have a rim diameter of less than 12 inches or 25 inches or more

§330 812 Transporter Registration

(a) Transporters shall register their operations with the executive director A person shall not transport whole used or scrap tires without registering with the executive director prior to commencing operations An application for a transporter registration shall be made on a form obtained from the executive director upon request The applicant may deliver **the completed application to any commission regional office** or mail the completed application to the following address **Texas Natural Resource Conservation Commission** [Texas Water Commission, 1700 North Congress Avenue, Stephen F. Austin Building,] P O. Box 13087, Austin, Texas 78711-3087 The following registration information must be provided to the executive director:

(1) -(2) (No change)

(3) a description of vehicles to be registered, including the

(A)-(C) (No change.)

(D) capacity of vehicle, **and**

(E) type of vehicle; [and]

(4) the anticipated number of tires to be hauled and/or weight of shredded tire pieces to be hauled per year; **and**[.]

(5) the business identification or social security number.

(b) Transporters who are registered by the executive director shall maintain a copy of their **commission** registration **notice** [form] containing their assigned registration number at their designated place of business and in each vehicle used to transport whole used or scrap tires.

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

(e) A new registration application shall be submitted, to the executive director within ten days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered transporter is changed Following the executive director's determination, the old transporter registration number **may** [shall] be canceled or **transferred to the new registrant.**

(f) Suspension, revocation or denial of registration procedures are as follows

(1) The commission may suspend or revoke a registration or deny an initial or renewal registration for

(A)-(B) (No change)

(C) **alteration** [falsification] of waste shipping documents or shipment records,

(D)-(I) (No change)

(J) failure to notify the **TNRCC** [TWC] of any change in transporter registration information required in subsection

(d) of this section, or

(K) (No change)

(2)-(4) (No change)

§330 813 Delivery Requirement Transporters shall deposit [whole used or] scrap tires at a registered waste tire facility, registered waste tire storage site, or at a permitted landfill [or monofill] as designated by the generator Shipments of whole used or scrap tires may not be commingled with any other type of waste material, except for incidental whole used or scrap tires picked up in enclosed packer units

§330 814 Vehicle and Equipment Sanitation Standards All vehicles and equipment used for the collection and transportation of whole used or scrap tires or shredded tire pieces shall be constructed, operated, and maintained to prevent loss of whole used or scrap tires or shredded tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public Collection vehicles and equipment shall be maintained in a sanitary condition to preclude odors and insect breeding. Any vehicle or trailer used to transport whole used or scrap tires or shredded tire pieces shall be identified on both sides and the rear of the vehicle The identification shall consist of the name and place of business of the transporter and the commission registration number using numbers and letters at least two inches tall Trailers or trucks used to transport whole used or scrap tires shall be either fully enclosed and lockable, or have sidewalls of sufficient height to contain the load Trailers and trucks transporting whole used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit Trailers and trucks transporting **shredded tire pieces** shall be covered with a tarp during transit

§330 815 Transporter RecordKeeping

(a) Manifest

(1)-(2) (No change)

(3) If the transporter removes, for beneficial reuse, all tires from an individually manifested load, the transporter shall return the original manifest to the generator within three months of the date of collection.

(b) Transportation. Transporters may transport whole used tires that can be used for the original intended purpose or modified to be used for the original intended purpose without a manifest, provided the load is accompanied by a work order or invoice which includes the following information:

(1) name and address of the person who sold the whole used tires;

(2) date of the off-site shipment;

(3) number and the type of whole used tires sold; and

(4) name and address of the person or business who purchased the whole used tires.

(c)[(b)] Maintenance of records and reporting The transporter shall retain [a copy of] all **manifests, work orders or invoices** showing the collection and disposition of the whole used or scrap tires or shredded tire pieces **Records** [Manifest copies] shall be retained by the transporter at **the** [his/her] designated place of business for a period of three years and made available to the executive director upon request Transporters shall submit to the executive director an annual report of their activities through December 31 of each calendar year showing the number and type of whole used or scrap tires collected, the disposition of such tires, and the number of whole used or scrap tires delivered to each facility The report shall be submitted no later than March 1 of the year following the end of the reporting period The report shall be prepared on a form provided by the executive director

(d)[(c)] Local ordinances Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, transporters may use such controls and records to satisfy the

commission's requirement under this section, following review and approval by the executive director

§330 816 Interstate Transportation Persons who engage in the transportation of [whole used or] scrap tires from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport [whole used or] scrap tires in Texas but have their place of business in another state or country, shall comply with all of the requirements for transporters contained in this subchapter If such persons also engage in any activity of managing whole used or scrap tires in Texas by storage, processing, or disposal, they shall follow the applicable requirements for operators of such activities Persons who engage in the transportation of whole used or scrap tires which do not originate or terminate in Texas, are exempt from these regulations, except for §330 814 of this title (relating to Vehicle and Equipment Sanitation Standards)

§330 817 Transporter Fees

(a)-(b) (No change)

(c) Fee schedule The fees shall be calculated based on the total number of whole used or scrap tires or shredded tire pieces transported annually The total weight of shredded tire pieces transportated annually shall be converted to the number of whole used or scrap tires using a conversion factor of 18 7 pounds per tire The following schedule shall be used to calculate the fee amount owing to the commission:

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

(d) Method of payment The transporter's annual registration fee shall accompany the applicant's payment coupon and shall be submitted in the form of a check or money order made payable to the **Texas Natural Resource Conservation Commission** [Texas Water Commission] and delivered or mailed to Fiscal Division, **Texas Natural Resource Conservation Commission,** P.O Box 13087, Austin, Texas 78711-3087.

(e) Revenue derived from fees charged under this section to transporters of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling fund.

§330 821 Mobile Tire Processors of Whole Used or Scrap Tires.

(a)-(b) (No change)

(c) Recycling responsibility Each mobile tire processor operating a mobile tire shredder that participates in the Waste Tire Recycling Fund (WTRF) program and receives reimbursement from the WTRF [(WTRF)] shall ensure that the shredded tire pieces that are generated have been delivered to a registered waste tire storage facility, or to a recycling, reuse, or energy recovery facility in accordance with applicable sections of this subchapter

(d) Prohibition Mobile tire processors operating a mobile tire shredder shall not charge a fee to a retail or wholesale dealer for collecting for delivery to a waste tire facility or for collecting and shredding whole used or scrap tires accepted for temporary storage by the dealer from purchasers of new tires, on or after April 1, 1992 This prohibition does not apply to the collecting and shredding of whole used or scrap tires received from manufacturers, retreaders, fleet operators, automotive dismantlers, and storage site owners or operators of whole used or scrap tires

(e) (No change)

(f) Approval authority. The executive director has the authority to approve or disapprove an individual or company identified by a mobile tire processor, as a legitimate end use source for their baled whole used or scrap tires or shredded tire pieces.

(g) Recycling report. Effective January 1, 1994, and on a semiannual basis thereafter, mobile tire processors shall report their recycling, reuse, and energy recovery activities to the executive director. The semi-annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the waste tire facility;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors; and

(3) a listing of all registered waste tire recycling facilities or waste tire energy recovery facilities where the mobile tire processor currently delivers the shredded tire pieces. Each waste tire recycling facility or waste tire energy recovery facility listed shall include the following information:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility;

(D) detailed description of process to recycle, reuse or recover the energy from the shredded tire pieces;

(E) copies of contracts and agreements between the mobile tire processor and the waste tire recycling facility or waste tire energy recovery facility for the recycling, reuse or energy recovery or the shredded tire pieces;

(F) exact quantities, by month, (in number of tires or weight of shredded tire pieces) that the mobile tire processor delivered to the registered waste tire recycling facility or waste tire energy recovery facility;

(G) the duration of the contract or agreement and the total material intended to be delivered;

(4) a complete description of additional activities in which the mobile tire processor is currently involved that may be classified as encouraging or promoting the growth of additional recycling, reuse, or energy recovery facilities in the state, or assisting in the expansion of existing recycling, reuse, or energy recovery facilities in the State; and

(5) any information considered confidential shall be so indicated on each page of the report and submitted with a cover letter requesting that it remain confidential. Such request shall be recognized as confidential pursuant to §330.875 of this title (relating to Confidentiality).

§330 822 Mobile Tire Processor Registration

(a)-(d) (No change)

(e) A new registration application shall be submitted to the commission within ten days of a determination by the executive director that operation or management methods are no longer adequately described by the existing registration, or ownership of the registered mobile tire processor has changed **A change in the federal tax identification number will constitute a change of ownership.** Following the executive director's determination, the previously issued mobile processor registration number shall be canceled

(f) Suspension, revocation or denial of initial or renewal registration procedures are as follows

(1) The commission may suspend or revoke a registration or refuse to

issue an initial or renewal registration for

(A)-(B) (No change.)

(C) **alteration** [falsification] of any record maintained or received by the registrant,

(D)-(G) (No change.)

(H) failure to operate a registered mobile processing facility within 180 days of receipt of registration from the executive director [illegal disposal of shredded tire pieces],

(I)-(J) (No change.)

(K) **alteration** [falsification] of any request for reimbursement from the WTRF,

(L) failure to complete the work required to clean-up a Priority Enforcement List (PEL) site described in §330.863 of this title (relating to Priority Enforcement List (PEL)) as stated in the executive director approved Site Clean-Up Plan, [or]

(M) failure to account to the executive director for recycling, reuse or energy recovery activities in the required five-year period; or[.]

(N) effective September 1, 1994, failure to comply with the requirements pursuant to §330.880(d) of this title (relating to Shredding Outside of State).

(2)-(4) (No change.)

(g) Each mobile tire processor shall maintain continuous commercial general liability insurance coverage during the registration term of their operations and comply with the following requirements.

(1) (No change.)

(2) evidence of commercial auto liability coverage with a minimum combined single limit of $1 million shall be provided to the Financial Assurance Section of the **TNRCC** [Texas Water Commission] at the address indicated in paragraph (4) of this subsection, prior to transporting the mobile tire equipment.

(3) (No change.)

(4) each certificate of insurance shall designate the **TNRCC** [Texas Water Commission] as a certificate holder in the following manner: **TNRCC** [Texas Water Commission], Financial Assurance Section (WTRF Program), P.O. Box 13087, Austin, Texas, 78711-3087.

(h) A mobile tire processor shall contact the Texas Natural Resource Conservation Commission's [Texas Water Region [District] Office area they are vacating and the **Texas Natural Resource Conservation Commission** [Texas Water Commission] **Region** [District] Office area they are entering at least 48 hours prior to the date the processing equipment is actually moved. This verbal notification shall be followed with written notification within ten days of the actual moving date.

(i) A mobile tire processing facility shall be inspected to insure compliance with the application by the executive director prior to receiving final approval to operate.

(j) Effective January 1, 1996, all new, amended, and renewal mobile tire processor registration applications shall contain requirements for the applicant to identify the individual or company registered pursuant to §330.933(a) of subchapter X of this title (relating to Requirements for a Waste Tire Recycling Facility) or §330.934(a) of subchapter X of this title (relating to Waste Tire Energy Recovery Facility Registration) that intends to accept for recycling, reuse, or energy recovery, the mobile tire processor's shredded tire pieces. The executive director shall only reimburse a mobile tire processor for those shredded tire pieces that have been delivered to a registered waste tire recycling facility or waste tire energy recovery facility.

(k) Registration Fees.

(1) Individuals or companies that prepare a new, renewed or amended application on forms obtained from the executive director for registration as a mobile tire processor shall pay a registration fee of $500.

(2) Registration fees collected under paragraph (1) of this subsection shall be allocated to the commission for its reasonable and necessary costs associated with reviewing for approval, applications for the registration of mobile tire processor.

§330.823 Delivery Requirement. Mobile tire processors seeking reimbursement from the WTRF shall deliver the shredded tire pieces of less than nine square inches in size to a registered waste tire facility, a registered waste tire storage facility, **a registered waste tire recycling facility or registered waste tire energy recovery facility.** [or a permitted waste tire monofill] or to a facility that will recycle, reuse, or recover energy from the shredded tire pieces.]

§330.824 Vehicle and Equipment Requirements.

(a) (No change.)

(b) The mobile tire processor shall **have a scale attached to the conveyor belt of the shredding equipment to record shredded tire weights as the whole tires are shredded or shred directly into a container capable of being transported by a truck to a weigh station. All loaded containers shall be weighed by the end of the shredding shift. A daily shredding log shall be maintained identifying the numbers on the weigh tickets for all of the containers weighed during each shift to identify the weigh tickets associated with a specific shredding time frame.** [be equipped with or shall have access to a scale to weigh the shredded tire pieces immediately after shredding.] Reimbursement from the WTRF shall be based on the after shredded weight of the tire. Any scale used that is not certified by the Texas Department of Agriculture (TDA) shall be supported with documentation as to why the scale cannot be certified and calibration documentation equivalent to the TDA must be provided to the executive director on a monthly basis from the manufacturer of the scale.

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

(e) The mobile tire processor shall notify the executive director in writing of the name and location of the certified weigh scale used for weighing the shredded tire pieces. The mobile tire processor shall limit their use to only the weigh scale identified in writing. In the event that the identified scale can not be used to weigh shredded tire pieces for the purpose of WTRF reimbursement, the mobile tire processor shall notify the executive director of that fact and inform the executive director of the name and location of the replacement scale within ten days.

(f) For the purposes of this subchapter, the mobile tire processor shall determine the tare weight for each truck and trailer combination used to weigh shredded tire pieces for WTRF reimbursement on a daily basis. The tare weight for the truck and trailer combination shall be determined by the weigh scale identified in subsection (e) of this section and shall be mechanically printed on the weigh ticket.

(g) The priority enforcement list site tire shreds shall be weighed separately and weight documentation shall identify the shreds as priority enforcement list unless the whole used or scrap tires or scrap tire pieces are weighed as incoming tires.

§330.825. Mobile Tire Processor RecordKeeping.

(a) Maintenance of records. The mobile tire processor shall maintain **originals** [copies] of all records required by this section for a period of three years. These records shall be **maintained at the same location as the shredder at all times and shall be** made available to the executive director for review upon request.

(b) Required records. A mobile tire processor shall maintain the following records:

(1)-(8) (No change.)

(9) a log containing copies of the monthly operations reports. This report shall contain the following information and shall be completely filled out each month by the mobile tire processor:

(A)-(G) (No change.)

(H) the monthly and total financial assurance secured and recorded with the **Texas Natural Resource Conservation Commission** [Texas Water Commission] Financial Assurance Section;

(I)-(M) (No change.)

(10) (No change.)

(11) a daily log identifying the location and time of all stops made by the transporter of tire shreds to and from a mobile shredding facility and to and from a registered waste tire storage facility, waste tire recycling facility, or waste tire energy recovery facility.

(c) Annual report. Mobile tire processors shall submit to the executive director an annual summary of their activities through December 31 of each calendar year showing the number and type of whole used or scrap tires collected, shredded, the disposition of such tires or shredded tire pieces, and the amount by weight of shredded tire pieces delivered to a registered waste tire facility, [registered] waste tire storage facility, [permitted waste tire monofill, or recycling, reuse or] **waste tire recycling facility, or waste tire** energy recovery facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

(d) (No change.)

§330.826. Operational Requirements for Mobile Tire Processors.

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

(c) Mobile tire processors may operate at any registered waste tire storage facility, or any permitted municipal solid waste landfill [or waste tire monofill] at which whole used or scrap tires are collected or disposed, at any priority enforcement list site authorized by the executive director, or on property utilized by generators to accumulate or store their own whole used or scrap tires.

(d) (No change.)

(e) All PEL shredded tire pieces shall be transported from the PEL site, within 48 hours after shredding, to a registered waste tire storage facility, a [registered] waste tire facility, **waste tire recycling facility, or waste tire** [a permitted waste tire monofill, or a recycling, reuse, or] energy recovery facility.

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

(h) All applicants seeking registrations to operate as a mobile tire processor and with the intent to seek reimbursement from the WTRF shall have adequate storage capacity at their registered waste tire storage facility to store all tires shredded during a specific month of operation.

§330.827. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.

(a) A mobile tire processor is eligible for reimbursement from the WTRF provided such processor is in compliance with §§330. 871-**330.883** [330.880] and **§330.889** [330.891] of this title (relating to the WTRF; WTRF Program; [Announcement of Intent to Participate; Site Clean-Up Agreement;] Public Notice of Intent to Operate; Other Permits or Registrations Required; **Confidentiality;** [Approval to Collect and Process Tires from PEL Sites; Shipping, Record Keeping, and Reporting Requirements;] WTRF Reimbursement Policies and Procedures; Payments to Waste Tire Facilities or Mobile Tire Processors; **Special Authorization Tires; WTRF Reimbursement Restrictions; Executive Director's Regional Site Directive or Central Office Report; Protest of Site Directive and/or Central Office Report; Formal Petition; Hearing by the Commission;** and Special Conditions for Beneficial Use of Whole Used or Scrap Tires).

(b) Compliance shall also include the following items:

(1) (No change)

(2) The shredded tire pieces shall be delivered to a registered waste tire facility, [a registered] waste tire storage facility, **waste tire recycling facility, or waste tire energy recovery facility** [a permitted waste tire monofill, or a facility that will recycle, reuse, or recover energy from the shredded tire pieces].

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

(f) The mobile tire processor shall maintain a complete record of all manifest forms for whole used or scrap tires for which reimbursement is being sought. The mobile tire processor shall ensure that Sections 1, 2, and 3 of the manifest form are accurately and completely filled out. Should the manifest form not be completely filled out or is filled out incorrectly, the mobile tire processor should not accept those whole used or scrap tires. The **Texas Natural Resource Conservation Commission** [Texas Water Commission] will not provide reimbursement from the WTRF to a mobile tire processor that processes whole used or scrap tires from such inaccurate or incomplete manifests.

§330.831. Storage of Whole Used or Scrap Tires or Shredded Tire Pieces.

(a) (No change.)

(b) Responsibility.

(1) (No change.)

(2) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver whole used or scrap tires or shredded tire pieces at their registered waste tire storage facility [or permitted waste tire monofill] are properly registered with the executive director as required by §330.812 of this title (relating to Transporter Registration), §330.822 of this title (relating to Mobile Tire Processor Registration) and §330.843 of this title (relating to Waste Tire Facility Registration).

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver whole used or scrap tires or shredded tire pieces at their registered waste tire storage facility [or permitted waste tire monofill] have manifested the whole used or scrap tires or shredded tire pieces as required by §330.815 of this title (relating to Transporter Record Keeping), §330.825 of this title (relating to Mobile Tire Processor Recordkeeping) and §330.845 of this title (relating to Waste Tire Facility Recordkeeping).

(4) (No change.)

(5) Maintenance of Records. The waste tire storage facility shall maintain **originals** [copies] of all records required by this section for a period of three years. These records shall be made available to the executive director for review upon request.

(6) A waste tire storage facility shall maintain manifests of whole used or scrap tires or shredded tire pieces. The manifest form shall contain the following information filled out completely by the waste tire storage facility prior to final disposition of the whole used or scrap tires or shredded tire pieces:

(A)-(C) (No change.)

(D) the number and type of whole used or scrap tires or the weight of shredded tire pieces stored [or disposed of] at the registered waste tire storage facility; and

(E) (No change.)

(7) If an application for registration for an VIII-R waste tire storage facility is received that is not administratively and technically complete, the WTRF staff shall notify the applicant of the deficiencies within 30 [10] working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant **and shall result in forfeiture of the application review fee.** The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response can not be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application within the time frames indicated above, the application **may** [shall] be considered withdrawn without prejudice **and shall result in forfeiture of the application review fee.**

(8) (No change.)

(c) Recycling report. Effective January 1, 1994, and on a semiannual basis thereafter, waste tire storage facilities owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The semi-annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the waste tire storage facility;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a listing of all in-state or out-of-state, registered or unregistered waste tire recycling facilities or waste tire energy recovery facilities where the waste tire storage facility owner or operators currently delivers the shredded tire pieces. Each waste tire recycling facility or waste tire energy recovery facility listed shall include the following information:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility;

(D) detailed description of process to recycle, reuse or recover the energy from the shredded tire pieces;

(E) copies of contracts and agreements between the waste tire storage site owners or operators and the waste tire recycling facility or waste tire energy recovery facility for the recycling, reuse or energy recovery or the shredded tire pieces;

(F) exact quantities, by month, (in number of tires or weight of shredded tire pieces) that the waste tire storage facility owners or operators delivered to the registered waste tire recycling facility or waste tire energy recovery facility.

(G) the duration of the contract or agreement and the total material intended to be delivered;

(4) a complete description of additional activities in which the waste tire storage facility owners or operators is currently involved that may be classified as encouraging or promoting the growth of additional recycling, reuse, or energy recovery facilities in the state, or assisting in the expansion of existing recycling, reuse, or energy recovery facilities in the State; and

(5) any information considered confidential shall be so indicated on each page of the report and submitted with a cover letter requesting that it remain confidential. Such request shall be recognized as confidential pursuant to §330.875 of this subchapter (relating to Confidentiality).

§330.832. Waste Tire Storage Facility Classification.

(a) (No change.)

(b) The executive director shall classify all waste tire storage facilities according to the following:

(1) Type VIII-WT. A Type VIII-WT facility is one in which less than 500 whole used or scrap tires are stored on the ground or **2,000** [1,500] whole used or scrap tires are stored in a totally enclosed and lockable container. Storage of whole used or scrap tires at a Type VIII-WT site shall be temporary. Whole used or scrap tires stored at a Type VIII-WT facility must be transported to a permitted or registered storage or disposal facility within 90 days following their accumulation.

(2) Type VIII-R. A Type VIII-R facility is one in which more than 500 whole used or scrap tires or an equivalent amount of shredded tire pieces are stored on the ground or **2,000** [1,500] whole used or scrap tires or an equivalent amount of shredded tire pieces are stored in a totally enclosed and lockable container. Storage of whole used or scrap tires or shredded tire pieces shall be temporary. Storage of whole used or scrap tires that are not designated as reusable whole used tires, is limited to 90 days from delivery date. Whole used or scrap tires that are **25** [26] inches or more in rim diameter or that weigh a minimum of 500 pounds are exempt from this requirement. **Effective January 1, 1996,** shredded tire pieces may be stored for a period of time not to exceed 12 months, unless written authorization for a longer storage period has been granted by the executive director because the recycling market cannot accommodate the shredded tire pieces. A Type VIII-R site shall be registered by the executive director.

[(3) Type VIII-S. A Type VIII-S site is a waste tire monofill that contains shredded tire pieces equivalent to or greater than 500 whole used or scrap tires. The whole used or scrap tires shall have been shredded to a particle size of not larger than nine square inches if the mobile tire processor or waste tire facility was seeking reimbursement from the WTRF or the whole used or scrap tires were only halved or quartered and the mobile tire processor or waste tire facility was not seeking reimbursement from the WTRF. Storage at a Type VIII-S site shall be considered long term and shall require a permit from the Texas Water Commission.]

(3)[(4)] Type VIII-I. A Type VIII-I is a waste tire storage facility that contains more than 500 whole used or scrap tires and is considered by the executive director as an illegal tire site. These types of facilities shall be handled through the Priority Enforcement List (PEL) and routine inspection and enforcement activities.

(4)[(5)] Type VIII-L. A Type VIII-L is a designated recycling collection area at a permitted municipal solid waste landfill. An unlimited number of whole used or scrap tires may be stored at a Type VIII-L facility for a period of 90 days from delivery.

§330.833. Waste Tire Storage Facility Registration.

(a) (No change.)

(b) An application for a waste tire storage facility registration number shall be made to the executive director on a form provided by the executive director **accompanied by a $500 non-refundable application review fee.** The following information shall be provided to the executive director:

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

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

(f) Out-of-State whole used or scrap tires or tire pieces are not eligible for reimbursement from the Waste Tire Recycling Fund. Waste tire storage facilities that intend to store whole used or scrap tires or tire pieces for reimbursement from the Waste Tire Recycling Fund and intend to store out-of-state whole used or scrap tires or tire pieces or shredded tire pieces shall store out-of-state whole used or scrap tires or tire pieces or shredded tire pieces in separate and discrete piles.

(g) A waste tire storage facility shall be inspected to insure compliance with the application by the executive director prior to receiving final approval for storage.

(h) Registration Fees.

(1) Individuals or companies that prepare a new, renewed or amended application on forms obtained from the executive director for registration as a waste tire storage facility shall pay a non-refundable application review fee of $500.

(2) Registration fees collected under paragraph (1) of this subsection shall be allocated to the commission for its reasonable and necessary costs associated with reviewing applications for the registration of waste tire storage facilities.

§330.834. Evidence of Financial Responsibility. The applicant seeking registration for a Type VIII-R storage facility [or a permit for a Type VIII-S storage facility] shall submit evidence of financial responsibility in conformance with the requirements contained in §§330. 885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

§330.835. Requirements for a Type VIII-R Waste Tire Storage Facility.

(a) Registration requirements.

(1) Persons who store or intend to store more than 500 whole used or scrap tires and/or an equivalent amount of shredded tire pieces on the ground or **2,000** [1, 500] whole used or scrap tires and/or an equivalent amount of shredded tire pieces in a totally enclosed and lockable container shall register these sites with the executive director. Registration forms shall be provided by the executive director upon request.

(2) (No change.)

(3) A Type VIII-R registration shall expire 60 months from the date of issuance **unless the storage site changes ownership prior to that time. A Type VIII-R registration is non-transferable and will expire at the time that ownership changes. A change in the federal tax identification number will constitute a change of ownership.** Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the Type VIII-R storage facility registration.

(4) Type VIII-R storage facility owners and/or operators shall submit an amendment to their application **and a non-refundable $500 application review fee** to the commission within 15 days of a change to their registration if:

(A)-(C) (No change.)

(5) A new Type VIII-R storage facility registration application **and a non-refundable $500 application review fee** shall be submitted to the executive director within ten days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered Type VIII-R storage facility has changed or the operator of a Type VIII-R storage facility has changed. Following the executive director's determination, the old Type VIII-R storage facility registration number shall be canceled.

(6) Suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) The commission may suspend or revoke a registration or refuse to issue an initial or renewal registration for:

***(i)* failure to maintain complete and accurate records required under this subchapter;**

***(ii)* failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Transportation or local traffic law enforcement agencies;**

***(iii)* alteration of any record maintained or received by the registrant;**

***(iv)* failure to comply with any rule or order issued by the commission pursuant to the requirements of this subchapter;**

***(v)* failure to submit the annual report required in subsection (d)(5) of this section**

***(vi)* failure to maintain financial assurance as required in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);**

***(vii)* collection and/or storage of shredded tire pieces or whole used or scrap tires or scrap tire pieces without the registration; and**

***(viii)* alteration of any documentation used to substantiate a request for reimbursement from the WTRF.**

(B) A Type VIII-R storage facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A Type VIII-R storage facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a Type VIII-R storage facility shall not store waste tire shreds or whole used or scrap tires or scrap tire pieces regulated under this subchapter.

(C) The holder of a Type VIII-R storage facility registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a Type VIII-R storage facility registration is revoked by the commission a second time, the revocation shall be permanent.

(D) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

***(i)* an opportunity for a formal hearing on the suspension or revocation of registration must be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant;**

***(ii)* an opportunity for a formal hearing on the denial of registra-**

tion or renewal of registration must be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address listed on the application. If the registration is denied, the individual or company shall not store shredded tire pieces or whole used or scrap tires or scrap tire pieces regulated under this subchapter; and

(iii) the formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedures and *Texas Register* Act, Texas Revised Civil Statute Article 6252-13a (Vernon 1992) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code annotated Chapter 361 (Vernon 1992) and the rules of the commission.

(E) If the registration is suspended or revoked, and a formal hearing has been timely requested by the registrant the Type VIII-R storage facility shall not accept for storage additional shredded tire pieces, whole used or scrap tires or scrap tire pieces regulated under this subchapter until a final decision has been made by the commission as result of the hearing.

(F) If the suspension or revocation of the Type VIII-R storage facility registration is approved by the commission, the owner or operator of the facility shall remove all shredded tire pieces and whole used or scrap tires and scrap tire pieces stored at the facility within 60 days from the date of suspension or revocation in accordance with the requirements contained in this subchapter. [The commission shall suspend or revoke a Type VIII-R storage facility registration or deny an initial or renewal application for registration for cause as provided in §330.840 of this title (relating to Penalties for Owner or Operator of Waste Tire Storage Facilities). An opportunity for a formal hearing on the suspension or revocation may be requested by the applicant within 20 days after a notice of suspension or revocation has been sent by the executive director to the last known address of the registrant. If the registration is suspended or revoked, and a formal hearing has been requested by the applicant the Type VIII-R storage facility shall not accept for storage additional whole used or scrap tires or shredded tire pieces regulated under this subchapter until a final decision has been made by the commission as result of the hearing. If the suspension or revocation of the Type VIII-R storage facility registration is approved by the commission, the owner or operator of the facility shall remove all whole used or scrap tires or shredded tire pieces stored at the facility within 60 days from the date of suspension or revocation.]

(7) Preparation and submission of an application for a Type VIII-R storage facility shall be accompanied by a nonrefundable $500 application review fee in accordance with the following procedures:

(A) (No change.)

(B) The application for a registration of a Type VIII-R storage facility shall be submitted in duplicate [triplicate] to the executive director with all supporting data also submitted in duplicate [triplicate] unless otherwise directed by the executive director. Within 30 days of [Following] receipt of the application, the executive director will forward to the applicant a letter acknowledging receipt of the application.

(C) Data presented in support of an initial or renewal application for a Type VIII-R storage facility shall consist of:

(i) the legal name, [and] address and federal tax identification number of the individual, partnership, corporation, city, county or other governmental entity that is applying for the registration and will be responsible for operations at the Type VIII-R storage facility;

(ii)-(xiii) (No change.)

(xiv) a statement from the property owner [substantially equivalent to §330.905 of this title (relating to Appendix E-Form for Property Owner Affidavit)] shall be submitted on a form prepared by the executive director when the applicant is not a city, county, state agency, federal agency, or other governmental entity and is not the owner of record of the land described in the application, or does not have an option to buy the land. The statement shall be witnessed and notarized[. If the property owner does not sign the statement, the applicant shall provide the executive director with documentation that the property owner has been properly notified and advised of his/her responsibilities and potential liabilities in relation to the operation of a Type-VIII-R waste tire storage facility on the owner's land] ;

(xv) a Type VIII-R storage facility layout plan showing location of the storage areas, oversize tires that qualify for WTRF reimbursement, and oversize tires that do not qualify for reimbursement, fire lanes, access roads (internal and external), fire control facilities, facility security and fencing, maintenance and control buildings, sanitation facilities, location and description of the type of tire processing equipment to be used, and other operational buildings to be located on the Type VIII-R storage facility;

(xvi) a drainage plan showing drainage flow throughout the Type VIII-R storage facility area, specifically the potential for contaminated storm water runoff from storage piles, or wastewater runoff from areas of the waste tire storage facility where equipment is operated or stored; locations of streams; and any other important drainage feature of the facility. Any additional surface drainage controls that are necessary to ensure facility containment and treatment of potentially contaminated storm water or wastewater shall be designed by a registered professional engineer [in accordance with §330.65(b)(5)(F)(iii) and (v) of this title (relating to Technical Information Required for Landfill Sites Serving 5,000 Persons or More-Site Development Plan)]. If, during review of the application or after issuance of the registration, a detailed drainage plan is determined to be required, then it shall be prepared, signed, and sealed by a registered professional engineer [in accordance with §330.58 of this title (relating to Preparation of Application)] within the time period requested by the executive director;

(xvii)-(xix) (No change.)

(b) Design requirements for Type VIII-R Waste Tire Storage Facility.

(1) (No change.)

(2) Whole used or scrap tires or shredded tire pieces may be stored using outside tire piles, inside storage, or lockable containers, or a combination of any of the aforementioned methods.

(A)-(B) (No change.)

(C) Whole used or scrap tires or shredded tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable and shall not be capable of containing more than 2,000 [1,500] whole used or scrap tires or equivalent number of shredded tire pieces.

(3) Outside piles consisting of whole used or scrap tires or shredded tire pieces and entire buildings used to store whole used or scrap tires or shredded tire pieces shall not be within 20 feet of the property line or easements of the Type VIII-R storage facility. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 20-foot property line or easement requirement on a case-by-case basis in cases of unusual building codes or site conditions. In order for the applicant to be granted a variance, the applicant must dem-

onstrate to the satisfaction of the executive director that the distance that is the subject of the variance is adequate for fire fighting purposes and meets the other applicable requirements of this subchapter.

(4) Whole used or scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the Type VIII-R storage facility. Large whole used or scrap tires that are 25 [26] inches or more in rim diameter or that weigh a minimum of 500 pounds are exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(5) There shall be a minimum separation of 20 feet between outside tire piles consisting of whole used or scrap tires or shredded tire pieces. This 20-foot space shall be designated as a fire lane **that totally encircles the tire piles** and shall be an all-weather road. The open space between buildings and outside tire piles consisting of whole used or scrap tires or shredded tire pieces shall be a minimum of 20 feet and kept open at all times and maintained free of rubbish, equipment, tires, or other materials.

(6)-(12) (No change.)

(13) All oversized tires must be weighed in separately from other whole used or scrap tires and stored in separate piles if the oversized tires do not qualify for reimbursement from the WTRF.

(c) (No change.)

(d) Type VIII-R Waste Tire Storage Facility Recordkeeping.

(1) General Requirements.

(A)-(B) (No change.)

(C) All drawings or other sheets prepared for revisions to a Type VIII-R storage facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in duplicate [triplicate].

(2) (No change.)

(3) Manifests. The Type VIII-R storage facility operator shall retain [a copy of] all manifests received from a mobile tire processor or waste tire facility, or waste tire transporter for whole used or scrap tires or shredded tire pieces delivered to the Type VIII-R storage facility or removed from the Type VIII-R storage facility. The Type VIII-R waste tire storage facility shall ensure that the top **original** [copy] of the five-part manifest shall be returned to the generator completely filled out within 90 days of the date and time of collection as indicated in Section 1 of the manifest form.

(4) Maintenance of records and reporting. The Type VIII-R storage facility operator shall retain an **original** [a copy] of all records showing the collection and disposition of the whole used or scrap tires or shredded tire pieces. Such **records** [copies] shall be retained for three years and made available for review to the executive director upon request.

(5) (No change.)

(e)[(6)] Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the Type VIII-R waste tire storage facility owner or operator shall use such controls and records to satisfy the commission's requirements, upon review and approval by the executive director.

§330.837. Requirements for a Type VIII-L Waste Tire Storage Facility.

(a) (No change.)

(b) To receive a waste tire storage facility registration number for the recycling collection area, the permittee shall **complete and** submit to the executive director, in **duplicate** [triplicate], **an application provided by the executive director** [an amendment to their previously approved Site Development Plan designating the collection area]. In addition, a metes and bounds description of the designated recycling collection area shall be submitted with the amendment request.

(c) (No change.)

§330.838. Requirements for a Type VIII-WT Waste Tire Storage Facility.

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

(c) Whole used or scrap tires stored in a Type VIII-WT storage facility shall be removed at least once every 90 days or when the accumulated number of whole used or scrap tires nears the 500 limit on the ground or nears the **2,000** [1,500] limit in a totally enclosed and lockable container.

§330.840. Penalties for Owners or Operators of Waste Tire Storage Facilities. An owner or operator of a registered [or permitted] waste tire storage facility that violates the requirements of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.841. Waste Tire Facility Processors of Whole Used or Scrap Tires.

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

(c) Recycling responsibility. Each waste tire facility that participates in the WTRF program and receives reimbursement from the WTRF shall be responsible for ensuring that the shredded tire pieces generated at the waste tire facility have been delivered to a registered waste tire storage facility, **waste tire recycling facility,** waste tire [or recycling, reuse, or] energy recovery facility in accordance with applicable sections of this subchapter.

(d) WTRF program. Waste tire facilities that participate in the WTRF program shall not charge a fee to retail or wholesale dealers for collecting for delivery to a processing facility or for collecting and shredding whole used or scrap tires accepted for temporary storage by the dealer from the purchasers of new tires on or after April 1, 1992. This prohibition does not apply to the collecting and shredding of whole used or scrap tires from manufacturers, retreaders, fleet operators, **automotive dismantlers,** and storage site owners or operators of whole used or scrap tires.

(e) (No change.)

(f) Approval authority. The executive director has the authority to approve or disapprove an individual or company identified by a waste tire facility, as a legitimate end use source for their baled whole used or scrap tires or shredded tire pieces.

(g) Recycling report. Effective January 1, 1994, and on a semiannual basis thereafter, waste tire facilities shall report their recycling, reuse, and energy recovery activities to the executive director. The semi-annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the waste tire facility;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a listing of all registered waste tire recycling facilities or waste tire energy recovery facilities where the waste tire facility currently delivers the shredded tire pieces. Each waste tire recycling facility or waste tire energy recovery facility listed shall include the following information:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility;

(D) detailed description of process to recycle, reuse or recover the energy from the shredded tire pieces;

(E) copies of contracts and agreements between the waste tire facility and the waste tire recycling facility or waste tire energy recovery facility for the recycling, reuse or energy recovery for the shredded tire pieces;

(F) exact quantities, by month, (in number of tires or weight of shredded tire pieces) that the waste tire facility delivered to the registered waste tire recycling facility or waste tire energy recovery facility;

(G) the duration of the contract or agreement and the total material intended to be delivered;

(4) a complete description of additional activities in which the waste tire facility is currently involved that may be classified as encouraging or promoting the growth of additional recycling, reuse, or energy recovery facilities in the state, or assisting in the expansion of existing recycling, reuse, or energy recovery facilities in the State; and

(5) any information considered confidential shall be so indicated on each page of the report and submitted with a cover letter requesting that it remain confidential. Such request shall be recognized as confidential pursuant to §330.875 of this subchapter (relating to Confidentiality).

§330.842. Waste Tire Facility Classification and Operation.

(a) (No change.)

(b) A Type VIII-P site shall be operated in accordance with the provisions [in Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) and the provisions] contained in this subchapter.

(c) Waste tire shredding or reduction equipment shall be equipped with or shall have access to a scale that is either certified annually by the weights and measures section of the Texas Department of Agriculture (TDA) or certified on a monthly basis by the manufacturer that developed and installed the scale. All shredded tire pieces for which WTRF reimbursement is being sought and is not weighed on a scale directly attached to the shredder conveyor belt, shall be shredded directly into a container capable of being transported by a truck to a weigh station. All loaded containers shall be weighed by the end of each shredding shift. A daily shredding log shall be maintained identifying the numbers on the weigh tickets for all of the containers weighed during each shift to identify weigh tickets associated with a specific shredding time frame. [weighed immediately after processing]. Reimbursement from the WTRF shall be based on the after shredded weight of the whole used or scrap tire. Any scale that is not certified by the TDA shall be supported with documentation as to why it cannot be certified by TDA and calibration documentation equivalent to the TDA documentation shall be obtained from the manufacturer of the scale.

(d) The waste tire facility shall notify the executive director in writing of the name and location of the certified weigh scale used for weighing the shredded tire pieces. The waste tire facility shall limit their use to only the weigh scale identified in writing. In the event that the identified scale can not be used to weigh shredded tire pieces for the purpose of WTRF reimbursement, the waste tire facility shall notify the executive director of that fact and inform the executive director of the name and location of the replacement scale within ten days.

(e) For the purposes of this subchapter, the waste tire facility shall determine the tare weight for each truck and trailer combination used to weigh shredded tire pieces for WTRF reimbursement on a daily basis. The tare weight for the truck and trailer combination shall be determined by the weigh scale identified in subsection (d) of this section and shall be mechanically printed on the weigh ticket.

(f) The priority enforcement list site tire shreds shall be weighed separately and weight documentation shall identify the shreds as priority enforcement list unless the whole used or scrap tire or scrap tire pieces are weighed as incoming tires.

§330.843. Waste Tire Facility Registration.

(a) Persons that process whole used or scrap tires at a waste tire facility shall obtain a registration number from the executive director for the operation of the waste tire facility. The registration number assigned to the waste tire facility shall be stenciled on each piece of processing equipment in use at that facility. This registration number requirement is only applicable to waste tire facilities that have permanent equipment used to shred or reduce whole used or scrap tires to a particle size of nine square inches or less.

(b)-(e) (No change.)

(f) A new registration application shall be submitted to the executive director within ten days of a determination by the executive director that operation or management methods are no longer adequately described by the existing registration, or ownership of the registered waste tire facility has changed, or the location of the equipment or facility has changed. A change in the federal tax identification number will constitute a change of ownership. Following the executive director's determination, the old waste tire facility registration number shall be canceled.

(g) Suspension, revocation or denial of initial or renewal registration procedures are as follows:

(1) The commission may suspend or revoke a registration, or deny the issuance of an initial or renewal registration for:

(A)-(B) (No change.)

(C) alteration [falsification] of any record maintained or received by the registrant;

(D)-(G) (No change.)

(H) failure to operate a waste tire processing facility within 180 days of receipt of registration from the executive director [illegal disposal of shredded tire pieces];

(I)-(J) (No change.)

(K) alteration [falsification] of any request for reimbursement from the WTRF;

(L) failure to complete the work required to clean up a PEL site as stated in the executive director approved Site Clean-Up Plan; [or]

(M) failure to account to the executive director for recycling, reuse, or energy recovery activities in the required five year period; or

(N) effective September 1, 1994, failure to comply with the requirements pursuant to §330.880(d) of this title (relating to Shredding Outside of State).

(2)-(4) (No change.)

(h) (No change.)

(i) A waste tire facility shall be inspected to insure compliance with the application by the executive director prior to receiving final approval for storage.

(j) Effective January 1, 1996, all new, amended, and renewal waste tire facility registration applications shall contain requirements for the applicant to identify the individual or company registered pursuant to §330.933(a) of subchapter X of this title (relating to Requirements for a Waste Tire Recycling Facility) or §330.934(a) of subchapter X of this title (relating to Waste Tire Energy Recovery Facility Registration) that intends to accept for recycling, reuse, or energy recovery, the waste tire facility's shredded tire pieces. The executive director shall only reimburse a waste tire facility for those shredded tire pieces that have been delivered to a registered waste tire recycling facility or waste tire energy recovery facility.

(k) Registration fees.

(1) Individuals or companies that prepare a new, renewed or amended application on forms obtained from the executive director for registration as a waste tire facility shall pay a nonrefundable registration fee of $500.

(2) Registration fees collected under paragraph (1) of this subsection shall be allocated to the commission for its reasonable and necessary costs associated with reviewing for approval, applications for the registration of waste tire facilities.

§330.845. Waste Tire Facility Recordkeeping.

(a) General Requirements.

(1) The executive director approved waste tire facility layout plan, facility operating plan, and all supporting data to the application, is an operational requirement. Any significant deviation as determined by the executive director, from any of the [above] requirements of this subsection without prior approval from the executive director shall be a violation of this subchapter.

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

(b) Maintenance of records. The waste tire facility shall maintain originals [copies] of all records required by this section for a period of three years. These records shall be maintained at the same location as the shredder at all times and shall be made available to the executive director for review upon request.

(c) Required records. A waste tire facility shall maintain the following records:

(1) manifests of whole used or scrap tire pieces. The manifest shall contain the following information filled out completely by the waste tire facility prior to final disposition of the whole used or scrap tires or scrap tire pieces:

(A)-(E) (No change.)

(2)-(9) (No change.)

(10) a log contain copies of the monthly operations reports. This report shall contain the following information and shall be completely filled out each month by the waste tire facility owner or operator:

(A)-(G) (No change.)

(H) the monthly and total financial assurance secured and recorded with the Texas Natural Resource Conservation [Texas Water Commission] Financial Assurance Section;

(I)-(M) (No change.)

(11) a daily log identifying the location and time of all stops made by the transporter of tire shreds to and from a waste tire shredding facility and to and from a registered waste tire storage facility, waste tire recycling, or waste tire energy recovery facility.

(d) Annual report. A waste tire facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number and type of whole used or scrap tires collected, shredded, the disposition of such tires, and the amount by weight of shredded tire pieces removed from the facility and delivered to a registered waste tire storage facility, waste tire recycling facility, or waste tire [a permitted waste tire monofill, or a recycling, reuse or] energy recovery facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(e) (No change.)

§330.846. Delivery Requirement. he waste tire facility shall be required to deliver or have delivered, the shredded tire pieces that received reimbursement from the WTRF only at a commission [permitted waste tire monofill or] registered waste tire storage facility, waste tire recycling facility, waste tire energy recovery facility or an executive director approved end user. [A facility that will eventually recycle, reuse, or recover energy from the shredded tire pieces may receive shredded tire pieces that were reimbursed from the WTRF.] Any shredded tire piece not receiving [included in the] reimbursement from the WTRF may be disposed of at a permitted landfill or a Type VIII-S waste tire storage facility; however, the preferred destination for shredded tire pieces is a waste tire recycling facility or waste tire [recycling, reuse, or] energy recovery facility.

§330.847. Operational Requirements for Waste Tire Facilities.

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

(e) All applicants seeking registrations to operate as a waste tire facility and with the intent to seek reimbursement from the WTRF shall have adequate storage capacity at their registered waste tire storage facility to store all tires shredded during a specific month of operation.

§330.848. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.

(a) (No change.)

(b) Compliance with §§300.841-330.849 of this title (relating to Waste Tire Facility Processors of Whole Used or Scrap Tires; Waste Tire Facility Classification and Operation; Waste Tire Facility Registration; Evidence of Financial Responsibility; Waste Tire Facility Recordkeeping; Delivery Requirement; Eligibility for the WTRF Program; Penalties for Waste Tire Facilities) shall also include the following items:

(1) (No change.)

(2) the shredded tire pieces shall be delivered to a registered waste tire storage facility, waste tire recycling facility or waste tire energy recovery facility [a permitted waste tire monofill, or a facility that will recycle, reuse, or recover the energy from the particles].

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

(f) The WTRF program targets the clean-up of Priority Enforcement List (PEL) [PEL] sites and the shredding of whole used or scrap tires generated on a daily basis from wholesale or retail dealers of new tires.

(g) The waste tire facility owner or operator shall maintain a complete record of all manifest forms for whole used or scrap tires for which reimbursement is being sought. The waste tire facility owner or operator shall ensure that Sections 1, 2, and 3 of the manifest form are accurately and completely filled out. Should the manifest form not be completely filled out or is filled out incorrectly, the waste tire facility owner or operator should not accept those whole used or scrap tires. The TNRCC [Texas Water Commission] will not provide reim-

bursement from the WTRF to a waste tire facility that processes whole used or scrap tires from such inaccurate or incomplete manifests.

§330.851. Waste Tire Baling Facility Registration.

(a) Applicability. The regulations contained in these sections establish standards applicable to persons who operate as a waste tire baling facility for the purpose of energy recovery. A waste tire baling facility shall be a fixed and permanent facility

(1) Effective March 1, 1994, a registered waste tire processor who bales whole tires for energy recovery purposes is eligible for reimbursement at a rate of 25 cents for each tire if the processor meets the requirements of this subchapter that apply to waste tire processors including provisions for financial assurance for such baled tires. A processor seeking reimbursement under this section for baling tires may not, directly or indirectly, receive additional reimbursement from the fund for the shredding of such baled tires.

(2) A registered waste tire baling facility requesting reimbursement for 25 cents from the WTRF for baling whole used or scrap tires shall not, directly or indirectly receive additional reimbursement from the WTRF for any further processing of such baled whole used or scrap tires.

(3) All waste tire baling activities must be conducted within the State of Texas. Only tires generated in the State of Texas will qualify for reimbursement from the WTRF.

(b) Responsibility.

(1) All individuals or companies who operate as a waste tire baling facility shall obtain all necessary and appropriate state and local permits, licenses, or registrations, and shall operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(2) Registered waste tire baling facilities shall ensure that the waste tire energy recovery facility utilized for the burning of the baled whole used or scrap tires has obtained all necessary and appropriate state and local permits, licenses, or registrations required for Texas and out-of-state. Copies of current required permits, licenses or registrations for the energy recovery facility(ies) utilized for the burning of baled whole used or scrap tires shall be maintained at the waste tire baling facility.

(3) The waste tire baling facility shall inform the executive director of the required information described in §330.853(c)(6) of this title (relating to Waste Tire Baling Facility Registration) if the waste tire energy recovery facilities to be utilized are located out-of-state.

(4) The individuals or companies who operate as a waste tire baling facility shall provide the financial responsibility contained in §§330.885-330.888 (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(c) Energy recovery responsibility.

(1) For the purpose of this subchapter, reimbursement from the WTRF at the rate of 25 cents for each whole used or scrap tire shall be made only to a registered waste tire baling facility upon confirmation that the baled whole used or scrap tires have been used for energy recovery.

(2) The executive director has the authority to approve or disapprove an individual or company identified by a waste tire baling facility, as a legitimate end use source for their baled whole used or scrap tires or shredded tire pieces. Such confirmation shall be submitted to the executive director and shall include, at a minimum, the following information:

(A) name of the waste tire energy recovery facility;

(B) name of responsible person, partners, corporate officers, and directors;

(C) phone number of company and responsible person;

(D) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility; and

(E) copies of licenses, registrations, or permits from other appropriate agencies if required;

(d) WTRF program. Waste tire baling facilities that participate in the WTRF program shall not charge a fee to retail or wholesale dealers for collecting for delivery to any processing facility, for collecting and baling whole used or scrap tires, or for collecting and baling for temporary storage by the dealer from the purchasers of new tires on or after April 1, 1992. This prohibition does not apply to the collecting and baling of whole used or scrap tires from manufacturers, retreaders, fleet operators, automotive dismantlers, and storage site owners or operators of whole used or scrap tires.

(e) Reimbursement requirement. Waste tire baling facilities which are not seeking reimbursement from the WTRF for the baling of whole used or scrap tires are not required to obtain a registration from the executive director authorizing the use of fixed baling and processing equipment for the baling of such tires.

(f) Recycling report. Effective January 1, 1994, and on a semiannual basis thereafter, waste tire baling facilities shall report their recycling, reuse, and energy recovery activities to the executive director. The semiannual report shall be prepared on a form provided by the executive director, and at a minimum include the following information:

(1) the name, physical address, mailing address, county and telephone number of the waste tire facility;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a listing of all registered waste tire recycling facilities or waste tire energy recovery facilities where the waste tire baling facility currently delivers the shredded tire pieces. Each waste tire recycling facility or waste tire energy recovery facility listed shall include the following information:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility;

(D) detailed description of process to recycle, reuse or recover the energy from the baled tires;

(E) copies of contracts and agreements between the waste tire baling facility and the waste tire recycling facility or waste tire energy recovery facility for the recycling, reuse or energy recovery for the baled tire;

(F) exact quantities (in number of bales and number of tires in bales), by month, that the waste tire baling facility delivered to the registered waste tire recycling facility or waste tire energy recovery facility; and

(G) duration of the contract or agreement and the total material intended to be delivered;

(4) complete description of activities in which the waste tire baling facility is currently involved which may be classified as encouraging or promoting the growth of recycling, reuse, or energy recovery facilities in the state, or assisting in the expansion of existing recycling, reuse, or energy recovery facilities in the state; and

(5) any information considered confidential shall be so indicated on each page of the report and submitted with a cover letter requesting that it remain confidential. Such request shall be recognized as confidential pursuant to §330.875 of this title (relating to Confidentiality).

§330.852. Waste Tire Baling Facility Registration.

(a) Effective March 1, 1994, individuals or companies that bale whole used or scrap tires for energy recovery purposes at a waste tire baling facility shall obtain a registration number from the executive director for the operation of the waste tire baling facility. The registration number assigned to the waste tire baling facility shall be stenciled on each piece of baling and processing equipment in use at that facility. This registration number requirement is only applicable to waste tire baling facilities that have permanent equipment used to bale whole used or scrap tires and intend to seek reimbursement from the WTRF for the baling of whole used or scrap tires for energy recovery activities.

(b) For the purpose of this subchapter, eligibility for reimbursement from the WTRF at the rate of 25 cents for each baled whole used or scrap tire shall be contingent upon the registered waste tire baling facility providing the financial assurance required by the executive director described in §§330.885-330.888 of this subchapter (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(c) Waste tire baling facilities shall register their operation with the executive director prior to commencing operations. An application for registration shall be made on a form provided by the executive director upon request. An application submittal shall be accompanied by a non-refundable $500 application review fee pursuant to subsection (k)(1) of this section. The following registration information must be provided to the executive director:

(1) the name, physical address, mailing address, county, and telephone number of applicant;

(2) the name, mailing address, and telephone number of partners, corporate officers, and directors;

(3) a description of the vehicles or equipment to be registered, including:

(A) make, model, and year of the vehicle or equipment;

(B) name of the vehicle or equipment owner;

(C) vehicle license plate (tag number) including state and year, if applicable;

(D) rated capacity of each piece of equipment or vehicle;

(E) type of equipment or vehicle; and

(F) area within Texas that the baling equipment will be located;

(4) the anticipated number of whole used or scrap tires to be baled for energy recovery purposes per year;

(5) a metes and bounds description of the site location of the facility;

(6) the name of the waste tire energy recovery facility to be utilized by the waste tire baling facility for energy recovery of the baled whole used or scrap tires and the following information concerning that waste tire energy recovery facility:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical location and mailing address of the waste tire energy recovery facility;

(D) detailed description of process to recover the energy from the baled whole used or scrap tires; and

(E) listing of all federal, state and local permits, licenses, or registrations required for operation in Texas and out-of-state:

(7) copies of contracts and agreements between the waste tire baling facility and the waste tire energy recovery facility or facilities for the burning of the baled whole used or scrap tires for which WTRF reimbursement is being sought;

(8) financial assurance as referenced in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments); and

(9) federal tax identification number.

(d) Persons who apply to the executive director for registration and receive the registration shall maintain a copy of the commission registration form containing their assigned registration number at their designated place of business and in each vehicle used to transport whole used or scrap tires to or from their waste tire baling facility.

(e) A waste tire baling facility registration shall expire 60 months after the date of issuance unless the storage site changes ownership prior to that time. A waste tire baling facility is non-transferable and will expire at the time that ownership changes. A change in federal tax identification number will constitute a change of ownership. A waste tire baling facility registration shall be renewed prior to the expiration date. Applications for renewal of registration must meet the requirements of subsection (b) of this section and shall be submitted at least 60 days prior to the expiration date. An application for renewal of registration must be obtained from the executive director.

(f) A waste tire baling facility shall provide written notice and, if requested by the executive director, a revised application for registration to the executive director within 15 days of any change to the registration if:

(1) the number of whole used or scrap tires handled or total waste tire baling facility operation has expanded by 50% over that originally registered;

(2) the office or place of business has relocated or federal tax identification number has changed;

(3) the registered name of the waste tire baling facility has changed;

(4) the amount of tire baling equipment has increased or changed;

(5) the intended area of the waste tire baling facility's operation has changed; or

(6) the waste tire energy recovery facility accepting the baled whole used or scrap tires for energy recovery has changed.

(g) A new registration application and a non-refundable $500 application review fee shall be submitted to the executive director within ten days of a determination by the executive director that operation or management methods are no longer adequately described by the existing registration, or ownership of the registered waste

tire baling facility has changed, or the location of the equipment or facility has changed. Following the executive director's determination, the old waste tire baling facility registration number shall be canceled.

(h) Suspension, revocation or denial of initial or renewal registration procedures are as follows:

(1) The executive director may suspend or revoke a registration, or deny the issuance of an initial or renewal registration for:

(A) failure to maintain complete and accurate records pursuant to §330.854 of this title (relating to Waste Tire Baling Facility Recordkeeping);

(B) failure to maintain equipment in safe working order;

(C) alteration of any record maintained or received by the registrant;

(D) delivery of baled whole used or scrap tires to a facility that is not a registered waste tire energy recovery facility and/or if the waste tire energy recovery facility is located out-of-state, not contained on the application approved for the registered waste tire baling facility;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this subchapter;

(F) failure to submit annual reports as required by §330.854(d) of this title (relating to Waste Tire Baling Facility Recordkeeping);

(G) failure to maintain financial assurance as required in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);

(H) failure to begin operation of a registered waste tire baling facility within 180 days of receipt of registration from the executive director;

(I) collection of whole used or scrap tires for the purpose of energy recovery of the baled whole used or scrap tires without obtaining a registration as required in this subchapter;

(J) failure to deliver baled whole used or scrap tires to a waste tire energy recovery facility as required in §330.851(c) of this title (relating to Waste Tire Baling Facility);

(K) alteration of any request for reimbursement from the WTRF;

(L) failure to complete the work required to clean-up a PEL site as stated in the executive director approved Site Clean-Up Plan;

(M) failure to account to the executive director for all energy recovery activities for the baled whole used or scrap tires; or

(N) effective September 1, 1994, failure to comply with the requirements pursuant to §330.880(d) of this subchapter (relating to Shredding Outside of State).

(2) A waste tire baling facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offenses), the time of suspension may be increased or decreased. A waste tire baling facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a waste tire baling facility shall not bale, for reimbursement from the WTRF, any whole used or scrap tires regulated under this subchapter.

(3) The holder of a waste tire baling facility registration that has been revoked by the executive director may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a waste tire baling facility registration is denied or revoked by the executive director a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation or denial of the initial or renewal registration has been sent from the executive director to the last known address of the applicant.

(B) An opportunity for a formal hearing on the denial of initial registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of initial or renewal registration has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not process whole used or scrap tires regulated under this subchapter.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. (Vernon 1993) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Annotated, Chapter 361 (Vernon 1993) and the rules of the commission.

(i) Waste tire baling facilities which fail to provide documentation to the executive director, described in §330.853(c)(6)(A)-(E) of this title (relating to Waste Tire Baling Facility Registration), to assure that energy is recovered from the baled whole used or scrap tires are not eligible for reimbursement from the WTRF.

(j) A waste tire baling facility and the designated waste tire energy recovery facility(ies) shall be inspected by the executive director to ensure compliance with the application prior to receiving final approval for baling or storage of whole used or scrap tires.

(k) Registration fees.

(1) Individuals or companies that prepare a new, renewed or amended application on forms obtained from the executive director for registration as a waste tire baling facility shall pay a registration fee of $500.

(2) Registration fees collected under paragraph (1) of this subsection shall be allocated to the commission for its reasonable and necessary costs associated with reviewing for approval applications for the registration of waste tire baling facilities.

§330.853. Waste Tire Baling Facility Operation. The waste tire baling facility shall be equipped with a mechanism to automatically count and record the number of whole used or scrap tires contained in each bale. Further, the waste tire baling facility shall be capable of recording the total number of bales produced. The recording equipment used for the baling of whole used or scrap tires shall be certified monthly by the manufacturer that developed and installed the equipment. Reimbursement from the WTRF shall be based on the number of whole used or scrap tires contained in bales after the bales have been used for energy recovery purposes. Confirmation for such energy recovery activities shall be provided pursuant to §330.831(c) of this title (relating to Stor-

age of Whole Used or Scrap Tires or Shredded Tire Pieces).

§330.854. Waste Tire Baling Facility Recordkeeping.

(a) General requirements.

(1) The executive director approved waste tire baling facility layout plan, facility operating plan, and all supporting data to the application are operational requirements. Any significant deviation, as determined by the executive director, from any of the above without prior approval from the executive director, shall be a violation of this subchapter.

(2) A copy of the registration with all supporting data, including the approved waste tire baling facility layout plan, the approved waste tire baling facility operating plan, and the commission's current rules shall be on-site at all times. The facility supervisor shall be knowledgeable of current commission rules and the contents of the approved application in relation to the operational requirements of the specific waste tire baling facility.

(3) All drawings or other sheets prepared for revisions to a waste tire baling facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Maintenance of records. The waste tire baling facility shall maintain originals of all records required by this section for a period of three years. These records shall be maintained at the same location as the baling equipment at all times and shall be made available to the executive director for review upon request.

(c) Required records. A waste tire baling facility shall maintain the following records:

(1) manifests of whole used or scrap tire or baled whole used or scrap tires shall contain the following information and shall be filled out completely by the waste tire baling facility (prior to transportation to the energy recovery facility) of the whole used or scrap tires or the baled whole used or scrap tires:

(A) the name, physical address and telephone number of the individual or company that is baling the whole used or scrap tires and the waste tire energy recovery facility where the baled whole used or scrap tires were delivered;

(B) the waste tire baling facility registration number and the waste tire energy recovery facility registration number;

(C) the date and time of delivery of the whole used or scrap tires to the waste tire baling facility and of the baled whole used or scrap tires to the waste tire energy recovery facility;

(D) the number and type of whole used or scrap tires delivered to the registered waste tire baling facility and the number of bales delivered to the waste tire energy recovery facility; and

(E) the signature of an authorized representative of the waste tire baling facility and the waste tire energy recovery facility acknowledging that the information on the manifest form is true and correct.

(2) a daily log which shall include, at a minimum, the following:

(A) the name and commission registration number of the waste tire baling facility and the waste tire energy recovery facility;

(B) the physical address of the waste tire baling facility and the waste tire energy recovery facility;

(C) the total number and type of whole used or scrap tires received at the waste tire baling facility from PEL sites, special authorization sites and generators, listed separately;

(D) the total number and type of whole used or scrap tires baled;

(E) the amount by number of whole used or scrap tires in the bales and total number of bales removed from the waste tire baling facility for energy recovery;

(F) the name and signature of an authorized facility representative acknowledging the truth and accuracy of the daily log; and

(G) the location and time of all stops made daily by the transporter of baled tires to and from a waste tire baling facility and to and from a registered waste tire energy recovery facility.

(3) a record of the specific location in the waste tire baling facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires are located upon delivery;

(4) a record describing the specific events or occurrences at the waste tire baling facility relating to routine maintenance, fires, theft, spraying for vectors, or other similar events or occurrences;

(5) a record of equipment and vehicle preventive maintenance;

(6) the annual report required by the executive director;

(7) a log containing copies of all monthly reimbursement vouchers submitted to the executive director for reimbursement;

(8) a record of the dates and documentation of calibration by the manufacturer of the recording equipment used to automatically count and record the number of whole used or scrap tires being baled and contained in each bale;

(9) a daily log of unmanifested tires listing the number and type of whole used or scrap tires received, the name of the individual or company that delivered the tires, and the date that the tires were delivered to the waste tire baling facility;

(10) a log containing copies of the monthly operations reports which shall completely filled out each month by the waste tire baling facility owner or operator and shall contain the following information:

(A) the month and date that the report was completed by the waste tire baling facility owner or operator;

(B) the name of the waste tire baling facility and waste tire energy recovery facility as shown on the monthly reimbursement voucher;

(C) the mailing address and telephone number of the waste tire baling facility and the waste tire energy recovery facility;

(D) he name of a contact person employed by the waste tire baling facility and the waste tire energy recovery facility;

(E) the baling operation time;

(F) the amount in whole use or scrap tire numbers and in baled units that were stored at the waste tire baling facility and the number of whole used or scrap tires and baled units that were removed to a waste tire energy recovery facility for which reimbursement from the WTRF was requested;

(G) the amount in whole used or scrap tires and in baled units that was stored at or removed from the waste tire baling facility for which reimbursement was not requested;

(H) the monthly and total financial assurance secured and recorded with the Texas Natural Resource Conservation Commission Financial Assurance Section;

(I) a list of all generators whose manifests were accepted during that month;

(J) a list of all transporters that delivered whole used or scrap tires to the waste tire baling facility during that month;

(K) a diagram of the waste tire baling facility and associated waste tire energy recovery facility outlining the specific whole used or scrap tire piles, the areas housing baled tires and the number of whole used or scrap tires in each pile and baled tire area deposited in each pile and baled tire area during that month; and

(L) the signature of an authorized representative of the waste tire baling facility acknowledging that the information on the monthly operations report is true and correct.

(d) Annual report. A waste tire baling facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number and type of whole used or scrap tires collected, baled, the disposition of such baled tires, and the amount by number of whole used or scrap tires and number of bales removed from the facility and delivered to a registered waste tire energy recovery facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, waste tire baling facility operators shall use such controls and records to satisfy commission requirements under this section upon review and approval by the executive director.

§330.855. Delivery Requirement. The waste tire baling facility shall deliver or have delivered, the baled whole used or scrap tires that received reimbursement from the WTRF, only to a registered waste tire energy recovery facility. If the waste tire energy recovery facility is located out-of-state, delivery shall be to the waste tire energy recovery facility identified in the application.

§§330.856. Operational Requirements for Waste Tire Baling Facilities.

(a) The owner or operator of the waste tire baling facility shall ensure that the vehicles and equipment are operated to prevent nuisances or disturbances to adjacent landowners.

(b) Stockpiles of whole used or scrap tires at the waste tire baling facility that are awaiting baling shall be monitored for vector control and appropriate vector control measures shall be applied at least once every two weeks.

(c) All applicants seeking registration as a waste tire baling facility shall also obtain registration for a waste tire energy recovery facility for the storage of baled whole used or scrap tires prior to initiation of operation of the waste tire baling facility.

(d) The waste tire baling facility owner or operator shall conduct a training program on a quarterly basis, for all waste tire baling facility employees that transport or handle whole used or scrap tires or baled whole used or scrap tires. This training program shall address the review and proper completion of manifest forms prior to the transportation of whole used or scrap tires from a generator, or the acceptance of whole used or scrap tires at the waste tire baling facility. Transporters not employed by the waste tire baling facility but who deliver whole used or scrap tires to the waste baling tire facility or baled whole used or scrap tires to a waste tire energy recovery facility shall be required to attend a training and orientation program to familiarize the transporter with the following:

(1) facility operational guidelines and requirements;

(2) the acceptable procedures for the collection and transportation of whole used or scrap tires from a generator (specifically when a collection fee can or cannot be charged),

(3) the proper completion of a manifest form, and

(4) the rules and regulations under which all aspects of the generation, transportation, baling, storage, and disposal of whole used or scrap tires or baled whole used or scrap tires are governed

(e) A waste tire baling facility owner or operator shall submit written documentation to the executive director indicating that the training and orientation programs required in the previous section have been completed. This written documentation shall be submitted by the waste tire baling facility owner or operator to the executive director within ten days of completion of the training and orientation program.

(f) All applicants seeking registration to operate as a waste tire baling facility and seeking reimbursement from the WTRF shall have adequate storage capacity at their registered waste tire energy recovery facility to store all tires baled during a specific month of operation

§330.857. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.

(a) A waste tire baling facility is eligible for reimbursement from the WTRF provided the waste tire baling facility is in compliance with §§330.871-330.877 of this title (relating to the WTRF; WTRF Program; Public Notice of Intent to Operate; Other Permits or Registrations Required; Approval to Collect and Process Tires from PEL Sites; Shipping, Record Keeping, and Reporting Requirements; WTRF Reimbursement Policies and Procedures; Payments to Waste Tire Facilities, Mobile Tire Processors or Waste Tire Baling Facilities; and Special Authorization Tires).

(b) All tires baled for energy recovery purposes for WTRF reimbursement shall have been generated from within the boundaries of Texas

(c) The WTRF program targets the clean-up of PEL sites and the baling for energy recovery purposes of whole used or scrap tires generated on a daily basis from wholesale or retail dealers of new tires.

(d) The waste tire baling facility owner or operator shall maintain a complete record of all manifest forms for baled and energy recovered whole used or scrap tires for which reimbursement is being sought. The waste tire baling facility owner or operator shall ensure that Sections 1, 2, and 3 of the manifest form are accurately and completely filled out. Should the manifest form not be completely filled out or be filled out incorrectly, the waste tire baling facility owner or operator should not accept those whole used or scrap tires The executive director will not provide reimbursement from the WTRF to a waste tire baling facility that bales, for the purpose of energy recovery, whole used or scrap tires generated with inaccurate or incomplete manifests.

(e) The priority enforcement list baled tires shall be baled and weighed separately and weight documentation shall identify the bales as bales containing priority enforcement list tires

§330.861. Priority Enforcement List (PEL).

(a) (No change.)

(b) Responsibility. Each individual or company that operates a waste tire facility and participates in the WTRF, or a mobile tire processor who participates in the WTRF, **or a waste tire baling facility owner or operator that participates in the WTRF** shall be responsible for operating in compliance with all provisions of this

subchapter when the total number of whole used or scrap tires or scrap tire pieces contained in illegal scrap tire sites that are identified on the PEL is above 500,000 tires for more than 30 consecutive days.

(c) PEL procurement. Upon executive director determination that the number of PEL tires has fallen below 500,000, the commission shall issue contracts to procure cleanups only for the removal and shredding or baling of tires from such sites through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Texas Civil Statutes, Article 601b) applicable to contract for services. The commission may choose to contract on a regional or site-specific basis and may award a contract for services that authorizes reimbursement in excess of 85 cents per weighed tire unit based on the competitive bids received. The commission may elect not to enter into contracts under this section.

(d) PEL requirement. The minimum 15% maximum 30% priority enforcement list requirement is not applicable when the commission is conducting cleanups through the competitive bid process described in subsection (a) of this section. Notification of inapplicability of the minimum 15% maximum 30 percent priority enforcement list requirement will be provided in writing by the executive director.

(e) PEL restrictions. For the purposes of this subchapter the calculation for the maximum 500,000 tire PEL limit shall not include tires on sites currently assigned for clean-up to waste tire facilities or mobile tire processors, or tires on sites under commission enforcement or attorney general action, or that require corrective action or remedial action in response to a release or threat of release of hazardous substances.

(f) Completion of PEL sites. Upon the commission's procurement for clean-up of PEL sites, any mobile tire processor or waste tire facility currently assigned PEL sites shall complete those clean-ups at the minimum 15% maximum 30% requirement per month until the site cleanup is completed.

(g) WTRF encumbered for PEL procurement. Funds shall be encumbered from the WTRF in the amount necessary to allow the commission to procure cleanups at PEL sites under conditions described in subsection (c) of this section.

(h) Recycling Reimbursement. For the purpose of this subchapter, the waste tire recycling facilities seeking reimbursement under the Recycling Reimbursement Program from the WTRF for the processing of whole used or scrap weighed tires into useful products in an amount not to exceed 25 cents per weighed tire shall not be subject to the requirements contained in §§330.861-330.870 of this title (relating to Priority Enforcement List (PEL)), Potential Responsibility Parties, Priority Enforcement List (PEL), Ranking of Illegal Waste Tire Sites, Assignment of PEL Sites, Pre PEL Clean-Up Responsibilities, Site Clean-Up Agreement, Approval to Collect and Process Tires from PEL Sites, Post PEL Clean-Up Responsibilities and Authority of Commission Personnel).

§330.862 Potentially Responsible Party (PRP)

(a) An illegal waste tire site that is eligible for placement on the PEL can be cleaned-up by a waste tire facility or a mobile tire processor that can be eligible for reimbursement from the WTRF provided the executive director determines there is no PRP for this site

(b) The actual determination of the PRP will be made by the executive director based on the facts obtained during the investigation and evaluation of the PEL site for classification. For purposes of the WTRF and this subchapter, the following three criteria determines whether an individual or company is a PRP.

(1) the individual or company must be the property owner of record, or the site operator of the whole used or scrap tires or tire pieces on the site or the depositor of the whole used or scrap tires or scrap tire pieces; and

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

(c)-(h) (No change.)

§330.863. Priority Enforcement List (PEL)

(a) (No change)

(b) The PEL shall be updated and published at least quarterly by the executive director. The PEL will be published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq (Vernon 1993) [Administrative Procedure and *Texas Register* Act Texas Revised Civil Statutes, Article 6252-13a (Vernon 1992)]. [A copy of the list can also be obtained from the Commission's Municipal Solid Waste Division]

(c) The PEL shall be subdivided on a region [district] basis based on the number and location of the waste tire facilities and mobile tire processors, and the number and location of illegal waste tire sites per region [district]. If the number of whole used or scrap tires or tire pieces located in a specific region [district] of the state is not sufficient to sustain the minimum 15% maximum 30% requirement of [25%] PEL tires to insure reimbursement eligibility, the waste tire facilities and mobile tire processors shall be required to obtain [the minimum requirement of] the minimum 15% maximum 30% requirement of [25%] PEL tires from another region [district] of the state.

(d) The executive director may, on an as needed basis, and with [sufficient] notice, reassign or assign additional processors to any PEL site identified and assigned in the state. If the PEL site is reassigned the executive director shall assign a new site to the waste tire facility or mobile tire processor to insure that the individual or company is still eligible for reimbursement under the WTRF, provided the individual or company meets the other program requirements as contained in this subchapter.

(e) Members of the commission, employees or agents of the commission, and authorized processors or their subcontractors are entitled to enter any public or private property at any reasonable time for the purpose of inspecting, investigating, or remediating any condition related to illegal dumping of scrap tires.

(f) An authorized processor or subcontractor is entitled to enter property only if the commission directs the processor or subcontractor to enter property. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least ten days before a commission member, commission employee or agent, or authorized processor or subcontractor enters the property. A commission member, commission employee or agent, or authorized processor or subcontractor who, acting under this subsection, enters private property shall:

(1) observe the establishment's rules concerning safety, internal security, and fire protection; and

(2) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(g) Authorized processors and their subcontractors shall not be considered agents of the state and are solely responsible for their own actions and actions of their agents.

§330.865. Assignment of PEL Sites.

(a) (No change.)

(b) Any waste tire facility or mobile tire processor registered by the execu-

tive director to participate in the WTRF shall receive reimbursement from the WTRF if the following requirements are met.

(1) The waste tire facility or mobile tire processor shall prepare, implement and comply with a clean-up plan and time schedule for conducting the clean-up and removal of all whole used or scrap tires or tire pieces from the site.

(2) The waste tire facility or mobile tire processor shall submit the clean-up plan and time schedule to the commission's region [district] office for approval and to the property owner for review, if requested by that property owner.

(3)-(7) (No change.)

[(8) The mobile tire processor or waste tire facility shall complete a report, developed by the executive director at the completion of a site clean-up that states the date site clean-up was completed and the total amount of whole used or scrap tires and tire pieces, by weight, removed from the site. This report shall sent to the TWC District Office in which the site is located, the TWC District Office in which the processing facility is located, if different than the site location District Office, and the TWC Austin Office.]

(c) If the executive director determines that an illegal waste tire site on the PEL contains more whole used or scrap tires or tire pieces than any single mobile tire processor or waste tire facility is likely to be able to collect and shred or bale within a reasonable period of time, or if the proposed schedule received from the mobile tire processor or waste tire facility indicates significantly longer time frames for total clean-up of the illegal waste tire site than is acceptable to the executive director, the executive director may decide to assign more than one mobile tire processor or waste tire facility to collect and process the whole used or scrap tires or tire pieces from the site.

(d) Mobile tire processors or waste tire facility owners or operators that elect to participate in the WTRF program will be allowed to clean-up PEL sites assigned by the executive director after April 1, 1992, provided all of the following criteria has been submitted to and approved by the executive director:

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

(3) the mobile tire processor or waste tire facility has signed the [illegal tire] Site Clean-Up Agreement and returned it to the executive director;

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

(6) all whole used or scrap tires or tire pieces regardless of the weight, size or the condition of such tires or pieces shall be removed by the waste tire facility or mobile tire processor from the site during the clean-up process. There shall be no exception to this requirement unless specifically authorized by the commission's region [district] staff and noted in the Site Clean-Up Plan; and

(7) the mobile tire processor or waste tire facility is in compliance with the applicable requirements[.] of this subchapter and on schedule with any other PEL site clean-up plans and time schedules.

§330.866. Pre PEL Clean-Up Responsibilities.

(a) A mobile tire processor or waste tire facility that is registered with the executive director and that intends to receive reimbursement from the WTRF for shredding whole used or scrap tires or tire pieces [so as] to facilitate the future extraction of useful products [materials] for recycling[, reuse,] or energy recovery shall submit a map and letter identifying the general location in the state where they want to be assigned PEL sites.

(b) Within ten days of notification by a mobile tire processor or waste tire facility that the assigned site clean-up was completed and the total number of whole used or scrap tires or tire pieces has been removed from the site, [the executive director's receipt of the report required in §330. 865(a)(8) of this title (relating to Assignment of PEL Sites),] the executive director shall begin a job performance evaluation to determine whether the clean-up on previously assigned PEL sites was performed to the executive director's satisfaction. After the executive director determines satisfactory work performance, the waste tire facility or mobile tire processor shall be notified in writing of their assignment of one or more new PEL sites for clean-up. The [Also included with the] site assignment notification shall also contain the original [be a copy of the] Site Clean-Up Agreement to the mobile tire processor or waste tire facility owner. The Site Clean-Up Agreement shall be signed by an authorized representative of the waste tire facility or mobile tire processor immediately upon receipt and returned to the executive director.

(c) (No change.)

§330.867. Site Clean-Up Agreement.

(a) (No change.)

(b) The agreement shall require, at a minimum, the following.

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

(4) that the waste tire facility or mobile tire processor shall meet with the commission's region [district] office prior to initiation of site clean-up and shall agree upon a clean-up plan as required by §330.868 of this title (relating to Approval to Collect and process tires from PEL Sites);

(5) that failure to clean-up the PEL site as required by the agreement shall result in waste tire facility or mobile tire processor ineligibility for reimbursement from the WTRF until such time as the clean-up of the PEL site is completed to the satisfaction of the executive director; and

[(6) that the waste tire facility or mobile tire processor upon completion of the PEL site clean-up shall complete a report, developed by the executive director, that confirms that clean-up of the PEL site has been completed to the satisfaction of the executive director; and]

(6)[(7)] upon executive director's determination of [receipt of the report confirming] satisfactory clean-up from the waste tire facility or mobile tire processor, the executive director may assign additional PEL sites to the waste tire facility or mobile tire processor pursuant to §330.866 of this title (relating to Pre PEL Clean-Up Responsibilities).

(c) Should the waste tire facility's or mobile tire processor's registration to shred whole used or scrap tires or tire pieces be suspended or revoked by the executive director [commission] pursuant to §330.822(f) of this title (relating to Mobile Processor Registration) and §330.843(g) of this title (relating to Waste Tire Facility Registration) respectively, then the PEL sites remaining in the Site Clean-Up Agreement shall be reassigned.

§330.868. Approval to Collect and Process Tires from PEL Sites.

(a) Prior to collecting and/or shredding whole used or scrap tires or tire pieces from any PEL site, a mobile tire processor or waste tire facility shall provide a clean-up plan and a time schedule for completing the clean-up of all whole used and scrap tires or tire pieces from the PEL site. Clean-up activities shall commence only after the submitted plan and schedule have been approved by the commission's region [district] office and the provisions of §330.865 of this title (relating to Assignment of PEL Sites) have been met.

(b) If the executive director finds that any of the schedule related information described in subsection (c)(1)-(14) of this section to be unacceptable, an amended clean-up plan or time schedule shall be negotiated between the commission's region [district] office and the waste tire facility or mobile tire processor before additional whole used or scrap tire or tire pieces are removed from the PEL site for shredding or baling.

(c) The Site Clean-Up Plan submitted by a mobile tire processor or waste tire facility shall, at a minimum, include the following:

(1) the estimated number of whole used or scrap tires or tire pieces collected, and the shredding or baling capacity, in either tires or pounds of shredded or baled rubber per day, that the waste tire facility or mobile tire processor can perform at the site;

(2) the approximate number of days required to complete the site clean-up, however, if more whole used or scrap tires or tire pieces are located on the PEL site than the original number of tires used to calculate the overall project length, a correction factor may be applied, following verification and approval from the commission's region [district] office;

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

(6) whether the waste tire facility or mobile tire processor intends to shred or bale all the whole used or scrap tires or tire pieces on the PEL site, transport all such tires to a registered waste tire facility, or conduct the clean-up using both methods;

(7) the total number of whole used or scrap tires or tire pieces by weight from other PEL sites that, as of the date the site clean-up plan was filed, have been collected and/or shredded or baled;

(8) the total number of whole used or scrap tires or tire pieces by weight from in-state sources other than PEL sites that, as of the date the Site Clean-Up Plan was filed, have been collected and/or shredded or baled;

(9) the method of recycling, reuse or energy recovery planned for the whole used or scrap tires or tire pieces that are proposed to be collected and shredded or baled by the waste tire facility or mobile tire processor;

(10) (No change.)

(11) the identification by name and registration number of any [temporary] waste tire storage sites proposed to be utilized for either whole used or scrap tires or tire pieces prior to shredding or baling;

(12)-(14) (No change.)

(d) The executive director may require that because of exceptional conditions, only waste tire facilities or mobile tire processors that are willing to transport all whole used or scrap tires or tire pieces off the PEL site prior to shredding or baling at a registered waste tire facility shall be allowed to collect and shred or bale tires from that specific PEL site.

(e) The executive director may require that collection and shredding or baling at a PEL site be conducted only between certain hours of the day and on certain days of the week.

§330.870. Authority of Commission Personnel.

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

(c) The commission may, with the funds available to the commission from the WTRF, undertake immediate remediation of a site if, after investigation, the commission finds:

(1) that there exists a situation caused by the illegal dumping of whole used or scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(2) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order.

(d) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement a remedial program for the site.

(e) The commission may bring suit against a potentially responsible party to recover reasonable expenses incurred in undertaking immediate removal under subsection (c) of this section, or in implementing a remedial action order under subsection (d) of this section. For purposes of this subchapter, the commission shall employ the following three criteria to determine whether a person is a potentially responsible party:

(1) the person must be the property owner of record, the site operator, or the depositor of the scrap tires on the site;

(2) the person must have benefitted financially from the disposition of the scrap tires on the site; and

(3) the person must be financially capable of paying all or part of the costs of the cleanup as determined by the commission.

(f) The commission shall file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(g) Money collected in a suit to recover costs shall be deposited to the credit of the WTRF.

(h) The commission, in lieu of bringing suit to recover costs incurred under this subchapter, may file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the property.

§330.871. Waste Tire Recycling Fund (WTRF).

(a) (No change.)

(b) Responsibility.

(1) Each individual or company that operates as a mobile tire processor or waste tire facility and that is eligible to participate in the WTRF program shall be responsible for operating in compliance with the provisions of this subchapter. **The mobile tire processor or waste tire facility shall be in compliance with all provisions of this subchapter at each existing registered mobile tire processor or waste tire facility prior to receiving final approval from the executive director to operate at any new or additional mobile tire processor, waste tire facility, waste tire baling facility, waste tire storage facility, waste tire recycling facility or waste tire energy recovery facility.**

(2) (No change.)

(3) The executive director requires that all whole used or scrap tires on which the $2.00 or $3.50 WTRF fee is assessed for the replacement tire shall be subject to the free collection and transportation of those whole used or scrap tires from the generator's place of business (authorized by the Texas Health and Safety Code Annotated, Chapter 361, §361.480 entitled Tire Collection Fee Prohibited), provided the generator is a wholesale or retail dealer of new tires.

(4) If a $2.00 or $3.50 WTRF fee is assessed on a replacement tire, then the tire that was disposed of as a waste tire shall not be charged an additional disposal fee by the wholesale or retail dealer of the tire.

(5) A whole used or scrap tire that does not fit the criteria for assessment of the $2.00 or $3.50 WTRF fee as defined in §330.872(d) of this title (relating to WTRF Program), shall not [may still] be eligible for reimbursement under the WTRF [provided the whole used or scrap tire is shredded to pieces that are less than nine square inches in size].

(6) The WTRF shall maintain a balance of not less than $500,000. [The executive director shall have the authority to limit the rate of pay-out from the WTRF should the WTRF become depleted, by limiting the number or weight of whole used or scrap tires or tire pieces that a waste tire facility or mobile tire processor shall be reimbursed for shredding for a specific month. The executive director shall notify the waste tire facility or mobile tire processor at least 30 days prior to the commencement of this activity.]

(7) If the number of tires on the PEL exceeds 500,000 but the executive director has reason to believe the fund will fall below $500,000, the executive director shall suspend the requirement to reimburse priority enforcement list tires in excess of the minimum 15%. Notification of nonpayment for tires shredded in excess of the minimum 15% shall be provided in writing by the executive director within 30 days of such notification from the Comptroller.

(8) The executive director shall not reimburse a mobile tire processor and/or waste tire facility for processing scrap tires if the executive director determines that the processor:

(A) has not provided adequate financial assurance; or

(B) does not have adequate fire protection; or

(C) is causing an imminent danger to public health or welfare.

(c) Capacity assessment. Not later than October 1 of each odd-numbered year, the executive director shall determine if registrations for mobile tire processors and waste tire facilities shall be issued during the following two-year period of time. In order to complete this assessment, the executive director shall compare the total shredding or baling capacity of all registered mobile tire processors, and waste tire facilities to the total number of WTRF reimbursed waste tire units during the previous year as follows:

(1) the total shredding or baling capacity by reviewing the anticipated shredding or baling capacity contained in each registered mobile tire processor and waste tire facility original or amended application for registration;

(2) the total number of waste tire units reimbursed shall be determined by obtaining, from the commission's reimbursement records, the total number of waste tire units reimbursed from the WTRF during the preceding twelve month period of time;

(3) the value calculated from the procedure described in paragraph (1) of this subsection shall be compared with the number obtained from the procedure described in paragraph (2) of this subsection as follows.

(A) If the total shredding or baling capacity exceeds the previous total reimbursements made, then the executive director shall not issue registrations for mobile tire processors and waste tire facilities until the next capacity assessment is completed; or

(B) If the previous year's total reimbursements made exceeds the total shredding or baling capacity then the executive director shall issue registrations for mobile tire processors and waste tire facilities;

(4) All registered mobile tire processors and waste tire facilities shall be notified, in writing, of the results of the capacity assessment within 20 days of completion of the assessment on each odd-numbered year; and

(5) The results of the capacity assessment shall be published in the *Texas Register* not later than November 30 of each odd-numbered year.

§330.872. Waste Tire Recycling Fund (WTRF) Program.

(a) Purpose. The purpose of the WTRF is to provide a means for the shredding or baling of all whole used or scrap tires or tire pieces within the boundaries of the State of Texas, except when the conditions contained in §330.880 of this title (relating to Out-of-State Processing for Reimbursement) are complied with. It is the WTRF program's intent [so] that the material contained in the tires can be effectively reused, recycled, or used in energy recovery facilities. The methods for recycling whole used or scrap tires or tire pieces are as follows:

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

(4) beneficial use of whole tires; [or]

(5) shredding whole tires into pieces nine square inches or less in size; or

(6) baling whole tires for use in waste tire energy recovery facilities.

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

(d) Resale. A wholesale or retail dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee for each new tire sold as follows:

(1) $2.00 for each tire that has a rim diameter of 12 inches but less than 17.5 inches;

(2) $3.50 for each tire that has a rim diameter of 17.5 inches but less than 25 inches; and

(3) $2.00 for a motorcycle tire, regardless of the rim diameter. The sale of a tire as original equipment in the manufacture of a new vehicle is a sale for resale and is not subject to the $2.00 or $3.50 fee. A fee may not be assessed for a bicycle tire. [$2.00 tire fee shall be collected on each new tire sold for an automobile, van, bus, truck, trailer, semi-trailer, truck tractor and semi- trailer combination, or recreational vehicle that has a rim diameter equal to or greater than 12 inches but less than 26 inches.] This fee shall be deposited into the WTRF. The monies in the WTRF shall be used to reimburse the mobile tire processors and waste tire facilities that comply with the requirements of this subchapter for the shredding or baling of whole used or scrap tires or tire pieces.

(e) Operation of the WTRF program. [The WTRF program shall be operated in the following manner:]

(1) (No change.)

(2) A mobile tire processor or waste tire facility that intends to shred or bale whole used or scrap tires or tire pieces for reimbursement shall either shred the tires or pieces to a particle size of nine square inches or less or bale the whole used or scrap tires for the purpose of energy recovery at a registered waste tire energy recovery facility.

(3) a mobile tire processor or waste tire facility shall shred or bale at least 15% but not more than 30% [25%] of the monthly weight of shredded or baled whole used or scrap tires or scrap tire pieces from PEL sites.

(4) A mobile tire processor or waste tire facility shall shred or bale at least 25% of the monthly weight of shredded or baled whole used or scrap tires or scrap tire pieces from generator sites.

(5) A mobile tire processor or waste tire facility shall shred or bale the remaining percentage [no greater than 50%] of the monthly weight of shredded or baled whole used or scrap tires or scrap tire pieces from sources that have been designated by the executive director as special authorization tires or generator tires.

[(6) Any remaining percentage of the monthly weight of shredded tire pieces can be obtained from the categories in paragraphs (3)-(5) of this subsection.]

(6)[(7)] A mobile tire processor or waste tire facility shall submit his/her reimbursement request on a payment voucher to the executive director on a monthly basis. The payment voucher form shall be supplied by the executive director,

or on a voluntary basis, supplied on a removable storage medium stored in an industry standard file format acceptable to the executive director. Use of such removable storage mechanism must first receive executive director approval.

(7)[(8)] A mobile tire processor or waste tire facility shall maintain and retain **originals** of all reimbursement records for a period of three years and shall make such records available to the executive director for review upon request.

(8)[(9)] The mobile tire processor or waste tire facility shall be reimbursed in an amount equal $0.85 for each 18.7 pounds of weighed tire shredded by the processor during the preceding calendar month **except when the clean-up of PEL sites is through a competitive bid process pursuant to §330.861(b)-(g) of this title (relating to Priority Enforcement List).**

(9) A registered waste tire baling facility shall be reimbursed 25 cents per whole used or scrap tire from the WTRF for baling those tires during the preceding calendar month except when the clean-up of PEL sites is through a competitive bid process pursuant to §330.861(b)-(g) of this title (relating to Priority Enforcement List (PEL).)

(10) Not later than the tenth day of the month following the month during which the mobile tire processor or waste tire facility shredded or baled for energy recovery whole used or scrap tires or tire pieces, the commission's region office shall inspect the documentation submitted by the mobile tire processor or waste tire facility as support for the reimbursement voucher request. The voucher request shall be signed by the mobile tire processor or waste tire facility and submitted to the commission's region office for overnight mailing to the central office for review. The reimbursement voucher request shall be submitted on a form to be provided by the executive director or on a removable storage medium stored in an industry standard file form approved by the executive director. The total pounds of whole used or scrap tires or tire pieces shredded or the total number of whole used or scrap tires baled by the mobile tire processor or waste tire facility during the previous calendar month shall be reported in the following manner:

(A) the total pounds of tires shredded or the total number of tires baled that were energy recovered from PEL sites during the calendar month;

(B) the total pounds of tires shredded or the total number of tires baled that were energy recovered from generators during the calendar month; and

(C) the total pounds of tires shredded or the total number of tires baled that were energy recovered from special authorization sites during the calendar month.

(f) Reimbursement restrictions. The WTRF shall not be used to reimburse for shredding or baling of:

(1) innertubes;

(2) scrap rubber products;

(3) green tires;

(4) industrial solid waste, excluding waste tires;

(5) oversized tires, as defined by commission rule, unless the oversized tires are collected from a PEL site; or

(6) manufacturer reject tires.

§330.873. Public Notice of Intent to Operate.

(a) Waste tire facilities that are registered with the executive director and intend to shred or bale whole used or scrap tires or tire pieces to receive reimbursement from the WTRF shall publish such intent in a local area newspaper where they intend to shred or bale whole used or scrap tires or tire pieces prior to commencement of shredding activity.

(b) Mobile tire processors that are registered with the executive director and intend to shred or bale whole used or scrap tires or tire pieces to receive reimbursement from the WTRF shall publish such intent in a local newspaper in the area where the mobile tire processor's registered waste tire storage facilities are located prior to commencement of shredding activity.

(c) The notice of intent published by the waste tire facility and mobile tire processor shall contain at a minimum the following information:

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

(5) a brief statement explaining the whole used or scrap tire shredding or **baling** process and specifically what activities the waste tire facility or mobile tire processor intends to perform at the location;

(6) where the shredded or **baled** tires will be stored, if different from the processing site; and

(7) the name of the end user of the shredded tire pieces or **baled whole used or scrap tires,** if one has been identified at the time of publication of the notice.

(d) The public notice of intent to operate shall identify the **Texas Natural Resources Conservation Commission** [Texas Water Commission] as the state agency administering the WTRF and shall also contain the Austin, Texas address of the commission and the telephone number of the WTRF program where questions concerning the WTRF can be directed.

(e)-(f) (No change.)

(g) Waste tire storage facilities, waste tire energy recovery facilities and waste tire baling facilities that are registered with the executive director and intend to store whole used or scrap tires or tire pieces, shredded tires or baled tires for energy recovery purposes that were reimbursed from the WTRF shall publish such intent in a local newspaper in the area where the waste tire storage facility or waste tire baling facility is located prior to commencement of storage described in subsection (c)(1)-(7) of this section.

§330.874. Other Permits or Registrations Required.

(a) Mobile tire processors, [or] waste tire facilities, **or waste tire baling facilities located within the state of Texas** that intend to participate in the WTRF program described in this subchapter and that intend to transport whole used or scrap tires or tire pieces from any PEL site, for [temporary] storage prior to shredding, or for immediate shredding, **or for storage prior to baling, or for immediate baling of whole used or scrap tires,** shall have a registered waste tire storage facility or a **registered waste tire energy recovery facility** at which the whole used or scrap tires, **baled tires** or tire pieces shall be held for a maximum of 90 days.

(b) Mobile tire processors or waste tire facilities that intend to participate in the WTRF program described in this subchapter and have not made arrangements for the immediate shipment of all shredded tire pieces, for which reimbursement under the WTRF is [to] being sought, directly to a recycler, reuser or energy recovery facility shall be required to store the shredded tire pieces on a temporary basis at a registered waste tire storage facility [or a permitted waste tire monofill] under the direct supervision of the individual or company requesting reimbursement.

(c) (No change.)

§330.876. WTRF Reimbursement Policies and Procedures.

(a) WTRF reimbursements provided by the State of Texas under this subchapter shall only be made for the **following purposes and only upon compliance with this subchapter:**

(1) shredding of whole used or scrap tires or tire pieces [and shall be] in

accordance with the reimbursement rate described in §330.877(a) of this title (relating to Payments to Waste Tire Facilities or Mobil Tire Processors) [required by law.];

(2) making of whole used or scrap tires into a useful product by a registered waste tire recycler, at a rate not to exceed 25 cents for each weighed tire;

(3) baling of whole used or scrap tires by an in-state registered waste tire baling facility at the reimbursement rate described in §330.851(c) of this title (relating to Waste Tire Baling Facility Registration).

(b) To be eligible to receive reimbursement for the shredding of whole used or scrap tires or tire pieces, waste tire facilities or mobile tire processors shall, at their own expense, provide:

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

(4) all payments associated with the acquisition, maintenance, and operation of any equipment or machinery needed to comply with the PEL site clean-up requirements described in §330. 868 of this title (relating to Approval to Collect and Process Tires From PEL Sites) and shredding or baling of generator and special authorization tires.

(c) (No change.)

(d) An individual or company registered and authorized to operate and receive reimbursement from the WTRF, shall never be able to receive, directly or indirectly, more than 85 cents per weighed tire unit from the WTRF for any activities performed pursuant to this subchapter except when the cleanup of PEL sites is though a competitive bid process pursuant to §330.861(b-(g) of this title (relating to PEL). [Whole used or scrap tires that accumulated at Type VIII-WT waste tire storage facilities that are not PEL sites, between January 1, 1992, and April 1, 1992, are eligible for reimbursement from the WTRF. Tires that accumulated at Type VIII-WT waste tire storage facilities that are not PEL sites, prior to January 1, 1992, are not eligible for reimbursement from the WTRF.]

§330.877. Payments to Waste Tire Facilities or Mobile Tire Processors.

(a) The executive director each month shall reimburse mobile tire processors or waste tire facilities that shred whole used or scrap tires or tire pieces or bale whole used or scrap tires and meet the requirements of this subchapter [section] and the rules adopted under this subchapter [section] in an amount equal to 85 cents for each 18. 7 pounds of whole used or scrap tires or tire pieces shredded or 25 cents for each whole used or scrap tire baled by the processor during the preceding calendar month except when the clean-up of PEL sites is through a competitive bid process pursuant to §330.861(b)-(g) of this title (relating to Priority Enforcement List (PEL)).

(b) A waste tire facility or mobile tire processor that desires to receive reimbursement under this section for tires shredded by the waste tire facility or mobile tire processor, or tires baled by a waste tire baling facility during a calendar month must:

(1) apply to the executive director in accordance with forms prescribed by the executive director, specifically, but not exclusively, the Monthly Reimbursement Voucher Report as described in §330.872(e)(10) [§330.875(c)] of this title (relating to Waste Tire Recycling Fund (WTRF) Program [Public Notice of Intent to Operate]) and the Monthly Operations Report as described in §330.825(b)(9) of this title (relating to Mobile Tire Processor Recordkeeping), [and] §330.845(c)(10) of this title (relating to Waste Tire Facility Recordkeeping) and §330.854(c)(10) of this title (relating to Waste Tire Baling Facility Recordkeeping); [and]

(2) demonstrate that:

(A) for mobile tire processors and waste tire facilities, not less than 90% of all whole used or scrap tire or tire pieces for which reimbursement is being sought have been shredded to a particle size of 9 square inches or less, and for waste tire baling facilities, that all whole used or scrap tires baled for reimbursement have been energy recovered; [and]

(B) not less than 15% [25] and not more than 30% of the whole used or scrap tires or tire pieces shredded, or whole used or scrap tires baled and energy recovered were collected from illegal tire sites listed on the executive director's PEL pursuant to §330.863 of this title (relating to Priority Enforcement List); [and]

(C) not less than 25% percent of the whole used or scrap tires or tire pieces shredded, or whole used or scrap tires baled and energy recovered were collected from generators of whole used or scrap tires, [and]

(D) all [All] shredding and baling equipment shall be used in accordance with the registration application (i.e.- if the equipment requires twice through processing to achieve the legislatively mandated shred size to be eligible for reimbursement then all whole used or scrap tires or tire pieces shall be shredded twice to be eligible for reimbursement); [and]

(3) provide any other information that the executive director determines is needed to accomplish the purposes of this subchapter; [and]

(4) he/she is in compliance with all requirements of this subchapter; [and]

(5) he/she has deposited the required financial assurance to cover the closure costs for the whole used or scrap tires or tire pieces and out-of- state tires shredded, or whole used or scrap tires baled and energy recovered during that month; and [.]

(6) he/she has not exceeded his or her waste tire storage facility's or waste tire energy recovery or waste tire recycling facility's maximum capacity authorized by the executive director.

(c) A waste tire facility or mobile tire processor that in any month shreds or bales for energy recovery purposes more than 15% but not more than 30 percent PEL tires [exceeds the 25% minimum requirement of subsection (b)(2)(B) of this section], shall be reimbursed for the amount in excess of 15% but not more than 30 [25]% that was shredded or baled and energy recovered and shall receive credit for that amount to meet the minimum requirement during a future month.

(d) A waste tire facility or mobile tire processor that in any month exceeds the 25% minimum requirement of subsection (b)(2)(C) of this section, shall receive a credit for the amount in excess of 25% that was shredded or baled and energy recovered that may be used to meet the minimum requirement during a future month. At the time the credit is used to make up a deficiency in the amount of generator tires shredded in a specific month, the waste tire facility or mobile tire processor shall also receive reimbursement for the amount of carry over shredded tire pieces used.

(e) A waste tire facility or mobile tire processor shall only receive reimbursement once for the shredding or baling for energy recovery purposes of a whole used or scrap tire or tire piece.

(f) For the purposes of reimbursement, at the end of each operating month, any WTRF ineligible whole used or scrap tires or scrap tire pieces or shredded tire pieces brought into a waste tire facility or mobile tire processing facility shall be deducted from the total shredded tire weight for that month.

§330.878. Special Authorization Tires.

(a) The TNRCC [TWC] allows, based on executive director approval, the

eligibility for reimbursement by the WTRF of certain whole used or scrap tires or tire pieces from sources other than [Priority Enforcement List (PEL)] tires and generator tires.

(b) (No change.)

(c) Effective July, 1, 1992, four categories of special authorization tires have been designated:

(1) (No change.)

(2) community clean-up-Those tires collected as a result of community cleanup projects with an approval letter from the [TWC] WTRF program;

(3) (No change.)

(4) region [District] letter-More than 50, but less than 500 tires brought directly to a waste tire processor by a citizen or by a registered transporter, or by a processor who is a registered transporter, for a citizen who is not a generator as defined in §330.805(a) of this title (relating to Generators of Whole Used or Scrap Tires), with a letter from the designated TNRCC region [TWC district] office approving the tires as eligible for reimbursement.

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

(f) The WTRF program will prepare an approval letter[,] for each community clean-up project [a special manifest form, as well as an approval letter. This special manifest form and the approval letter] which shall be presented to the mobile tire processor or waste tire facility upon collection of the whole used or scrap tires. The waste tire facility or mobile tire processor the community selected to execute its clean-up project shall provide a manifest form for each load of tires transported from the clean-up project. The approval letter and the manifest forms[, and] shall be included in the waste tire facility's or mobile tire processor's monthly [month] Recordkeeping to ensure reimbursement from the WTRF.

(g) (No change.)

(h) Whole used or scrap tire piles containing greater than 50 tires but less than 500 tires can be disposed of providing the appropriate commission region [district] office is notified and requested to perform an inspection of the site. An approval letter may be issued by the region [district] office authorizing the removal of the whole used or scrap tires from the site and confirming that the shredding or baling for energy recovery purposes of such whole used or scrap tires shall be reimbursed by the WTRF. The mobile tire processor or waste tire facility accepting the whole used or scrap tires must, at the same time, receive the commission region [district] office approval letter to insure reimbursement will occur. The mobile tire processor or waste tire facility shall include the approval letter in their monthly Recordkeeping.

(i) (No change.)

§330.885. Cost Estimate for Closure.

(a) As part of a facility's registration or permit application, an owner or operator of a Type VIII-R waste tire storage facility, [Type VIII-S waste tire storage facility, or] a Type VIII-P waste tire processing facility, a waste tire baling facility, a waste tire recycling facility with greater than a 30 calendar day supply on site of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces, or a waste tire energy recovery facility, with baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces on site for longer than 30 calendar days must prepare a written estimate, in current dollars, of the cost of closing the facility(ies).

(1) The registration closure cost calculation for a Type VIII-R waste tire storage facility, a Type VIII-P waste tire processing facility, a waste tire baling facility, a waste tire recycler with greater than a 30 calendar day supply of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces, or a waste tire energy recovery facility, with baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces on site for longer than 30 calendar days [waste tire storage facility] is determined by the sum of subparagraphs (A), (B), [and] (C) and (D) of this paragraph, plus subparagraph (E), when applicable:

(A) the estimated cost for the maximum number of whole tires generated from out of state stored at the facility is calculated as follows: Number of baled or loose whole tires generated from out of state and stored at the facility x $0.85/tire = Dollar cost estimate [Whole tires generated from out of state should be classified into types. For example, passenger car tires at an average weight of pounds per tire; truck tires at an average weight of pounds per tire. Sum the total weight of the various tire classes and divide by 18.7 pounds to determine the number of whole tires generated from out of state];

(B) the estimated cost to transport the maximum site capacity [accumulation] of [shredded] tire pieces as depicted by the site layout plan to another registered storage site, waste tire recycling facility or waste tire energy recovery facility with documentable available storage capacity [end user] by a third party The estimate shall [should] include equipment and operator time for loading shreds;

(C) the estimated cost to complete cleanup of the site of any and all debris. This shall be considered to be a minimum of $3,000;

(D) the estimated cost of increasing the financial assurance to store the shreds at the receiving facility (registered storage site, waste tire recycling facility or waste tire energy recovery facility), using the calculations for estimating the amount employed in subparagraph (B) of this paragraph;

(E) if the Type VIII-R waste tire storage facility stores shredded waste tire pieces that are less than nine square inches in size but not two by two inch minus in size, then the registration closure cost calculation shall contain the estimated cost to reshred the shredded waste tire pieces to a recyclable size. For the purpose of this subchapter a recyclable size shall be defined as two by two inch minus size. The two by two inch minus size is defined as an individual tire shred piece containing metal that is no greater than two inches in diameter with all loose metal removed;

(F) upon application, the executive director may grant a variance to the requirements contained in subparagraph (E) of this paragraph. An applicant shall submit to a regional inspection of the processing facility and storage facility to confirm that all tire shreds are two by two inch minus size, and submit a copy of the regional inspector's report with the application for registration to the executive director. The applicant must confirm that the processing facility is capable of shredding to two by two inch minus size, by submitting diagrams that identify the components of the shredding operation that accomplish shredding to this size. Upon confirmation, the executive director shall provide appropriate written approval to the applicant.

(2) The registration closure cost calculation for an in state fixed, waste tire processor is determined by the sum of subparagraphs (A) and (B) of this paragraph.[:] If a fixed waste tire processor is located out of state then the closure cost calculation is double the sum of subparagraphs (A) and (B) of this paragraph:

(A) if the fixed processor has located the shredding equipment at a site different from a registered storage site the criteria in paragraph (1)(A)-(C) of this subsection apply;

(B) the estimated cost to render the shredding equipment unusable and prevent access to the equipment or the cost of removing it from the site to a location acceptable to the executive director.

(b) The registration closure cost estimate must equal the cost of closing the facility based on the maximum number of baled or loose whole tires generated from out of state stored at the facility, the maximum number of shredded tire equivalents, the financial assurance needed to store the shredded tire equivalents at the receiving facility, [and] disabling any processing equipment as disclosed in the facility's registration application and, if applicable, the cost of reshredding the shredded tire equivalents to a recyclable size. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required and may amend the closure cost estimate provided by the owner or operator.

(c) Baled or loose whole [Whole] tires generated from out of state and stored at the facility and shredded tire equivalent storage may not exceed the maximum numbers disclosed in the facility's registration application. An owner or operator seeking to increase the volume of whole tires generated out of state and/or shredded tire equivalents that may be stored at the waste tire storage facility shall submit a registration amendment for approval by the executive director. The amendment application shall include a recalculation of the registration closure cost estimate based on the requested volume increases. An owner or operator shall not increase the volume of whole tires generated from out of state and stored at the facility and/or shredded tire equivalents until the registration amendment has been approved by the executive director. Only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining financial assurance closure requirements.

(d) The financial assurance for closure shall be based upon the actual number of in state or out of state baled or loose whole used or scrap tires and/or the weight of pieces of used or scrap tires as depicted in the site layout plan. The quantities of such tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator;

(2) a cubic yard of tire shreds or pieces shall be considered to weigh 850 pounds per cubic yard;

(3) a weighed tire (waste tire unit or equivalent) shall be considered to be 18.7 pounds of tire pieces; and

(4) whole tires which were baled for the purposes of energy recovery shall have an accurate count of the number of tires in each bale prior to compression; however, baled whole tires not being considered for reimbursement may be reported by the weight of each bale. The calculated capacity of a site as calculated for the financial assurance may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited to, new site layout plans to substantiate the revised capacity and new financial assurance calculations based upon the depicted volumetric capacity converted to weights, posting of the revised financial assurance and written approval for the amended registration. The owner or operator is also responsible for submitting a registration amendment to revise the registration closure cost estimate whenever [necessary to provide for closing at the most expensive point in the facility's operations or when] requested to do so by the executive director. Registration amendments with revised registration closure cost estimates shall [should] be submitted to the executive director within 15 days of the executive director's written request to revise the registration closure cost estimate.

(e) The owner or operator must keep the following at the facility during the operating life of the facility: the latest approved registration closure cost estimate. [prepared in accordance with subsections (a) and (b) of this section and, when this estimate has been adjusted in accordance with subsections (c) or (d) of this section, the latest adjusted registration closure cost estimate.

§330.886. Financial Assurance for Closure.

(a) An owner or operator of a waste tire facility regulated by this chapter and requiring financial assurance [Type VIII-R waste tire storage facility, Type VIII-S waste tire storage facility, or a Type VIII-P waste tire processing facility] must establish financial assurance for the closure of each registered or permitted facility. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993 must provide financial assurance for the closure of each registered or permitted facility based on the monthly cumulative closure cost estimate defined in §330.803 of this title (relating Definitions) [Subchapter A of this chapter (relating to General Information)]. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure). [The owner or operator must choose from the options as specified in subsection (e)(1)-(4) of this section.]

(b) Owners or operators of privately owned facilities must choose from the options as specified in subsection (e)(1)-(4) of this section. Owners of publicly owned facilities may choose from the options as specified in subsection (e)(1)-(5) of this section. For the purposes of this subchapter, publicly owned facilities refer to waste tire facilities and waste tire storage facilities owned by city or county governments. [The instruments submitted for compliance with this section must be worded exactly as they appear in §330.888 of this title (relating to Wording of the Instruments), except that the clause pertaining to automatic renewal of the instrument(s) is optional until April 1, 1993. On or before April 1, 1993 all instruments submitted for compliance with the financial assurance requirements of this section must be worded exactly as they appear in §330.888 of this title.)]

(c) The instruments submitted for compliance with this section must be worded exactly as they appear in §330.888 of this subchapter. All financial assurance documents shall be filed as originally signed copies with the executive director of the Texas Natural Resource Conservation Commission [Texas Water Commission]. The executive director will determine the acceptability of both the instrument provided and the institution issuing such instrument.

(d) For purposes of this section, closure is defined as the removal and transportation of all baled or loose whole tires [generated out of state] stored at the facility and shredded tire equivalents to a registered waste tire storage facility, waste tire recycling facility or waste tire energy recovery facility; provision of the additional financial assurance needed to store the shredded tire equivalents at the receiving facility; the reshredding of tire shreds or tire pieces to a recyclable size, if applicable and the cleanup and removal of any debris.[; and] For [for] fixed processors, closure is defined as rendering the shredding equipment unusable and preventing access to the equipment. Closure will begin when:

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

(4) closure is ordered by the Texas Natural Resource Conservation Commission [Texas Water Commission] or

a United States District Court or other court of competent jurisdiction; or

(5) (No change.)

(e) Financial assurance options.

(1) Closure trust fund.

(A) An owner or operator of **waste tire facilities regulated by this chapter and requiring financial assurance** [a Type VIII-R waste tire storage facility, Type VIII-S waste tire storage facility, or a Type VIII-P waste tire processing facility] may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this paragraph. An originally signed duplicate of the trust agreement must be submitted to the executive director to receive approval as a [permitted or] registered waste tire [storage or waste tire processing] facility. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(B) (No change.)

(C) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** payment into the trust fund must be made on the first business day of each month in an amount that when combined with previous monthly payments equals or exceeds the monthly cumulative closure cost estimate. For example, a trust payment made on August 1 when added to previous payments into the trust must equal or exceed the estimated cost of closure of the site on August 31. If a combination of financial assurance instruments is used in accordance with paragraph (6) [(5)] of this subsection, it is a combination of instruments that must equal or exceed the estimated cost of closure as calculated through the end of the month in which payment is being made. **Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).**

(D) A receipt from the trustee for the **initial** [first] payment must be submitted by the owner or operator to the executive director with the original copy of the trust agreement. Subsequent monthly trust receipts must be submitted at the executive director's request to the following address: **Texas Natural Resource Conservation Commission** [Texas Water Commission], Financial Assurance Section (Tires), P.O. Box 13087, Austin, Texas, 78711-3087.

(E) If an owner or operator **that makes an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for approval of the release of the amount in excess of the monthly cumulative closure cost estimate covered by the trust fund. **If an owner or operator that makes an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for approval of the release of the amount equal to the face amount of the substituted instrument.**

(F) (No change.)

(G) After beginning closure, an owner or operator or any other person authorized by the executive director to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the permit or registration or otherwise justified, and if so, will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (8) [(7)] of this subsection, that the owner or operator is no longer required to maintain financial assurance for closure.

(H) The executive director may agree to termination of the trust when:

(i) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this paragraph and paragraphs (2)-(5) [(4)] of this subsection; or

(ii) the **Texas Natural Resource Conversation Commission** [Texas Water Commission] releases the owner or operator in accordance with paragraph (8) [(7)] of this subsection.

(I) If an owner or operator **that makes an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** fails to make a required monthly payment into the trust or if a deficiency in the fund exists and is not corrected in accordance with subparagraph (C) of this paragraph, **the executive director may not pay a processor from the WTRF for tires shredded or baled during the previous calendar month** [the executive director may withhold funds due to the owner or operator under the WTRF program in an amount equal to the missed payment or deficiency]. If either circumstance occurs more than once within a twelve month period, **the executive director** [Texas Water Commission] may revoke the owner's or operator's registration [or permit] and require immediate closure.

(J) Following a determination that the owner or operator has failed to perform closure in accordance with subsection (d) of this section or with the [permit or] registration requirements when required to do so, **the executive director** [Texas Water Commission] may terminate or revoke the owner's or operator's registration or permit and draw on funds in the trust account for the closure of the facility.

(2) Surety bond guaranteeing performance of closure.

(A) An owner or operator of **waste tire facilities regulated by this chapter and requiring financial assurance** [a Type VIII-R waste tire storage facility, Type VIII-S waste tire storage facility, or a Type VIII-P waste tire processing facility] may satisfy the financial assurance requirements by obtaining a surety bond which conforms to the requirements of this paragraph. An originally executed copy of the bond must be submitted to the executive director to receive approval as a [permitted or] registered waste tire [storage or waste tire processing] facility. The bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of Treasury.

(B) (No change.)

(C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination that the owner or operator has failed to perform closure in accordance with subsection (d) of this section or with the [permit or] registration requirements when required to do so, **the executive director** [Texas Water Commission] may revoke the owner's or operator's

registration [or permit] and direct the surety to perform closure in accordance with [permit or] registration requirements or place the penal sum of the bond into an account as directed by the executive director for the closure of the facility.

(D) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** the penal sum of the bond must be in an amount at least equal to the monthly cumulative closure cost estimate, except as provided in paragraph (6) [(5)] of this subsection. **Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).**

(E) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** whenever the monthly cumulative closure cost estimate increases to an amount greater than the penal sum **of the bond** [as a result of changes in cost factor described in §330.885(d) of this title (relating Cost Estimate for Closure)], the owner or operator, within 15 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the [recalculated] monthly cumulative closure cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. **If the owner or operator fails** [Failure] to increase the penal sum of the bond to equal or exceed the [recalculated] monthly cumulative closure cost estimate, **the executive director may not pay a processor from the WTRF for tires shredded or baled during the previous calendar month. If this circumstance occurs more than once within a 12-month period, the executive director may revoke the owner's or operator's registration and require immediate closure** [may, at the executive director's discretion, result in the withholding of funds due the owner or operator under the WTRF program in the amount of the deficiency]. Whenever the monthly cumulative closure cost estimate decreases, the penal sum may be reduced to the amount of the monthly cumulative closure estimate following written approval by the executive director.

(F)-(G) (No change.)

(H) The executive director will return the surety bond to the issuing institution for termination when:

(i) (No change.)

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (8) [(7)] of this subsection.

(3) Closure letter of credit.

(A) An owner or operator of **waste tire facilities regulated by this chapter and requiring financial assurance** [a Type VIII-R waste tire storage facility, Type VIII-S waste tire storage facility, or a Type VIII-P waste tire processing facility] may satisfy the financial assurance requirements by obtaining an irrevocable standby letter of credit. The letter of credit must conform to the requirements of this subparagraph, and an original copy of the letter of credit must be submitted to the executive director to receive approval as a [permitted or] registered waste tire [storage or waste tire processing] facility. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(B) (No change.)

(C) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the TWC Registration [or Permit Number], name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(D) (No change.)

(E) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** the letter of credit must be issued in an amount at least equal to the monthly cumulative closure cost estimate, except as provided in paragraph (6) [(5)] of this subsection. **Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).**

(F) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** w [W]henever the monthly cumulative closure cost estimate increases to an amount greater than the amount of the letter of credit [as a result of changes in cost factors described in §330.885(d) of this title (relating Cost Estimate for Closure)], the owner or operator, within 15 days after the increase, must either cause the letter of credit to be increased so that it at least equals the [recalculated] monthly cumulative closure cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. **If the owner or operator fails** [Failure] to increase the amount of the letter of credit to equal or exceed the [recalculated] monthly cumulative closure cost estimate **the executive director may not pay a processor from the WTRF for tires shredded or baled during the previous calendar month. If this circumstance occurs more than once within a twelve month period, the executive director may revoke the owner's or operator's registration or permit and require immediate closure** [may, at the executive director's discretion, result in the withholding of funds due the owner or operator under the WTRF program in the amount of the deficiency]. Whenever the monthly cumulative closure cost estimate decreases, the amount of the credit may be reduced to the amount of the monthly cumulative closure cost estimate following written approval by the executive director.

(G) Following a determination that the owner or operator has failed to perform closure in accordance with subsection (d) of this section or with the [permit or] registration requirements when required to do so, the executive director may draw on the letter of credit and deposit such funds into an account for the closure of the facility.

(H) (No change.)

(I) The executive director will return the letter of credit to the issuing institution for termination when:

(i) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in subsection this paragraph and paragraphs (1), (2), (4), **and (5) of this subsection;** or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (8) [(7)] of this subsection.

(4) Closure Insurance.

(A) An owner or operator of **waste tire facilities regulated by this chapter and requiring financial assurance** [a Type VIII-R waste tire storage fa-

cility, Type VIII-S waste tire storage facility, or a Type VIII-P waste tire processing facility] may satisfy the financial assurance requirements by obtaining closure insurance which conforms to the requirements of this paragraph. The certificate of insurance must be submitted to the executive director to receive approval as a [permitted or] registered waste tire [storage or waste tire processing] facility. At a minimum, the insurer must be licensed or an eligible surplus lines insurer in Texas and authorized to engage in the business of insurance.

(B) (No change.)

(C) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** the closure insurance policy must be issued for a face amount at least equal to the monthly cumulative closure cost estimate, except as provided in **paragraph (6) of this subsection** [§330.835(e)(5) of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility)]. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments. **Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).**

(D) (No change.)

(E) After beginning closure, an owner or operator or any other person authorized by the executive director to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the permit or registration or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (8) [(7)] of this subsection, that the owner or operator is no longer required to maintain financial assurance for closure of the facility.

(F)-(G) (No change.)

(H) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail, return receipt requested, to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration.

(i) (No change.)

(ii) the **registration** [permit] expires, is terminated, or revoked or a new or renewal **registration** [permit] is denied; or [

[(iii) The registration expires, is terminated, or revoked or a new or renewal registration is denied; or]

(iii)[(iv)] closure is ordered by the **Texas Natural Resource Conservation Commission** [Texas Water Commission] or a United States District Court or other court of competent jurisdiction; or

(iv)[(v)]the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(v)[(vi) the premium due is paid

(I) **For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993,** whenever the monthly cumulative closure cost estimate increases to an amount greater than the face amount of the policy [as a result of changes in cost factors described in §330.885(d) of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility)], the owner or operator, within 15 days after the increase must either cause the face amount to be increased to an amount at least equal to the monthly cumulative closure cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this paragraph and paragraphs (1)-(3) **and (5)** of this subsection to cover the increase. **If the owner or operator fails** [Failure] to increase the face amount of the policy to equal or exceed the monthly cumulative closure cost estimate **the executive director may not pay a processor from the WTRF for tires shredded or baled during the previous calendar month. If this circumstance occurs more than once within a twelve month period, the TNRCC may revoke the owner's or operator's registration and require immediate closure** [may, at the executive director's discretion, result in the withholding of funds due the owner or operator under the WTRF program in the amount of the deficiency]. Whenever the monthly cumulative closure cost estimate decreases, the face amount may be reduced to the amount of the monthly cumulative closure cost estimate following written approval by the executive director.

(J) The executive director will give written consent to the owner or operator that the insurance policy may be terminated when:

(i) an owner or operator substitutes alternate financial assurance as specified in this paragraph and paragraphs (1)-(3) and (5) of this subsection; or

(ii) the executive director releases the owner or operator in accordance with paragraph **(8)** [(f)] of this subsection.

(5) (Reserved) Financial Test for Publicly Owned Facilities. The financial test of self-insurance for publicly owned facilities will be developed when the United States EPA adopts final rules including the financial test of self-insurance for local governments for municipal solid waste landfills in the Subtitle D program. Until the test is adopted in final rules of the commission, city and county governments must choose between paragraphs (1)-(4) of this subsection. [Use of Multiple Financial Options. An owner or operator may satisfy the requirements of this section by establishing more than one financial option per facility. The options shall be as specified in paragraphs (1)-(4), respectively, of this subsection, except that it is the combination of options, rather than the single option, which must in total provide financial assurance for an amount at least equal to the monthly cumulative closure cost estimate. The executive director may invoke any or all of the options to provide for closure of the facility.]

(6) Use of Multiple Financial Options. An owner or operator may satisfy the requirements of this section by establishing more than one financial option per facility. The options shall be as specified in paragraphs (1)-(4), respec-

tively, of this subsection, except that it is the combination of options, rather than the single option, which must in total provide financial assurance. For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, the combination of options must be in an amount at least equal to the monthly cumulative closure cost estimate. For owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, the combination of options must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure). The executive director may invoke any or all of the options to provide for closure of the facility.

(7)[(6)] Use of a financial option for multiple facilities. An owner or operator may use a financial assurance option specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the executive director must include a list showing, for each facility, the **TNRCC** [TWC] registration [or permit number], name, address, and the amount of funds for closure assured by the option. The amount of funds available through the option must be no less than the sum of funds that would be available if a separate option had been established and maintained for each facility.

(8)[(7)] Release of the owner or operator from the financial assurance requirements. Within 60 days after receiving certifications from the owner or operator that closure has been accomplished in accordance with [permit or] registration requirements and the closure requirements of subsection (d) of this section, the executive director shall notify the owner or operator in writing that financial assurance for closure of the facility is no longer required, unless the executive director has reason to believe that closure has not been in accordance with the [permit or] registration requirements.

§330.888. Wording of the Instruments.

(a) A trust agreement for a trust fund, as specified in §330.886(e)(1) of this title (relating to Financial Assurance for Closure), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the **Texas Natural Resource Conservation Commission, "TNRCC"**, [Texas Water Commission, "TWC,"] an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility shall provide assurance that funds will be available when needed for closure of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any [registered Type VIII-R waste tire storage facility, registered Type VIII-P waste tire processor, or permitted Type VIII-S waste tire storage] facility subject to regulation under Subchapter R of 30 [31] TAC, Chapter 330.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the **TNRCC** [TWC] Registration or Permit Number, name, address, and the current closure cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of **TNRCC** [TWC]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by **TNRCC** [TWC].

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the executive director shall direct, in writing, to provide for the payment of the costs of closure of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the executive director from the Fund for closure expenditures in such amounts as the executive director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon. Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time

any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited,such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Quarterly Valuation. The Trustee shall quarterly, within 15 days of quarter-end, furnish to the Grantor and to the appropriate executive director a statement confirming the value of the Trust. Quarter-ends are designated as March 31, June 30, September 30, and December 31. Any securities in the Fund shall be valued at market value as of quarter-end. The failure of the Grantor to object in writing to the Trustee within 30 days after the statement has been furnished to the Grantor and the executive director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the executive director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or **TNRCC** [TWC] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or **TNRCC** [TWC], except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the executive director, by certified mail within 15 days following the expiration of any month-end period, if no payment is received from the Grantor during that period.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate executive director, or by the Trustee and the appropriate executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the executive director, or by the Trustee and the executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in **30** [(3)1] Texas Administrative Code §330. 888(a)(1) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By:

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By:

(Title)

Attest:

(Title)

(Seal)

(b) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §330.886(e)(1)of this title.

State

of_____

_____

County

of_____

_____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

(c) A surety bond guaranteeing performance of closure, as specified in §330.886(e)(2) of this title must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Dated bond executed:

_____

_____

Effective date:

_____

_____

Principal: (legal name and business address of owner or operator).

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation").

State of incorporation:

_____

_____

Surety(ies): (name(s) and business address(es)).

TNRCC [TWC] Registration or Permit Number, name, address, and closure amount(s) for each facility guaranteed by this bond (indicate closure amounts separately):_____

Total penal sum of bond: $_____

Surety's bond number:

_____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the **Texas Natural Resource Conservation Commission** [Texas Water Commission] (hereinafter called **TNRCC** [TWC]), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under Subchapter R of 30 [31] TAC, Chapter 330, the Waste Tire Management Program, to be registered or have a permit in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the permit or provisions to operate as a registered owner or operator;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure in accordance with requirements of the permit or registration as such permit or registration may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance, and obtain the **TNRCC** [TWC] executive director's written approval of such assurance, within 30 days after the date of notice of cancellation is received by both the Principal and the executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the executive director that the Principal has been found in violation of the closure requirements for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with permit or registration requirements or place the closure amount guaranteed for the facility into an account as directed by the executive director.

Upon notification by the executive director that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the executive director during the 30 days following receipt by both the Principal and the executive director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into an account as directed by the executive director.

The Surety(ies) hereby waive(s) notification of amendments to permits, registrations, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the executive director, provided, however, that cancellation shall not occur during the 60 days beginning on the date of receipt of the notice of cancellation by both the Principal and the executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the executive director of the **TNRCC** [TWC].

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not in-

crease by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in **30** [(3)1] Texas Administrative Code, §330. 888(b) as such regulations were constituted on the date this bond was executed.

Principal
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal) Corporate Surety(ies)
(Name and address)
State of incorporation: _____.
Liability limit: $_____.
(Signature(s))
(Name(s) and title(s))
(Corporate seal)
(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: $_____.

(d) [(c)] A letter of credit, as specified in §330.886(e)(3) of this title, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT
Executive Director
Texas Natural Resource Conservation Commission [Texas Water Commission]
P.O. Box 13087
Austin, TX 78711-3087
Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (owner's or operator's name and full address) up to the aggregate amount of (in words) U.S. dollars, $_____ available upon presentation by the executive director of the Texas Natural Resource Conservation Commission [Texas Water Commission] of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Solid Waste Disposal Act, Tire Recycling Program."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

We certify that the wording of this letter of credit is identical to the wording specified in **30** [(31)] Texas Administrative Code §330.888(c) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in 30 [31] Texas Administrative Code §330.886(e)(4) of this title, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Closure
Name and Address of Insurer (herein called the "insurer"):

_____
_____
Name and Address of Insured (herein called the "insured"):

_____
_____
Facilities covered: (list for each facility: The TNRCC [TWC] Registration or Permit Number, name, address, and the amount of insurance for closure (these amounts for all facilities covered must total the face amount shown below)).
Face Amount: _____
_____
Policy Number: _____
_____
Effective Date: _____
_____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of **30** [(31)] Texas Administrative Code §330.886(e)(4), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the **Texas Natural Resource Conservation Commission ("TNRCC")** [Texas Water Commission ("TWC")], the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in **30** [(31)] Texas Administrative Code §330.888(d) as such regulations were constituted on the date shown immediately below, and that the Insurer is either licensed or an eligible surplus lines insurer in Texas and authorized to engage in the business of insurance.

(Authorized signature of Insurer)
(Name of person signing)
(Title of person signing)
(Date)

§330.889. Special Conditions for Beneficial Use of Whole Used or Scrap Tires.

(a) Beneficial uses of whole used or scrap tires for erosion control, reefs in coastal waters, decorations, containment walls for composting or commercial operations, traffic control, or bumpers for boat dock and boats shall not require a registration number [or commission permit].

(b)-(e) (No change.)

(f) Beneficial use of shredded tire pieces is not regulated by this subchapter except for shredded tire pieces that were generated from a waste tire facility or mobile tire processor that received reimbursement from the WTRF. Such shredded tire pieces shall not be used for beneficial use at a permitted municipal or industrial solid waste landfill except as approved by the executive director [Texas Water Commission].

(g) (No change.)

(h) Any process involving the beneficial use of whole used or scrap tires or tire pieces shall be reviewed and approved by the executive director prior to executing the beneficial use.

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 Sptil 13, 1994.

TRD-9439048 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: April 20, 1994

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

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• 30 TAC §§330.836, 330.851-330.857, 330.875

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

The repeals are proposed under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1051, Act of the 73rd Legislature, 1993, which provides the Texas Natural Resource Conservation Commission with the authority to establish the rules necessary to adequately administer the Waste Tire Recycling Fund, and implement the activities necessary to insure prompt and accurate pay out from the fund, and to register and monitor the activities of waste tire generators, transporters, fixed and mobile processors, and storage and disposal facility owners or operators; and under the Texas Water Code ™5. 103, which gives the Texan Natural Resource Conservation Commission the powers, duties and responsibilities.

The repeals implement the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992)

§330.836. Requirements for a Type VIII-S Waste Tire Storage Facility.

§330.851. Disposal of Whole Used or Scrap Tires.

§330.852 Disposal of Whole Used or Scrap Tires or Shredded Tires Pieces

§330.853. Permit Requirements of Waste Tire Disposal Facilities.

§330.854. Existing Waste Tire Disposal Sites.

§330.855. Final Cover Requirements.

§330.856. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.

§330.875. Shipping, Record Keeping, and Reporting Requirements.

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 April 13, 1994.

TRD-9439047 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 20, 1994

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

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Subchapter X. Management of Whole Used or Scrap Tires or Shredded Tire Pieces

• 30 TAC §§330.900-330.917, 330.920-330.939

The new sections are proposed under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1051, Act of the 73rd Legislature, 1993, which provides the Texas Natural Resource Conservation Commission with the authority to establish the rules necessary to adequately administer the Waste Tire Recycling Fund, and implement the activities necessary to insure prompt and accurate payout from the fund, and to register and monitor the activities of waste tire generators, transporters, fixed and mobile processors, and storage and disposal facility owners or operators, and under the Texas Water Code, §5.103, which gives the Texan Natural Resource Conservation Commission the powers, duties and responsibilities.

The new sections implement the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992).

§330.900. Useful Product Reimbursement Program.

(a) Applicability. The regulations contained in these sections establish the standards applicable to the creation and management of a schedule for reimbursement to registered waste tire recyclers that process weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products.

(b) Responsibility.

(1) Each individual(s) or company(ies) that is seeking reimbursement from the WTRF under the Useful Product Reimbursement Program for recycling weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products shall register pursuant to Subchapter X, §330.933 of this title (relating to Requirements for Registration for a Waste Tire Recycling Facility).

(2) Each individual(s) or company(ies) registered as a waste tire recycling facility pursuant to §330.933 of this title shall further register as a Useful Product Reimbursement program participant in order to be considered eligible for reimbursement from the WTRF based on the reimbursement schedule outlined in §330.908 of this title (relating to Useful Product Reimbursement Schedule).

(3) The individual(s) or company(ies) shall remain in compliance with all applicable provisions of this subchapter in order to maintain eligibility for reimbursement from the WTRF under the Useful Product Reimbursement Program for processing weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products.

(4) The individual(s) or company(ies) shall comply with all reporting requirements contained in §330.933(d) of this title (relating to Waste Tire Recycling Facility Recordkeeping).

(c) Prohibition.

(1) For the purpose of this subchapter, individual(s) or company(ies) that intend to burn whole used or scrap tires or scrap tire pieces or shredded tire pieces or baled whole used or scrap tires as Tire-Derived Fuel (TDF) for energy recovery shall not qualify for the Useful Product Reimbursement Program and are therefore ineligible for the 25 cents maximum reimbursement from the WTRF.

(2) For the purpose of this subchapter, individual(s) or company(ies) that intend to, by mechanical means, shred whole used or scrap tires or scrap tire pieces or shredded tire pieces to crumb or powder size shall not qualify for the Useful Product Reimbursement Program and are therefore ineligible for the 25 cents maximum reimbursement from the WTRF.

(3) Individual(s) or company(ies) seeking reimbursement under this subchapter for the process of making useful products from weighed tires shall have not previously, directly or indirectly, received reimbursement from the WTRF for the shredding or baling of such weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces.

(4) Individual(s) or company(ies) seeking reimbursement from the WTRF under the Useful Product Reimbursement Program as registered waste tire recycling facilities shall be operated entirely within the boundaries of the state. No out-of-state recycling shall be eligible for reimbursement from the WTRF.

(5) Individual(s) or company(ies) seeking reimbursement from the WTRF under the Useful Product Reim-

bursement Program shall receive reimbursement only for in-state whole used or scrap tires or scrap tire pieces or shredded tire pieces that are processed into a useful product.

(6) Individual(s) or company(ies) cannot seek reimbursement from the WTRF under the Useful Product Reimbursement Program for whole used or scrap tires approved for Beneficial Use under Subchapter R, §330.889 of this title (relating to Special Conditions for Beneficial Use of Whole Used or Scrap Tires).

(d) Fee prohibition. Individual(s) or company(ies) that intend to participate in the Useful Product Reimbursement Program shall not charge a fee to retail or wholesale dealers for collecting for delivery to any registered waste tire recycling facility from the purchasers of new tires on or after April 1, 1992. This prohibition does not apply to the collecting of whole used or scrap tires or scrap tire pieces from manufacturers, retreaders, fleet operators, automotive dismantlers, and storage site owners or operators of whole used or scrap tires.

(e) Registration. Individual(s) or company(ies) not seeking reimbursement from the WTRF under the Useful Product Reimbursement Program for the processing of weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products are still required to obtain a registration from the executive director authorizing the operation of a waste tire recycling facility in the state under §330.932 of this title (relating to Waste Tire Recycling Facility Registration).

(f) Waste disposal. Individual(s) or company(ies) that are seeking reimbursement from the WTRF under the Useful Product Reimbursement Program for the processing of weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products shall be required to pay for the appropriate disposal of all scrap tire pieces remaining from the processing whole used or scrap tires pursuant to Subchapter R, §330.872(f) of this title (relating to Waste Tire Recycling Fund (WTRF) Program).

(g) Confidentiality. Individual(s) or company(ies) that are seeking reimbursement from the WTRF under the Useful Product Reimbursement Program for the processing of weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products shall be eligible for confidentiality protection if the individual(s) or company(ies) complies with the conditions outlined in Subchapter R, §330.875 of this title (relating to Confidentiality).

(h) Reimbursement restriction. The unused portion of the weighed whole used or scrap tire utilized in the production of a useful product reimbursed under the Useful Product Reimbursement Program portion of the WTRF is not eligible for additional reimbursement from the WTRF (i.e. 85 cents for 18.7 pounds of shredded rubber).

(i) Process requirement. Whole used or scrap tires or scrap tire pieces or shredded tire pieces must be altered by a mechanical, chemical or thermal process before it can be eligible for reimbursement from the WTRF under the Useful Product Reimbursement Program as a useful product.

§330.901. Useful Product Reimbursement Program.

(a) Purpose. The purpose of the Useful Product Reimbursement Program is to provide a means to reimburse individual(s) or company(ies) that make useful products from weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces within the boundaries of the state.

(b) Objectives. The objectives of the Useful Product Reimbursement Program are:

(1) to provide a mechanism and schedule to reimburse individual(s) or company(ies) which recycle weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces to make useful products;

(2) to subsidize the future development of individual(s) or company(ies) involved in the production of useful products from weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces within the boundaries of the state; and

(3) to assist in the collection of whole used or scrap tires which are generated on a daily basis prior to being deposited at an illegal waste tire site.

(c) Classification of tires. The weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces which have been determined by the executive director to be eligible for reimbursement at a rate not to exceed 25 cents for each weighed tire under the Useful Product Reimbursement Program are categorized as follows:

(1) whole used or scrap tires or scrap tire pieces from certain legal waste tire storage sites registered in the state;

(2) whole used or scrap tires or scrap tires pieces from generators that accumulate the whole used or scrap tires on a daily basis;

(3) shredded tire pieces from mobile tire processors, waste tire facilities or waste tire storage facilities that accumulate on a daily basis as a result of shredding activities; and

(4) whole used or scrap tires or scrap tire pieces from sources other than those indicated in paragraphs (1) and (2) of this subsection, as approved by the executive director. For the purpose of this subchapter, whole used or scrap tires in this fourth category shall be called special authorization tires. (For a complete description of special authorization tires refer to Subchapter R, §330.878(a)-(i) of this title (relating to Special Authorization Tires).

(d) Operation of the useful product reimbursement program within the WTRF. The Useful Product Reimbursement Program shall operate in the following manner:

(1) the waste tire recycling facility registered as a Useful Product Reimbursement Program participant shall submit a reimbursement request on an invoice voucher to the executive director on a quarterly basis. The invoice voucher format shall be prepared by the Useful Product Reimbursement Program and shall be subject to executive approval, or on a voluntary basis, on a removable storage medium stored in an industry standard file format acceptable to the executive director;

(2) the waste tire recycling facility registered as a Useful Product Reimbursement Program participant shall maintain and retain all reimbursement records for a period of three years and shall make such records available to the executive director for review upon request; and

(3) the waste tire recycling facility registered as a Useful Product Reimbursement Program participant shall be reimbursed in an amount not to exceed 25 cents for each weighed whole used or scrap tire or scrap tire piece or shredded tire piece processed by the recycler during the preceding calendar quarter notwithstanding procurement by the commission for the clean-up of PEL sites.

§330.902. Useful Product Reimbursement Program Registration.

(a) Registration requirements.

(1) An individual(s) or company(ies) that is seeking reimbursement from the WTRF under the Useful Product Reimbursement (UPR) Program for recycling whole used or scrap tires, scrap tire pieces or shredded tire pieces into useful products shall register as a UPR participant with the executive director prior to commencing operations. Each UPR participant must also register the production facility where the useful product is manufactured as a Waste Tire Recycling Facility. Registration forms shall be provided by the executive director upon request.

(2) Individual(s) or company(ies) that apply for and receive a UPR participant registration from the executive

director shall maintain a copy of the registration at their designated place of business.

(3) A UPR participant registration shall be reviewed annually but shall expire 60 months from the date of issuance unless the UPR business changes ownership prior to that time.

(4) A UPR participant registration is non-transferable and will expire at the time that ownership changes. A change in the business federal tax identification number will constitute a change of ownership. The new owner shall submit a new registration application and obtain complete written registration approval from the executive director prior to commencing operation or becoming eligible for reimbursement from the WTRF.

(5) Applications to renew registrations shall be submitted at least 60 days prior to the expiration date. The TNRCC will require a minimum of 60 days to process an administratively complete initial or renewal application. Failure to submit a application renewal 60 days prior to the expiration date may result in expiration of the registration prior to the issuance of a renewal registration. Products produced during the expiration period will not be eligible for reimbursement.

(6) UPR participants shall notify the WTRF staff, in writing, within 15 days of:

(A) change in any data submitted in support of the application for registration;

(B) change in business physical or mailing address;

(C) change in business name,

(D) change in business ownership; or

(E) change in business federal tax identification number.

(7) A new UPR participant registration application and application review fee shall be submitted to the executive director within 15 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration. Following the executive director's determination, the old registration number shall be canceled.

(8) Failure of a UPR participant to comply with the requirements of this subchapter shall result in enforcement procedures in accordance with §330.939 of this title (relating to Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities).

(9) A UPR participant will not receive payment from the WTRF until and unless the requirements of this subchapter are fully complied with, including TNRCC approval and issuance of a UPR participant registration, and TNRCC approval and issuance of a waste tire recycling facility registration.

(10) Preparation and submission of an application to the executive director for a UPR participant registration must be accompanied by a non-refundable $500 fee. The application review fee and shall be prepared in accordance with the following procedures:

(A) the application for registration shall be prepared and signed by the applicant or authorized representative on a form provided or approved by the executive director;

(B) the application shall include information necessary for the executive director to make an evaluation of the proposed operation and to ensure that the facility is located, designed, and operated so that the health, welfare, and physical property of the public as well as the environment are protected;

(C) failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director and forfeiture of the application review fee;

(D) the submission of false information shall constitute grounds for denial of an initial or renewal application or suspension or revocation of a current UPR participant registration;

(E) the UPR participant registration shall be issued upon receipt and approval of an administratively and technically complete application and the posting of the financial assurance, if required, by the waste tire recycling facility registration;

(F) the application for a registration of a UPR participant shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director, and

(G) data presented in support of an initial or renewal application for a UPR participant shall consist of:

(i) the legal business name, mailing address, telephone number and facsimile number, of the applicant;

(ii) the business federal tax identification number (will be used for the purpose of determining ownership and ownership changes);

(iii) the name, mailing address, telephone number and facsimile number of the responsible person making the application and accepting responsibility and liability for operations of the facility;

(iv) the name, mailing address, telephone number and facsimile number, if applicable, of the property owner of the UPR facility or documentation sufficient to prove that the property owner is also the facility operator;

(v) the maximum amount of whole used or scrap tires, scrap tire pieces, or shredded tire pieces (calculated in pounds) that will be on site at the UPR facility at any given time as described in the Waste Tire Recycling Facility Registration Application;

(vi) the amount of whole used or scrap tires, scrap tire pieces, or shredded tire pieces necessary to provide a 30 calendar-day raw material supply for the proposed recycling process; and

(vii) the signature of an authorized representative empowered to make commitments for the applicant on a form provided by the executive director, and a statement that they are familiar with the application and all supporting data and are aware of all commitments represented in the application and that they are also familiar with all pertinent requirements in these regulations, local building, fire and zoning codes and they agree to develop and operate the UPR facility in accordance with the application and its supporting attachments, the sections in this subchapter, local building, fire and zoning codes and any special provisions that may be imposed by the executive director or other legal authority

(b) Manufacturing and production method disclosure. The UPR participant shall submit sufficient manufacturing and production information necessary for the executive director to evaluate the useful product and determine the rate of reimbursement for that product The information submitted to the executive director by a UPR participant(s) which pertains to specific manufacturing and/or productions methods unique to the organization submitting the application will be subject to confidentiality as described in Subchapter R, §330.875 of this title (relating to Confidentiality)

§330.903. Request for Reimbursement.

(a) Not later than the 20th day of the month following the calendar quarter during which the waste tire recycling facility registered as a Useful Product Reimbursement Program participant processed the weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products, the Useful Product Reimbursement Program participant shall submit the reimbursement invoice to the executive director in the Austin Central Office for review in order to approve the requested reimbursement invoice.

(b) The executive director shall set aside fund money from the WTRF for purpose of reimbursing Useful Product Reimbursement Program participants for the recycling of whole used or scrap tires or scrap tire pieces or shredded tire pieces into useful products.

(c) Upon review and approval by the executive director in the Austin Central Office of all eligible reimbursement invoices, the executive director shall calculate the total requested reimbursement amount during that calendar quarter and determine, if necessary, the percentage of the total requested amount the fund is capable of reimbursing. Upon determination of the specific quarterly percentage, the executive director shall apply that percentage to each eligible reimbursement invoice, determine the amount that will be reimbursed to each Useful Product Reimbursement Program participant who requested reimbursement, and attach a signed reimbursement voucher to the invoice which states the authorized reimbursement amount

(d) The reimbursement invoice prepared by the Useful Product Reimbursement Program participant shall contain the following information and shall be reviewed and approved by the executive director prior to use:

(1) the total number of in-state weighed whole used scrap tires, or the weight of scrap tire pieces or shredded tire pieces processed by the waste tire recycling facility registered as a Useful Product Reimbursement Program participant during the previous calendar quarter and reported in the following manner:

(A) the total number or weight of tires processed from PEL sites during the calendar quarter, if applicable;

(B) the total number or weight of tires processed from generator(s) during the calendar quarter; and

(C) the total number or weight of tires processed from special authorization sites during the calendar quarter;

(2) the name, mailing address, telephone number and business tax number of the waste tire recycling facility registered as a Useful Product Reimbursement Program participant;

(3) the months of the calendar quarter for which the useful product reimbursement invoice is being submitted;

(4) the type and quantity of useful products made and sold (including all bills of sale) during the calendar quarter; and

(5) the signature and date of signature of the responsible person designated in the original application for registration as a Useful Product Reimbursement Program participant who can verify the accuracy of the information contained in the reimbursement invoice.

§330.904. Useful Product Reimbursement Program Restrictions.

(a) The Useful Product Reimbursement Program shall observe the WTRF Program Restrictions and shall not be reimbursed for the following types of weighed tires:

(1) green tires;

(2) manufacturer reject tires; or

(3) oversized tires, as defined by commission rule, unless the oversized tires are collected from a PEL site

(b) The executive director shall only reimburse for weighed whole used or scrap tires or scrap tire pieces or shredded tire pieces processed into useful products.

(c) The executive director shall not recognize or reimburse for whole used or scrap tire pieces or shredded tire pieces processed to make crumb or powdered rubber.

(d) The waste tire recycling facility registered as a Useful Product Reimbursement Program participant shall initiate processing with a whole used or scrap tire or scrap tire piece or shredded tire piece and make the resulting product capable and complete for sale to the consumer

(e) For the purposes of this subchapter, the processing of whole used or scrap tires as TDF for energy recovery shall not be considered eligible for reimbursement under the Useful Product Reimbursement Program.

(f) The executive director shall not reimburse for out-of-state whole used or scrap tires or scrap tire pieces or shredded tire pieces utilized in the production of useful products for reimbursement from the WTRF. Adequate records to identify the origin of the weighed whole used or scrap tires (i.e. manifests) shall be maintained by the waste tire recycling facility to identify the out-of-state tires received for processing from the in-state tires received for processing.

§330.905. Public Notice of Intent to Operate.

(a) Waste tire recycling facilities which are registered with the executive director as Useful Product Reimbursement Program participants and which intend to process whole used or scrap tires or scrap tire pieces or shredded tire pieces to make useful products to receive reimbursement from the WTRF, shall publish such intent in a local area newspaper where they intend to process the whole used or scrap tires prior to commencement of processing activity.

(b) The notice of intent published shall contain, at a minimum, the following information:

(1) the waste tire recycling facility registration number;

(2) the name under which the waste tire recycling facility registration number was issued;

(3) the permanent street address of the waste tire recycling facility; and

(4) a statement explaining the useful product that will be made at the facility.

(c) The public notice of intent to operate shall identify the Texas Natural Resource Conservation Commission (TNRCC) as the state agency administering the WTRF and shall also contain the telephone number of the WTRF program where questions concerning the WTRF can be directed.

(d) Prior to publication in a local area newspaper, the public notice of intent shall be reviewed and approved by the executive director.

(e) The public notice of intent shall be published in the legal section of a local area newspaper at least five days prior to commencing processing activities. The notice of intent shall be published for a period of five days continuously.

§330.906. Useful Product Reimbursement Program Policies. To be eligible to receive reimbursement for the processing of whole used or scrap tires or scrap tire pieces or shredded tire pieces, the waste tire recycling facility registered as a Useful Product Reimbursement Program participant shall, at their own expense, provide:

(1) all payments to registered transporters covering the expenses associated with the shipment of whole used or scrap tires or scrap tire pieces or shredded tire pieces to the waste tire recycling facility or the shipment of useful products from the

waste tire recycling facility to wholesale or retail manufacturers located within or outside the state of Texas;

(2) all payments to laborers, equipment operators, or other employees whose services may be needed in order to comply with the conditions necessary to ensure that the processing of whole used or scrap tires or scrap tire pieces or shredded tire pieces results in a useful product as described in §330.907(a) of this section (relating to the Definition of a Useful Product); and

(3) all payments associated with the acquisition, maintenance, and operation of any equipment or machinery needed in order to comply with the requirements described in §330.907(a) of this section (relating to the Definition of Useful Product).

§330.907. Definition of a Useful Product.

(a) For the purposes of this subchapter, a useful product shall be defined by the executive director as a recycled product that:

(1) is made from whole used or scrap tires or scrap tire pieces or shredded tire pieces,

(2) is in a marketable form;

(3) has a contract for sale of a minimum of 75% of the product made on a calendar quarterly basis;

(4) is available for immediate sale upon completion of the processing; and

(5) the contracted product is removed from the waste tire recycling facility site during that calendar quarter

(b) For the purposes of this subchapter, the executive director shall not reimburse as a useful product crumb rubber, powdered rubber or any other intermediate product made from whole used or scrap tires or scrap tire pieces or shredded tire pieces.

(c) The determination that the useful product is eligible for reimbursement under the Useful Product Reimbursement Program from the WTRF in an amount not to exceed 25 cents shall be based on the information contained in the Useful Product Reimbursement Program application form completed by the waste tire recycling facility. The waste tire recycling facility shall contact the executive director to request and obtain the application for the Useful Product Reimbursement Program.

(d) At least annually thereafter, the executive director shall confirm the continued eligibility of the useful product made by the waste tire recycling facility for reimbursement under the Useful Product Reimbursement Program from the WTRF. This annual inspection shall include, but not be limited to:

(1) an on-site inspection of the waste tire recycling facility;

(2) a complete review of all records maintained by the waste tire recycling facility in support of the reimbursement requested in the invoices; and

(3) documentation that the product made and reimbursed as a useful product meets the conditions stated in subsection (a) of this section to maintain useful product eligibility.

§330.908. Useful Product Reimbursement Schedule.

(a) Upon receipt of the application requesting consideration for eligibility for reimbursement from the WTRF under the Useful Product Reimbursement Program, the executive director shall consider the type of useful product being processed, the complexity and difficulty in the processing of the useful product and the time involved in the processing of the useful product, and determine the reimbursement rate for the weighed whole used or scrap tires, scrap tire pieces, or shredded tire pieces used to process the useful product.

(b) The same reimbursement rate shall be applied to all individual(s) or company(ies) registered as waste tire recycling facilities seeking reimbursement for the processing of a specific or similar type of useful product.

(c) The reimbursement rate shall not be less than 5 cents per weighed tire or greater than 25 cents per weighed tire, and shall increase in 5-cent increments to the maximum of 25 cents allowable.

(d) A list of reimbursement rates shall be developed by the executive director six months after initiation of the Useful Product Reimbursement Program. The list shall contain all useful products approved for reimbursement and the reimbursement rate determined by the executive director. The useful product reimbursement rate list shall be made available to all interested parties upon request.

§330.909. Nonpayment of Requests for Reimbursement under the Useful Product Reimbursement Program. The following conditions shall result in nonpayment of requests for reimbursement from the WTRF under the Useful Product Reimbursement Program:

(1) failure to maintain complete and accurate records required in this subchapter;

(2) alteration of any record maintained or received by the waste tire recycling facility registered as a Useful Product Reimbursement Program participant;

(3) failure to adequately identify and maintain records on out-of-state tires and in-state tires received by the waste tire recycling facility registered as a Useful Product Reimbursement Program participant for processing;

(4) failure to deliver the useful product produced from whole used or scrap tires to a market for sale;

(5) failure to submit requests for reimbursement within the timeframe described in §330.902 of this title (relating to Useful Product Reimbursement Program Registration);

(6) failure to maintain adequate financial assurance (if required) or adequate fire protection (if required);

(7) a determination by the executive director that the individual(s) or company(ies) is causing an imminent danger to public health or welfare shall constitute a basis for non-reimbursement; or

(8) the WTRF balance falls below $500,000.

§330.910. Financial Audits.

(a) Purpose. The purpose of this section is to establish procedures regarding the reimbursement of money expended from the WTRF and to assure payment from the fund for tires processed which are eligible for reimbursement as defined in this subchapter.

(b) Applicability. This subchapter applies to all requests for reimbursement from the WTRF. Those requesting reimbursement shall herein be considered a Reimbursement Responsible Party.

(c) Responsibility. A Reimbursement Responsible Party shall ensure that all WTRF activities are in compliance with all applicable sections of this subchapter. A Reimbursement Responsible Party shall ensure that all requests for reimbursement from the WTRF are supported by documentation as required in each applicable section of this subchapter. A Reimbursement Responsible Party shall ensure that all requests for reimbursement from the WTRF are made on documents as prescribed or approved by the executive director or, on a voluntary basis, shall apply by a removable storage medium stored in an industry standard file format acceptable to the commission.

§330.911. Duty of Recipients of Reimbursement from the WTRF.

(a) Each Reimbursement Responsible Party who requests reimbursement from the WTRF shall do so for only those tires which are eligible for reimbursement in accordance with Subchapter R, §330.872 of this title (relating to the WTRF Program).

(b) Each Reimbursement Responsible Party shall maintain originals of all records required by applicable subsections of this subchapter for a minimum of three years at the registered address of business for review at the executive directors request.

(c) Each Reimbursement Responsible Party who requests reimbursement from the WTRF shall cooperate fully with any audit or investigation by the executive director to the verification of reimbursements from the WTRF.

§330.912. Reimbursement Defined.

(a) Reimbursement by the executive director of a reimbursement claim means only that the claim is potentially subject to post-reimbursement audit.

(b) By payment of reimbursement claims from the WTRF, the executive director makes no statement or admission that the reimbursements are for eligible tires as defined in this subchapter, or that the tires were processed in accordance with the rules of this subchapter.

§330.913. WTRF Financial Audits.

(a) The executive director's staff shall conduct a sufficient number of audits of reimbursements claimed and payments made to assure achievements of the purposes of this subchapter. Such audits may occur prior to or after claims for reimbursement have been paid. Such audits shall include, at a minimum, an investigation of the records supporting the requests for reimbursement as described in this subchapter. Such audits may include investigations of associated waste tire storage facilities, waste tire recycling facilities, waste tire energy recovery facilities and other approved end user records to ensure achievement of the purposes of this subchapter.

(b) Each Reimbursement Responsible Party shall retain all records for a minimum of three years as required in this subchapter, unless notified by the executive director of a pending audit inspection that will include a review of those records prior to the end of the three-year period.

(c) The executive director shall submit to the Reimbursement Responsible Party an audit report notifying the Reimbursement Responsible Party of the findings of the audit not later than 90 days after the audit inspection.

(d) Upon the Responsible Party's request for confidentiality as described in Subchapter R, §330.875(b) of this title (relating to Confidentiality), documents submitted by Reimbursement Responsible Parties to the executive director or copied by the executive director for the purposes of this section shall be considered confidential as described in Subchapter R, §330.875(a) of this title.

§330.914. Overpayment from the WTRF.

(a) If the executive director conducts an audit or investigation and concludes that reimbursement of a claim(s) was for an amount which was not justified, a notice of overpayment shall be delivered to the Reimbursement Responsible Party identifying the amount overpaid from the WTRF.

(b) Upon receipt of a notice of overpayment, the Reimbursement Responsible Party shall submit a check returning the amount of the overpayment to the executive director.

(c) All checks rendered to return overpayments shall be made to "The State of Texas-Waste Tire Recycling Fund", and mailed to the Chief Fiscal Officer, Texas Natural Resource and Conservation Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087 with the notation "WTRF Waste Tire Processor, Baler/Recycler No. _____, overpayment return."

(d) If the overpayment has not been returned to the commission by the 30th calendar-day after mailing of the notice of overpayment, excluding the date of mailing, the executive director shall file a petition seeking an order from the commission to compel payment.

(e) If, upon hearing, the commission issues an order compelling return of overpayment in any amount, the person found responsible for returning overpayment shall also be required to reimburse the commission for all reasonable hearing costs, including the costs of preparation

(f) Upon notification of any commission hearing or court appeal to resolve overpayment disputes, all records reviewed for the determination of overpayment shall be retained for a minimum of three years and/or until the hearing decision is issued and/or the Reimbursement Responsible Party is compliant with all decisions or orders.

(g) The executive director may seek an order from the commission to compel cooperation with an audit or investigation when deemed necessary to achieve the purposes of this subchapter.

(h) A Reimbursement Responsible Party who violates the requirements of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.915. WTRF Program Audit Applicability and Responsibility.

(a) Purpose. The purpose of this section is to establish procedures regarding the audits of records required of any person involved in the generation, transportation, processing, storage, disposal or recycling of whole used or scrap tires that are classified as municipal solid waste and regulated by the commission to provide the most effective protection to the environment for the protection of public health and safety.

(b) Applicability. This subchapter applies to any person involved in the generation, transportation, processing, storage, disposal or recycling of whole used or scrap tires which are classified as municipal solid waste and regulated by the commission.

(c) Responsibility. Each individual(s) or company(ies) that generates, transports, processes, stores, disposes or recycles whole used or scrap tires, or scrap or shredded tire pieces shall ensure that all WTRF activities are in compliance with all applicable sections of this subchapter and shall maintain records which document the WTRF activities as described in this subchapter.

(d) Cooperation. Each individual(s) or company(ies) shall cooperate fully with any audit or investigation by the executive director to verify the management of whole used or scrap tires or shredded tire pieces.

(e) Records Each individual(s) or company(ies) shall maintain originals of all records required by applicable subsections of this subchapter for a minimum of three years.

§330.916 WTRF Program Audits.

(a) The executive director's staff shall conduct a sufficient number of audits of required records to assure achievements of the purposes of this subchapter. Such audits may occur prior to or after any claims for reimbursement have been paid. Such audits may include an investigation of the records documenting the generation, transportation, processing, storage, disposal and recycling of whole used or scrap tires or shredded tire pieces. Such audits may include investigations of associated waste tire storage facilities, waste tire recyclers, waste tire energy recovery facilities and other approved end user records to ensure achievement of the purposes of this subchapter.

(b) Each individual(s) or company(ies) shall retain all records as required by §330.915(c) of this title (relating to WTRF Program Audits) unless notified by the executive director of a pending audit that will include a review an inspection of those records prior to the end of the three-year period.

(c) Upon an individual(s) or company(ies) request for confidentiality as described in Subchapter R, §330.875(b) of this title (relating to Confidentiality), documents submitted by that individual(s) or company(ies) to the executive director or copied by the executive director for the purposes of this title shall be considered confidential as described in Subchapter R, §330.875(a) of this title.

(d) The executive director may seek an order from the commission to compel cooperation with an audit or investigation when deemed necessary to achieve the purposes of this subchapter.

(e) Upon notification of any hearing or court appeal to resolve records disputes, all records reviewed shall be retained at a minimum of three years and/or until hearing decision is issued, and/or compliance with all decisions or orders is achieved.

§330 917. Penalties for Records Violations. An individual(s) or company(ies) that violates the requirements of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.920. WTRF Percentage Index Allocation Method.

(a) Applicability.

(1) For the purposes of §§330 920-330.930 of this title (relating to WTRF Percentage Index Allocation Method, WTRF Percentage Index Allocation Model Factors, Calculation of Factors for WTRF Percentage Index Allocation Model, Determination of the Weighting Factors for the Percentage Index Allocation Model, Notification of Allocation, Reallocation for Rural County Collection, Definition of Rural County, Reallocation Criteria, Calculation of Reallocation Model, Reallocation Notification, and Allocation Restrictions) and unless otherwise indicated, the WTRF includes the annual allocated fund dollar amount which consists of that portion of the WTRF that is available for reimbursement to the processors. It does not include the administrative funds for program operation for the TNRCC and the Texas Comptroller of Public Accounts.

(2) The regulations contained in these sections establish the percentage index allocation system for the management of reimbursements from the WTRF in order to ensure the WTRF maintains a balance of not less than $500,000.

(3) If the fund balance falls below $500,000, the executive director may suspend the requirement to reimburse for the shredding of priority enforcement list tires, special authorization tires and generator tires.

(4) If reimbursement requests during any month result in the fund balance falling below $500,000, the executive director shall recalculate the voucher requests and pay a percentage of each request to reflect the funds available in excess of $500, 000. The recalculated voucher requests shall document the unreimbursed tires as carryover to be paid when the WTRF is not being allocated.

(5) Unpaid carryover shall be reimbursed only when:

(A) the executive director chooses to discontinue the WTRF allocation process, in which case the rate of carryover reimbursement shall be determined by the executive director; or

(B) the processor's reimbursement request is less than the allocated amount, in which case the processor may be reimbursed for carryover up to the allocated amount

(6) The executive director shall implement the allocation process for the WTRF when the fund balance is equal to or less than $5,560,000. This amount is the sum of the conditions contained in subsection (c) of this section.

(7) Should the WTRF balance exceed $5,560,000 for two consecutive months the executive director may chose to discontinue the WTRF allocation process until such time as the fund balance falls below $5,560,000 Upon reinstatement of the allocation process, all mobile tire processors and waste tire facilities shall use the allocation number in effect when allocation was discontinued until the next semi-annual allocation occurs (on a calendar year basis). The executive director shall notify processors, in writing, regular mail and certified mail, return receipt requested, of allocation discontinuation or reinstatement within ten days of such decision.

(8) Only those multiple location, single-ownership processing registrations which were approved and under which separate reimbursements were requested by January 31, 1993,shall be given a separate allocation per facility.

(b) Responsibility.

(1) The executive director shall develop a model to allocate the WTRF to prevent fund depletion that takes into consideration the following weighting factors:

(A) appropriate payments to reflect the varying amounts of money available in the fund;

(B) a mobile tire processor's or waste tire facility's monthly average number of tires for which the processor has been reimbursed historically;

(C) a mobile tire processor's or waste tire facility's shredding and storage capacity;

(D) the date the mobile tire processor or waste tire facility was registered; and

(E) the number of waste tire units a mobile tire processor or waste tire facility delivered to an end user(s) for recycling on a monthly basis.

(2) The WTRF allocation management system developed by the executive director shall also consider a supplemental adjustment for reallocation. The reallocation model shall be employed when all registered mobile tire processors and waste tire facilities do not fully use their monthly allocation for reimbursement. The unused portion of the allocation may be assigned to another waste tire processor who can demonstrate having underutilized shredding and storage capacity available for service to rural counties in the state

(c) Funds reserved The percentage index model for calculation of each processor's allocation shall be based on the total annual allocated fund dollar amount, converted to number of tires, less the following dollar considerations·

(1) the legislative minimum of $500,000 required by §361.475(h) of the Texas Health and Safety Code (relating to Waste Tire Recycling Fund),

(2) the Priority Enforcement List Request for Proposal amount totalling $3,060,000 encumbered annually for cleanup of the illegal waste tire dumps located in the state, and

(3) the Useful Product Reimbursement Program amount totalling $2,000,000 set aside annually for reimbursement to individual(s) or company(ies) that produce a useful product according to the requirements contained in §§330.900-330.909 of this title (relating to Useful Product Reimbursement Program, Useful Product Reimbursement Program Registration, Request for Reimbursement, Useful Product Reimbursement Program Restrictions, Public Notice of Intent to Operate, Useful Product Reimbursement Program Policies, Definition of a Useful Product, Useful Product Reimbursement Schedule, and Nonpayment of Requests for Reimbursement under the Useful Product Reimbursement Program).

(d) Total fund reserved. The total amount deducted from the WTRF annually to account for the considerations contained in subsection (c) of this section is $5,560,000. The total number of tires allocated annually will be determined by subtracting $5, 560,000 from the annual allocated fund dollar amount then converting the resulting dollar amount to number of tires. The annual number of tires is then divided by 12 to determine the number of tires available for allocation monthly.

(e) Reallocation intervals. A new allocation amount for all registered mobile tire processors and waste tire facilities will be recalculated at six-month intervals based on the calendar year.

§330.921. WTRF Percentage Index Allocation Model Factors.

(a) Based on the requirements contained in §330.920 of this title (relating to WTRF Percentage Index Allocation Method) the executive director shall define the five criteria to be used to calculate the allocation for all mobile tire processors and waste tire facilities in the following manner.

(1) the appropriate payments to reflect the amount of money in the fund is defined as the total amount of money allocated annually to the fund less the factors stated in §330 920 of this title (relating to WTRF Percentage Index Allocation Method);

(2) the historical shredding capacity is defined as the average number of tires the mobile tire processor or waste tire facility shredded monthly between the date the processor registered (based on the date of the mobile tire processor or waste tire facility registration approval letter) and the date of allocation;

(3) the storage capacity is defined as the available approved storage capacity upon which the mobile tire processor or waste tire facility is capable of storing the waste tire units that are allocated to the processor monthly;

(4) program longevity or the date the processor was registered is defined as the number of months the mobile tire processor or waste tire facility has been registered in the program based on the initial registration date through the date of allocation; and

(5) end use is defined as the average number of waste tire units the mobile tire processor or waste tire facility forwards monthly to a registered and/or approved and/or legitimate recycling, reuse or energy recovery end-use market

(b) All information submitted to determine the criteria for each mobile tire processor or waste tire facility shall be contained in the Monthly Operations Report. Failure to submit the required information will result in non-credit for that specific criteria in the Percentage Index Allocation model. Information that is determined or suspected to be inaccurate will result in non-credit for that specific criteria in the Percentage Index Allocation model, however, the executive director will attempt to resolve any discrepancy with the processor prior to the determination of non-credit in the model.

(c) The calendar allocation period will use information submitted during the following months:

(1) July allocation period is based on data contained in December-May Monthly Operations Reports (submitted by the 15th day of the month following the month during which the data was collected); and

(2) January allocation period is based on data contained in June-November Monthly Operations Reports (submitted by the 15th day of the month following the month during which the data was collected).

§330.922. Calculation of Factors for WTRF Percentage Index Allocation Model

(a) Based on the requirements contained in §330. 920 of this title (relating to WTRF Percentage Index Allocation Method) the executive director shall develop equations to calculate the individual five criteria. The numbers resulting from the equations will be called factors. The factors will to be used to determine an allocation amount unique to each registered mobile tire processor and waste tire facility in the following manner

(1) the appropriate payment to reflect the amount of money in the fund is calculated by determining the total amount of money allocated to the fund during the previous 12-month period of time (June 1-May 31 for the July allocation and December 1-November 30 for the January allocation) plus the fund balance at the beginning of the 12-month period less the factors stated in §330.920 of this title (relating to WTRF Percentage Index Allocation Method);

(2) the historical shredding capacity is calculated by dividing the total number of waste tire units reimbursed to each individual processor by the processor's program longevity (defined in paragraph (4) of this subsection);

(3) the available storage capacity is calculated by subtracting from the total storage capacity of the storage facility (based on the capacity stated in the registration approval letter) the number of waste tire units stored at the storage facility at the time of allocation. Subsequent to that calculation, adequate capacity for the proposed six-month allocation period will be confirmed by comparing the remaining capacity with the proposed allocation number. If the processor's registered waste tire storage facility is determined to have inadequate available approved storage capacity for the full six-month allocation period or inadequate end-use market delivery as described in paragraph (5) of this subsection, then the proposed allocation number for the six-month period will be adjusted to accurately reflect the available approved storage capacity and end-use market delivery;

(4) program longevity, or the date the processor was registered is calculated by subtracting the initial date of registration (based on the date of the mobile tire processor or waste tire facility registration approval letter), from the date of allocation and dividing by 30 days, then rounding to the nearest whole number to determine number of months registered in the program; and

(5) end use is calculated by subtracting the total amount of waste tire units stored at the registered storage facility from the total number of waste tires units reimbursed to each individual processor, then dividing that resulting number by the number of months the processor has been in the program using the number calculated in paragraph (4) of this subsection

(b) Upon calculating each processor's individual factors for all five criteria, using the equations described above, the total of all individual factors for each of the five criteria is determined by summing all individual processor's factors. Each individual factor is then divided by the total to give each processor a percentage factor. This percentage factor is then multiplied by the specific criteria weighting factor as determined by the executive director in §330. 923 of this title (relating to Determination of the Weighting Factors for the Percentage Index Allocation Model) to produce a weighting factor specific for each of the five criteria for each processor. These specific weighting factors are totalled to obtain the weighted index for each registered processor.

(c) The allocation for each processor is then determined by dividing the total number of tires available monthly as calculated in §330.920(c) and (d) of this title (relating to WTRF Percentage Index Allocation Method) by 100 to determine each processor's percentage of the total allocation which is essentially each processor's percentage of the shredding program. That number is then multiplied by the processor's individual weighted index as calculated in subsection (b) of this section to produce the specific individual allocation (in number of tires) for each processor.

§330.923. Determination of the Weighting Factors for the Percentage Index Allocation Model.

(a) The weighting factors are based on a total of 100% assuming the sum of the percentages for each of the four criteria equals 100% of the allocation to be distributed to the individual processors because the processors currently registered constitute 100% of the shredding program. The criteria of appropriate payments to reflect the varying amounts of money available in the fund will not be considered in this stage of the model calculation.

(b) The initial weighting factors are as follows:

(1) historical shredding capacity-50%;

(2) available storage capacity-10%;

(3) registration date (program longevity)-10%; and

(4) end-use market delivery (recycling)-30%.

(c) The weighting factor for shreds forwarded to an end-use market shall be increased each fiscal year (September 1-August 31) based on the following graduated scale:

(1) 35%-for fiscal year 1994;

(2) 50%-for fiscal year 1995;

(3) 65%-through December of fiscal year 1996; and

(4) 70%-after January 1, 1996.

(d) Concurrently, the weighting factor for historical shredding capacity shall be decreased each fiscal year (September 1-August 31), based on the following graduated scale to account for the increase in the end-use weighting factor:

(1) 45%-for fiscal year 1994;

(2) 30%-for fiscal year 1995;

(3) 15%-through December of fiscal year 1996; and

(4) 10%-after January 1, 1996

(e) The weighting factor percentages for registration date (program longevity) and available storage capacity shall remain unchanged for fiscal years 1994, 1995, and 1996.

§330.924. Notification of Allocation

(a) The executive director shall notify all registered mobile tire processors and waste tire facilities that the Texas Natural Resource Conservation Commission intends to allocate semi-annually prior to the actual date of allocation. This notice of pending allocation will be sent by the 20th day of the month prior to the month of new allocation (December 20 for the January 1 semi-annual allocation date and June 20 for the July 1 semi-annual allocation date) and shall contain the following:

(1) the data the executive director intends to use (received from the processor's Monthly Operations Report) in the model for calculation of the new allocation numbers for all registered processors;

(2) the requirement to notify the executive director of any errors in the data within two days of receipt of the letter to correct the information before the final model is run; and

(3) the requirement to provide missing data within two days of receipt of the executive director's letter if that letter indicates the Processor's Monthly Operations Report is incomplete.

(b) Failure to notify the executive director of errors in the data, or failure to provide missing data within the time frame specified in subsection (a)(2) of this section will result in non-credit for that specific criteria, as indicated in §330 921(b) of this title (relating to WTRF Percentage Index Allocation Model Factors), and running of the percentage index allocation model on schedule for final notification on the dates indicated in §330 921(c) of this title (relating to WTRF Percentage Index Allocation Model Factors)

(c) The final letter notifying all registered processors of their new allocation number will be mailed by regular mail and by certified mail, return receipt requested, not later than January 1 or July 1, depending on the semi-annual allocation period.

(d) The mobile tire processor or waste tire facility shall begin using the new assigned allocation number immediately upon receipt (either January 1 or July 1), and shall continue to use the number until notified otherwise, or until reallocation adjusts the previously assigned allocation number

§330.925. Reallocation for Rural County Collection.

(a) If a mobile tire processor or waste tire facility does not fully use its monthly allocation for reimbursement, the executive director may assign the unused portion of the allocation to another registered processor who can demonstrate having underutilized shredding and storage capacity available for service to rural counties in this state.

(b) To determine if a processor is eligible for reallocation, three criteria must be confirmed:

(1) the processor must collect in rural counties;

(2) the processor must have adequate available storage capacity to store or have an available end-use market to recycle the reallocated tires; and

(3) the processor must be capable of shredding additional reallocated tires, if assigned.

(c) Any waste tires assigned to a processor during allocation but unused by the processor in the initial month of allocation become the tires eligible for reallocation. If any portion of a processor's initial allocation is unused and subsequently reassigned in the reallocation model, the processor forfeits that portion of the allocation for the remaining allocation period.

(d) The reallocation model will calculate and automatically reassign all tires unused during the first month of allocation, however, if a catastrophic event prevents a processor from using the entire allocated amount during the first month of the allocation period, a processor may petition the executive director to retain the original allocated amount for the remaining allocation period. This petition must be made to the executive director in writing and received not later than 30 days after the date of initial allocation (February 1 or August 1). The executive director shall notify the requesting processor of approval or denial of the petition for retention of the original allocation amount within 30 days after the required date of receipt of the petition for consideration of allocation retention (not later than February 28 or August 31)

§330 926. Definition of Rural County.

(a) For the purposes of this subchapter, the executive director has defined a rural county in Texas as a county having a population of less than 10,000. This is a random method of rural determination for the purposes of WTRF reallocation only and is not intended for use in other TNRCC programs.

(b) The executive director has determined that 96 counties in the state have a population of less than 10, 000. A listing of the 96 designated rural counties may be obtained upon written request to the Texas Natural Resource and Conservation Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087 with attention to the WTRF program.

(c) Within the 96 rural counties, the executive director has registered approximately 665 waste tire generators. Only those waste tires collected from a registered generator on the list are eligible for rural county credit for reallocation. A listing of the 665 designated rural county generators may be obtained upon written request to the Texas Natural Resource and Conservation Commission, P.O. Box 13087, Capitol Sta-

tion, Austin, Texas 78711-3087 with attention to the WTRF program.

§330.927. Reallocation Criteria.

(a) To be eligible for reallocation the processor must meet the three criteria described in §330. 925 of this title (relating to Reallocation for Rural County Collection).

(b) To determine the rural county collection, proof of collection, in the form of a Waste Tire Manifest, is required to obtain credit for rural county collection and subsequent reallocation.

(1) Registered processors interested in participating in rural county collection for reallocation shall notify the executive director in writing not later than 30 days after the date of initial allocation (February 1 or August 1).

(2) The request must include in writing and specifically state that the processor is interested in inclusion in rural county collection for reallocation model.

(3) The request must also contain documentation listing all counties from which the processor collects tires and all registered generators within those counties that receive tire collection on a regular basis. As stated previously, proof of collection will consist of a manifest from the each generator scheduled for waste tire collection by the processor on a regular basis.

(4) Generators from whom manifests were received will be contacted at random to confirm the processor is providing waste tire collection on a regular basis.

(c) To confirm adequate available storage capacity, an equation within the model will determine the available storage capacity by subtracting from the total storage capacity of the storage facility (based on the capacity stated in the registration approval letter) the number of waste tire units stored at the storage facility at the time of allocation. In addition to that determination, the equation will also determine the additional waste tire units that will be added to the storage facility during the allocation period. Subsequent to that determination, the capacity for the remaining four months of the six-month allocation period will be confirmed by comparing the sum of the remaining capacity and the monthly number of waste tire units forwarded to an end-use market with the proposed reallocation number to determine adequacy

(d) To determine adequate shredding capacity, an equation within the model will determine whether the processor shredded a number of waste tires equal to the number allocated to the processor during the first month of allocation. If the processor failed to shred the allocated maximum number of tires assigned by the allocation model during the initial month of allocation, then the processor is automatically disqualified from receiving additional tires from the reallocation model.

§330.928. Calculation of Reallocation Model. Upon determination of processor qualification based on the criteria contained in §330.927 of this title (relating to Reallocation Criteria), the reallocation model will consider the total number of counties from which each processor collects waste tires. That factor will be divided by the total number of counties from which waste tires were collected. The resulting percentage factor will be multiplied by a weighting factor for rural county collection (100%) resulting in a weighted index for rural county collection. The weighted index shall be used to calculate the number of reallocated tires each participating processor will receive by dividing the number of unused initially allocated tires (from the first month of allocation) into the weighted index.

§330.929. Reallocation Notification.

(a) Upon receipt of all processor vouchers from the first month of allocation (by not later than February 15 or August 15), the number of unused waste tires shall be determined and the model will be used to calculate the number of tires each participating processor shall receive from reallocation

(b) A letter notifying all registered processors of their new allocation number will be mailed by regular mail and by certified mail, return receipt requested, not later than March 1 or September 1, depending on the semi-annual allocation period This letter will inform the processor of the following:

(1) the original allocation amount assigned to the processor,

(2) the number of additional tires received as a result of reallocation, if applicable, or the number of tires the processor forfeits for the remaining allocation period as a result of unuse; and

(3) the new total allocation number assigned to the processor

(c) The mobile tire processor or waste tire facility shall begin using the new assigned total allocation number immediately upon receipt (either March 1 or September 1), and shall continue to use that number until notified otherwise.

§330.930. Allocation Restrictions. When the TNRCC is allocating the fund, reimbursements from the WTRF for waste tire shredding to less than a nine square-inch size shall only be made in the amount specifically indicated in the executive director's allocation or reallocation letter, unless an error in voucher calculations has been identified by the TNRCC regional or central offices, or the processor is in violation with rules and/or the statutes governing the WTRF program resulting in the withholding of shredding reimbursement.

§330.931. Applicability and Responsibility for Recyclers of Whole Used or Scrap Tires or Scrap Tire Pieces or Shredded Tire Pieces.

(a) Applicability. The regulations contained in these sections establish standards applicable to individuals or companies that either:

(1) utilize shredded tire pieces of less than nine square inches from registered WTRF processors as raw material for the purpose of manufacturing useful products;

(2) utilize whole used or scrap tires or scrap tire pieces and convert either all or a portion thereof by any means including, but not limited to mechanical, chemical, or thermal processes in order to obtain a useful product(s);

(3) utilize whole used or scrap tires or scrap tire pieces as tire-derived fuel or fuel supplement for energy recovery purposes;

(4) collect or provide a collection site where whole used or scrap tires may be deposited by the general public or by designated and registered generators, or

(5) store baled or loose whole used or scrap tires or scrap tire pieces for periods longer than 30 consecutive calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities.

(b) Recycling. For the purposes of this subchapter, waste tire recycling is defined as any process(es) in which all or part of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces are utilized either alone or in conjunction with other materials to make a product(s) (including energy recovery) which has a commercial market verifiable by the executive director or which has been otherwise approved as a site specific beneficial use by the executive director.

(c) Responsibility. Each waste tire recycler shall ensure that their facility is registered and operated in accordance with the applicable sections of this subchapter.

(d) Burning. For the purposes of this subchapter burning whole used or scrap tires does not constitute shredding.

(e) Shredding. For the purposes of this subchapter shredding shall be defined

only as the mechanical reduction of a whole used or scrap tire to pieces that are less than nine square inches in size.

§330.932. Waste Tire Recycling Facility Registration.

(a) Individuals or companies which utilize whole used or scrap tires, scrap tire pieces or shredded tire pieces for the purposes of recycling by any method other than energy recovery from tire-derived fuel regardless of whether or not they receive reimbursement from the waste tire recycling fund, shall be subject to the specific requirements of this subchapter and shall be required to obtain a waste tire recycling registration from the executive director.

(b) An application for a waste tire recycling facility registration shall be made to the executive director on a form provided by the executive director.

(c) The executive director has the authority to approve or disapprove an individual or company identified by a mobile tire processor, waste tire facility or waste tire baling facility, as a legitimate end-use source for their baled whole used, scrap tires, scrap tire pieces or shredded tire pieces.

§330.933. Requirements for Registration for a Waste Tire Recycling Facility.

(a) Registration requirements.

(1) Any facility utilizing whole used or scrap tires, scrap tire pieces or shredded tire pieces for recycling purposes shall register the site(s) with the executive director. Registration forms shall be provided by the executive director upon request.

(2) A copy of the recycling registration shall be maintained at the designated place of business.

(3) A waste tire recycling registration shall expire 60 months from the date of issuance unless the waste tire recycling facility changes ownership prior to that time. A waste tire recycling registration is non-transferable and will expire at the time that ownership changes. A change in the federal tax identification number will constitute a change of ownership. Prior to commencing operation of the facility, the new owner shall submit new registration applications and obtain complete written registration approval from the executive director. Applications to renew registrations shall be submitted at least 60 days prior to the expiration date. Failure to submit an application renewal at least 60 days prior to the expiration date may result in a lapse in registration.

(4) Waste tire recycling facility owners and/or operators shall submit a written amendment to their application to the commission within 15 days of a change in registration if:

(A) any data submitted in support of the application for registration has changed; or

(B) the office or place of business is relocated; or

(C) the registered name of the facility owner or operator has changed

(5) A new waste tire recycling facility registration application shall be submitted to the executive director within 15 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration. Following the executive director's determination, the old registration number shall be canceled.

(6) Failure of an owner or operator of a waste tire recycling facility to comply with the requirements of this subchapter shall result in enforcement procedures in accordance with §330.939 of this title (relating to Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities).

(7) Preparation and submission of an application to the executive director for a waste tire recycling facility shall be in accordance with the following procedures:

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director. The application shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated to protect the health, welfare, and physical property of the public, as well as the environment. Failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director. The submission of false information shall constitute grounds for denial of the initial or renewal application, or suspension or revocation of the current waste tire recycling facility registration. The waste tire recycling facility registration shall be issued upon receipt and approval of an administratively and technically complete application, including the posting of the financial assurance, if required.

(B) The application for a registration of a waste tire recycling facility shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director.

(C) Data presented in support of an initial or renewal application for a waste tire recycling facility shall consist of:

(i) the legal name, mailing address, telephone number and facsimile number, if applicable, of the responsible individual, partnership, corporation, city, county or other governmental entity making the application and accepting responsibility and liability for operations;

(ii) the name, mailing address, telephone number and facsimile number, if applicable, of the property owner of the waste tire recycling facility;

(iii) the physical location, including county and street address, if applicable, of the waste tire recycling facility;

(iv) the maximum amount of whole used or scrap tires, scrap tire pieces, or shredded tire pieces (in pounds) which will be on site at the waste tire recycling facility at any given time;

(v) the current status of the waste tire recycling facility; (i.e. proposed or existing);

(vi) the amount of whole used or scrap tires, scrap tire pieces, or shredded tire pieces necessary to provide a 30 calendar-day raw material supply for the proposed recycling process;

(vii) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(viii) the existing land use surrounding the waste tire recycling facility (residential, industrial, rural, urban, farming or grazing land);

(ix) a property owner affidavit in a format as furnished by the executive director submitted when the applicant is not a city, county, state agency, federal agency, or other governmental entity and is not the owner of record of the land described in the application, or does not have an option to buy the land. The statement shall be witnessed and notarized. If the property owner does not sign the statement, the applicant shall provide the executive director with documentation that the property owner has been properly notified and advised of his/her responsibilities and potential liabilities in relation to the operation of a waste tire recycling facility on the owner's land;

(x) statement and signature of the applicant, or the authorized representative empowered to make commitments for the applicant on a form provided by the executive director, stating that he is familiar with the application and all supporting data; and is aware of all commitments represented in the application; and that he is also familiar with all pertinent requirements in these regulations, local building, fire and zoning codes, and he agrees to develop and operate the waste tire recycling facility in accordance with the application and its supporting attachments, the sections in this subchapter, local building, fire and zoning codes and any special provisions which may be imposed by the executive director or other legal authority.

(8) If the applicant seeking registration for a waste tire recycling facility intends to have more than a 30 calendar-day supply of baled or loose whole used or scrap tires, scrap tire pieces, or shredded tire pieces at the facility site, then the applicant shall provide the following additional information which shall be prepared and sealed by a professional engineer registered in Texas:

(A) a waste tire recycling facility site layout plan drawn to an acceptable scale showing location of the storage areas, fire lanes; access roads (internal and external); fire control facilities, facility security and fencing, maintenance and control buildings, sanitation facilities; location and type of waste tire handling and processing equipment to be used; and other fixed equipment or operational buildings to be located on the waste tire recycling facility; and if all whole used or scrap tires or scrap tire pieces or shredded tire pieces are stored indoors or in totally enclosed containers, then the site's flood plain status shall be indicated on the site layout plan;

(B) if any whole used or scrap tires, scrap tire pieces, or shredded tire pieces are stored outside and not in totally enclosed containers, then a site drainage plan showing drainage flow throughout the proposed fully developed waste tire recycling facility area, specifically showing the interaction of full storage piles with storm water, or run-off from areas of the waste tire storage facility where equipment is operated or stored; locations of drainage systems and facilities; surface types, surface slopes or contours as necessary, flood plain status including extent and elevation, if any; and any other important drainage features of the facility shall be submitted. If all whole used or scrap tire or scrap tire pieces are stored inside buildings or in totally enclosed and lockable containers then a site drainage plan need not be submitted. All surface drainage controls that are deemed necessary by the executive director to ensure facility containment and treatment of potentially contaminated storm water or waste water shall be designed by a Texas-registered professional engineer;

(C) a legal description of the waste tire recycling facility, consisting of the legal metes and bounds, description including the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application;

(D) the jurisdictional location of the waste tire recycling facility by county, or extraterritorial jurisdiction of a city;

(E) the estimated amount of whole used or scrap tires or scrap tire pieces (in pounds) to be received daily;

(F) a topographic map which shall be a complete United States Geological Survey 7-1/2 minute quadrangle sheet (scale: 1 inch = 2,000 feet) or equivalent, and with the waste tire recycling facility boundaries accurately plotted and showing any roadway access; and

(G) evidence of financial responsibility in conformance with the requirements contained in Subchapter R, §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(9) The registration applicant and/or the registered waste tire recycling facility shall submit, upon request, copies of any documents which the executive director may deem necessary to properly manage the waste tire recycling fund. Such documents shall include, but not be limited to, purchase and/or sales contracts for baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces. Any information considered confidential by the registrant shall be so indicated on each page and submitted with a cover letter requesting that it remain confidential. Such requests shall be recognized as confidential pursuant to Subchapter R, §330. 875 of this title (relating to Confidentiality).

(10) A mobile tire processor shall not be located or operate at a waste tire recycling facility.

(b) Design requirements for a waste tire recycling facility. Unless otherwise required by the executive director, the design requirements contained herein are restricted to those applicants seeking registration for waste tire recycling facilities which intend to store more than a 30 calendar-day supply of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces on site.

(1) The waste tire recycling facility shall be designed to protect the health, welfare and safety of workers, and the general public, and the environment is maintained.

(2) The waste tire recycling facility shall be limited to a maximum of three piles containing loose whole used or scrap tires on the ground. The registration application and financial assurance instruments shall define the maximum number of piles of baled whole used or scrap tires or scrap tire pieces on the ground and/or the number of piles of shredded tire pieces on the ground and/or the number of baled or loose whole used or scrap tires or scrap tire pieces, or shredded tire pieces in totally enclosed and lockable containers. Whole used or scrap tire or scrap tire piece piles and shredded tire piece piles on the ground shall be sized according to the maximum area and height authorized in Subchapter R, §330.835 of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility).

(A) Tire piles consisting of baled or loose whole used or scrap tires, scrap tire pieces, or shredded tire pieces shall be no greater than 15 feet in height nor shall the pile cover an area greater than 8,000 square feet.

(B) Baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces may be stored in an enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Inside storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(C) Baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable and shall be capable of being towed on public streets and highways.

(3) Outside piles consisting of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces and entire buildings used to store baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces shall not be located within 20 feet of the property line or easements of the waste tire recycling facility. The executive director may grant a variance to the 20-foot property line or easement requirement. In order for the applicant to be granted a variance, the applicant must dem-

onstrate to the satisfaction of the executive director that the distance that is the subject of the variance is adequate for fire fighting purposes and meets the other applicable requirements of this subchapter.

(4) Appropriate vector controls shall be used as necessary and in accordance with other applicable ordinances and regulations.

(5) There shall be a minimum separation of 20 feet between outside tire piles consisting of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces. This 20-foot space shall be designated as a fire lane and shall be an all-weather road as determined by the local fire authority and completely encircle each pile. The open space between buildings and outside tire piles consisting of baled or loose whole used or scrap tires or shredded tire pieces shall be a minimum of 20 feet and kept open at all times and maintained free of rubbish, equipment, tires, or other materials.

(6) The waste tire recycling facility shall be completely enclosed with at least a six-foot high chain-link type security fence with no less than three strands of taut barbed wire encircling the top of the fence and with lockable gates of the same design as the fence. In the event that local zoning ordinances prohibit such a fence, the waste tire recycling facility shall submit proof of such ordinances to the executive director in order to obtain approval of an alternative fence design. Storage buildings or enclosures not enclosed with a chain-link type security fence shall be secured by lockable doors. Waste tire recycling facilities shall be kept locked during all non-operational hours.

(7) The waste tire recycling facility shall have an adequate fire protection system as defined by the local fire authority marshal and shall be in conformance with all local and state fire code requirements. The fire marshal within whose jurisdiction the waste tire recycling facility is located shall review the fire protection system. A letter from the fire marshal approving the fire protection system and the fire protection measures in the site layout plan and site operating plan shall be included in the application for waste tire recycling facility registration.

(8) The waste tire recycling facility shall have five-pound or larger dry chemical or other approved fire extinguisher(s) located throughout the entire site. Fire extinguishers used at waste tire recycling facilities shall be equally spaced throughout the facility to provide quick access from any location within the facility. The minimum number of fire extinguishers for each waste tire recycling facility shall be one per acre.

(9) Suitable drainage structures or features shall be provided to control the flow of rainfall run-off to include filtering particulate material from the run-off or other uncontaminated surface water within the waste tire recycling facility as necessary. Should a site initially become registered without a site drainage plan but is later determined by the executive director to have a drainage problem, then a site drainage plan sealed by a Texas-registered professional engineer shall be submitted to the executive director for approval within 60 calendar days of such a determination. If such a drainage plan is not submitted within 60 calendar days of the executive director's determination then the registration shall be treated in accordance with §330. 939 of this title (relating to Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities). Any facilities or procedures required to be built or implemented in order to obtain approval of the site drainage plan shall be constructed or implemented within the timeframes required by the executive director or the facility shall be required to stop accepting and/or processing whole used or scrap tires or scrap tire pieces or shredded tire pieces until the site drainage plan has been fully implemented and written approval received from the executive director to resume operations

(10) Each site shall conspicuously display at each entrance a sign at least 1-1/2 feet by 2-1/2 feet in size with clear, legible letters stating the name of the waste tire recycling facility using the words "waste tire recycling facility", the registration number prefixed by "Texas Natural Resource Conservation Commission Registration Number MSW", the facility's telephone number(s), and operating hours.

(11) A waste tire recycling facility located within a designated floodplain area shall provide adequate flood protection levees or dikes designed by a registered professional engineer and with a top at least one foot higher than a 100-year flood crest at that point to prevent the discharge off-site of any material from within the facility.

(12) The waste tire recycling facility shall be designed in accordance with all local building codes, fire codes, or other appropriate local codes.

(c) Waste tire recycling facility standard operating plan. Unless otherwise required by the executive director, the standard operating plan requirements contained herein are restricted to those applicants seeking registration for waste tire recycling facilities which intend to store more than a 30 calendar-day supply of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces on site

(1) The purpose of the waste tire recycling facility standard operating plan is to allow the executive director to review and approve the specific guidance and instructions for the management and operation of a waste tire recycling facility in order to ensure compliance with the Health and Safety Code, §361 486(b). The site operating plan shall contain instructions in sufficient detail to enable the facility operator(s) to conduct day-to-day operations in compliance with the requirements contained in this subchapter.

(2) The waste tire recycling facility operating plan shall include guidance or instructions on the following:

(A) security, facility access control, the hours and days during which tire-hauling vehicles will be accepted, traffic control, and safety;

(B) control of loading and unloading of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces within designated areas so as to minimize operational problems at the facility,

(C) fire prevention and control plans, and any special training requirements for fire-fighting personnel who may be called for assistance,

(D) vector control procedures for any type of vector which may be found at the facility,

(E) procedures for removal of any waste material which is not a whole used or scrap tire or scrap tire pieces or shredded tire pieces to a legally permitted disposal facility. These procedures must include the means to be used for removal of any waste material illegally deposited at the waste tire recycling facility. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection containers or be returned to the transporter's vehicle and removed from the waste tire recycling facility;

(F) a designated facility employee whose name shall be provided to the executive director by the owner or operator of the facility shall; inspect each load of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces which is delivered to the facility; have the authority and responsibility to reject unauthorized or improperly manifested loads; and shall be authorized to have unauthorized materials removed by the transporter or by on-site personnel.

(G) a procedure whereby the manifest required by §330.933(d) of this title (relating to Waste Tire Recycling Facility Recordkeeping), the daily log and other required documents shall be maintained at the waste tire recycling facility for a period of three years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the recycling facility;

(H) dust and mud control measures for access roads, fire lanes, and storage areas within the waste tire recycling facility, as necessary;

(I) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the facility in use during the active operating period of the facility;

(J) incorporation of other instructions as necessary to ensure that the waste tire recycling facility personnel comply with all of the operational standards for the facility; and

(K) a training program conducted by the waste tire recycling facility owner or operator for all waste tire recycling facility employees that transport or handle whole used or scrap tires, scrap tire pieces, or shredded tire pieces which shall address the review and proper completion of manifest forms prior to the transportation of whole used or scrap tires or scrap tire pieces from a generator, or the acceptance of baled whole or loose used or scrap tires or scrap tire pieces or shredded tire pieces at the waste tire recycling facility, followed by submittal of written documentation to the executive director, within 10 days of the program's completion indicating that the training and orientation programs required in this section have been completed.

(d) Waste tire recycling facility recordkeeping. The recordkeeping requirements shall be complied with by all waste tire recycling facility applicants regardless of the quantity of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces stored at the site, or whether the waste tire recycling facility intends to house more or less than a 30 calendar-day supply of such tires or tire shreds.

(1) General requirements.

(A) A legible copy of the complete waste tire recycling facility registration application as approved by the executive director including the facility layout plan, facility operating plan, and all other supporting data to the application, shall be maintained at the waste tire recycling facility site for review by all authorized personnel. Any deviation, as determined by the executive director, from any part of the site layout plan or operating plan or other supporting data without prior approval from the executive director shall be a violation of this subchapter.

(B) The facility supervisor shall be knowledgeable of current applicable commission rules and the operational requirements of the approved waste tire recycling facility application.

(2) Daily log. Individuals or companies that store baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces subject to control under this subchapter shall maintain a record of each individual delivery and removal. Such records shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum:

(A) the weight of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces received at the waste tire recycling facility identified by load;

(B) the weight of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces, removed from the waste tire recycling facility by disposal, resale, recycling, or reuse identified by load;

(C) a description of specific events at the facility relating to routine maintenance, on site fires, nearby fires, theft or vandalism, spraying for vectors, observation or evidence of vectors, or other similar events or occurrences; and

(D) the name, signature and date of the facility representative acknowledging the truth and accuracy of the daily log.

(3) Manifests. The waste tire recycling facility operator shall retain all manifests received from a waste tire transporter or mobile tire processing facility for whole used or scrap tires or scrap tire pieces or shredded tire pieces delivered to or from the waste tire recycling facility. The waste tire recycling facility shall ensure that the top original of the five-part manifest shall be returned to the generator.

(e) Local ordinances. Where local ordinances require procedures, controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the waste tire recycling facility owner or operator shall use such controls and records to satisfy the commission's requirements, upon review and approval by the executive director.

§330.934. Waste Tire Energy Recovery Facility Registration.

(a) Individuals or companies that utilize baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces for the purposes of recycling by energy recovery from tire-derived fuel shall be subject to the specific requirements of this subchapter and shall be required to obtain a waste tire energy recovery registration from the executive director.

(b) An application for a waste tire energy recovery facility registration shall be prepared and sealed by a Texas-registered professional engineer and submitted to the executive director on a form provided by the executive director.

(c) The executive director shall not disapprove or fail to register an individual or company authorized by the state to use tire-derived fuel for energy recovery purposes.

(d) All applicable federal, state, and local air, water, hazardous or industrial waste, or municipal solid waste permits and/or registrations for operation as a tire-derived fuel shall be obtained prior to submittal of an application for registration as a waste tire energy recovery facility under the WTRF program.

§330 935. Requirements for a Waste Tire Energy Recovery Facility

(a) Registration requirements.

(1) Any facility utilizing whole used or scrap tires, scrap tire pieces or shredded tire pieces for energy recovery purposes shall register each site with the executive director on forms provided by the executive director upon request.

(2) Individuals or companies that apply and receive a waste tire energy recovery registration from the executive director shall maintain a copy of the registration at the designated place of business

(3) A waste tire energy recovery registration shall expire 60 months from the date of issuance unless the facility is sold prior to that date in which case the registration expires effective the time of sale. Applications to renew registrations shall be submitted at least 60 days prior to the expiration date. Failure to submit an application renewal at least 60 days prior to the expiration date may result in a lapse in registration.

(4) Waste tire energy recovery facility owners and/or operators shall submit a written amendment, to their application to the commission within 15 days of a change to their registration if:

(A) any data submitted in support of the application for registration has changed;

(B) the office or place of business is relocated; or

(C) the registered name of the facility owner or operator has changed.

(5) A new waste tire energy recovery facility registration application shall be submitted to the executive director within 15 days of:

(A) a determination by the executive director that operations or management methods are no longer adequately described by the existing registration (following the executive director's determination, the old registration number shall be canceled); or

(B) a notification that ownership of the registered facility has changed (the registration number shall be canceled upon the effective date of the ownership transfer).

(6) Failure of an owner or operator of a waste tire energy recovery facility to comply with the requirements of this subchapter shall result in enforcement procedures in accordance with §330.939 of this title (relating to Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities).

(7) Preparation and submission of an application to the executive director for a waste tire energy recovery facility shall be in accordance with the following procedures

(A) The application for registration shall be prepared and sealed by an engineer registered in the state of Texas and co-signed by the applicant on a form to be provided by the executive director and shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated to protect the health, welfare, and physical property of the public, as well as the environment. Failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director. The waste tire energy recovery facility registration shall be issued upon receipt and approval of an administratively and technically complete application including the posting of the required financial assurance and the determination that all required federal, state, and local permit(s) and/or registration(s) have been obtained.

(B) The application for a registration of a waste tire energy recovery facility shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director.

(C) Data presented in support of an initial or renewal application for a waste tire energy recovery facility shall consist of:

(i) the legal name, mailing address, telephone number and facsimile number, if applicable, of the responsible individual, partnership, corporation, city, county or other governmental entity making the application and accepting responsibility and liability for operations;

(ii) the name, mailing address, telephone number and facsimile number, if applicable, of the property owner of the waste tire energy recovery facility;

(iii) the physical location, including county and street address, if applicable, of the waste tire energy recovery facility;

(iv) the jurisdictional location of the waste tire energy recovery facility by county, or extraterritorial jurisdiction of a city;

(v) the maximum weight in pounds of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces that will be on site at the waste tire energy recovery facility at any given time;

(vi) the weight in pounds of whole used or scrap tires or scrap tire pieces or shredded tire pieces necessary to provide a 30-day supply of tire-derived fuel for energy recovery;

(vii) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers which are locked during non-operational hours);

(viii) a topographic map which shall be a complete United States Geological Survey 7-1/2 minute quadrangle sheet (scale: 1 inch = 2,000 feet) or equivalent, and with the waste tire energy recovery facility boundaries accurately plotted and showing any roadway access;

(ix) a property owner affidavit in a format as furnished by the executive director submitted when the applicant is not a city, county, state agency, federal agency, or other governmental entity. The statement shall be witnessed and notarized. If the property owner does not sign the statement, the applicant shall provide the executive director with documentation that the property owner has been properly notified and advised of his/her responsibilities and potential liabilities in relation to the operation of waste tire energy recovery facility on the owner's land;

(x) a waste tire energy recovery facility site layout plan drawn to an acceptable scale showing location of the storage areas; fire lanes; access roads (internal and external) ; fire control facilities; facility security and fencing; maintenance and control buildings; sanitation facilities; type of tire-derived fuel handling and processing equipment to be used, other fixed equipment or operational buildings to be located on the waste tire energy recovery facility, and if all whole used or scrap tires or scrap tire pieces or shredded tire pieces are stored indoors or in totally enclosed containers, the site's flood plain status shall be noted on the site layout plan;

(xi) if any whole used or scrap tires, scrap tire pieces or shredded tire pieces are stored outside and not in totally enclosed containers, then a drainage plan showing drainage flow throughout the waste tire energy recovery facility area shall be submitted. The drainage plan shall specifically show the interaction of full storage piles with storm water, run-off from areas of the waste tire energy recovery facility where equipment is operated or stored; locations of drainage systems and facilities; surface types; surface slopes or contours as necessary; flood plain status including extent and elevation, if any; and any other important drainage feature of the facility; and any additional surface drainage controls that are deemed necessary by the executive director to ensure facility containment and treatment of potentially contaminated storm water or waste water. The site drainage plan shall be designed by a Texas-registered professional engineer;

(xii) a legal description of the waste tire energy recovery facility, consisting of the legal metes and bounds, description including the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application;

(xiii) a waste tire energy recovery facility standard operating plan containing information outlined in subsection (c) of this section; and

(xiv) statement and signature of the applicant provided by the applicant, or the authorized representative empowered to make commitments for the applicant, stating that he is familiar with the application and all supporting data; is aware of all commitments represented in the application; and that he is also familiar with all pertinent requirements in these regulations, any local building, zoning and fire codes; that he agrees to develop and operate the waste tire energy recovery facility in accordance with the application and its supporting attachments, the sections in this subchapter, any local or state building, zoning or fire codes, and any special provisions which may be imposed by the executive director.

(8) The applicant seeking registration for a waste tire energy recovery facility shall submit evidence of financial responsibility pursuant to Subchapter R, §§330. 885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(9) The applicant seeking registration as a waste tire energy recovery facility shall submit proof of authorization to conduct waste tire energy recovery test burns from the appropriate air quality authorities. The authorization shall be submitted with the initial waste tire energy recovery facility registration. The maximum amount of baled or loose whole used or scrap tires, scrap tire pieces or shredded tire pieces that a waste tire energy recovery facility may have on site shall not exceed the smaller of more than twenty per cent in excess of the amount needed for the test burn, or a 30 calendar-day supply for the test burn. Upon successful completion of the test burns and receipt of full air quality approval for the utilization of tire-derived fuel, the waste tire energy recovery facility applicant shall submit proof of such approval and request authorization to utilize the waste tire energy recovery storage area to its maximum registered capacity. Baled or loose whole used or scrap tires, scrap tire pieces or shredded tire pieces in excess of test burn minimum requirements shall not be received at the waste tire energy recovery facility until after appropriate air quality permits have been approved for tire-derived fuel usage and written approval from the WTRF program is received to fully utilize the storage area.

(10) The registration applicant and/or the registered waste tire energy recovery facility shall submit, upon request, copies of any documents which the executive director may deem necessary to properly manage the waste tire recycling fund. Such documents shall include, but not be limited to, purchase and/or sales contracts for baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces, waste tire energy recovery facility equipment processes and test reports. Any information considered confidential by the applicant shall be so indicated on each page and submitted with a cover letter requesting that it remain confidential. Such requests shall be recognized as confidential pursuant to Subchapter R, §330.875 of this title (relating to Confidentiality)

(b) Design requirements for a waste tire energy recovery facility.

(1) A waste tire energy recovery facility shall be designed to protect that the health, welfare and safety of workers and the general public, and the environment is maintained.

(2) Notwithstanding the test burn restrictions, waste tire energy recovery facilities shall be limited to a maximum of three piles containing loose whole used or scrap tires on the ground and/or an unlimited number of piles of baled whole used or scrap tires on the ground and/or an unlimited number of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces in totally enclosed and lockable trailers. Whole used or scrap tire and scrap tire piece piles and shredded tire piece piles on the ground shall be sized according to the maximum area and height authorized in Subchapter R, §330. 835 of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility). A waste tire energy recovery facility utilizing and fully permitted for tire-derived fuel and which is fed by an automated conveyor type bulk fuel handling system may request an individual variance regarding the size and location of the tire-derived fuel piles from the executive director. Such approval shall be considered site-specific and shall not be unreasonably withheld. Whole tire, baled tire and tire shred bulk fuel systems shall be designed in accordance with good engineering practices and all applicable fire and building codes.

(A) Tire piles consisting of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces shall be no greater than 15 feet in height nor shall the pile cover an area greater than 8, 000 square feet unless a variance has been obtained from the executive director as stated in subsection (b)(2) of this section.

(B) Baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces may be stored in an enclosed building or other type of covered enclosure Where applicable, local fire prevention codes must be met and appropriate precautions taken Inside storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins unless a variance has been obtained from the executive director as stated in subsection (b)(2) of this section.

(C) Baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable and shall be capable of being towed on public streets and highways.

(3) Outside piles consisting of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces and entire buildings used to store baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces shall not be located within 20 feet of the property line or easements of the waste tire energy recovery facility. The executive director may grant a variance to the 20-foot property line or easement requirement.

(4) Appropriate vector controls shall be used as necessary and in accordance with other applicable ordinances and regulations

(5) There shall be a minimum separation of 20 feet between outside tire piles consisting of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces. This 20-foot space shall be designated as a fire lane and shall be an all-weather road as determined by the local fire authority and completely encircle each pile. The open space between buildings and outside tire piles consisting of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces shall be a minimum of 20 feet and kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 20-foot minimum separation between outside tire piles. In order for the applicant to be granted a variance, the applicant must demonstrate to the satisfaction of the executive director that the distance that is the subject of the variance is adequate for fire fighting purposes and meets other applicable requirements of this subchapter.

(6) The waste tire recycling facility shall be completely enclosed with at least a six-foot high chain-link type security fence with no less than three strands of taut barbed wire encircling the top of the fence and with lockable gates of the same design as the fence. In the event that local zoning ordinances prohibit such a fence, the waste tire energy recycling facility submit proof of such ordinances to the executive director in order to obtain approval of an alternative fence design. Storage buildings or enclosures not enclosed with a chain-link type security fence shall be secured by lockable doors. Waste tire energy recovery facilities shall be kept locked during all non-operational hours.

(7) The waste tire energy recovery facility shall have an adequate fire protection system in accordance with applicable fire and building codes. The fire marshal authority within whose jurisdiction the waste tire energy recovery facility is located shall review the fire protection system. A letter from the local fire marshal approving the fire protection system and fire protection measures in the site layout plan and site operating plan shall be included in the application for waste tire energy recovery facility registration.

(8) Suitable drainage structures or features shall be provided to control the flow of rainfall run-off to include filtering particulate material from the run-off or other uncontaminated surface water within the waste tire energy recovery facility as necessary.

(9) A waste tire energy recovery facility located within a designated floodplain area shall provide adequate flood protection levees or dikes designed by a Texas-registered professional engineer and with a top at least one foot higher than a 100-year flood crest at that point to prevent the discharge off-site of any material from within the facility.

(10) The waste tire energy recovery facility shall be designed in accordance with all local building codes, fire codes, or other appropriate local codes.

(c) Waste tire energy recovery facility operating plan.

(1) The purpose of the waste tire energy recovery facility operating plan is to allow the executive director to review and approve specific guidance and instructions for the management and operation of a waste tire energy recovery facility in order to ensure compliance with the Texas Health and Safety Code, §361.486(b). The operating personnel shall have instructions in sufficient detail to enable them to conduct day-to-day operations in a manner consistent with the design of facility and in compliance with the requirements contained in this subchapter.

(2) The waste tire energy recovery facility operating plan shall include guidance or instructions on the following:

(A) security, facility access control, the hours and days during which tire-hauling vehicles will be accepted, traffic control, and safety;

(B) sequence of the development of the facility such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(C) control of loading and unloading of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces within designated areas so as to minimize operational problems at the facility;

(D) fire prevention and control plans, and any special training requirements for fire fighting personnel who may be called for assistance;

(E) vector control procedures for any type of vector which that may be found at the facility;

(F) a designated facility employee shall:

(i) be designated by the owner or operator to inspect each load of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces that is delivered to the facility;

(ii) the employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads;

(iii) the name of the designated employee shall be provided to the executive director by the owner or operator of the facility,

(G) a procedure whereby the transporter manifest required by subsection (d) of this section (relating to Waste Tire Energy Recovery Facility Recordkeeping), the daily log, and other required documents shall be maintained at the waste tire energy recovery facility for a period of three years and be made available for inspection by the executive director;

(H) dust and mud control measures for access roads, fire lanes, and storage areas within the waste tire energy recovery facility as necessary,

(I) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the facility in use during the active operating period of the facility; and

(J) a training program shall be conducted by the waste tire energy recovery facility owner or operator for all waste tire energy recovery facility employees who transport or handle whole used or scrap tires, scrap tire pieces, or shredded tire pieces which shall address the review and proper completion of manifest forms for the acceptance of baled whole or loose used or scrap tires or scrap tire pieces or shredded tire pieces at the waste tire energy recovery facility, followed by submittal of written documentation to the executive director within 10 days of the program's completion indicating that the training and orientation programs required in this section have been completed.

(d) Waste tire energy recovery facility recordkeeping.

(1) General requirements.

(A) A legible copy of the complete waste tire energy recovery facility registration application as approved by the executive director including the facility layout plan, facility operating plan, and all other supporting data to the application, shall be maintained at the waste tire energy recovery facility site for review by all authorized personnel. Any deviation as determined by the executive director, from any part of the site layout plan or operating plan or other supporting data without prior approval from the executive director shall be a violation of this subchapter.

(B) A copy of the commission's current rules applicable to the waste tire energy recovery facility shall be on-site at all times. The facility supervisor shall be knowledgeable of current applicable commission rules and the operational requirements of the approved energy recovery facility registration application.

(2) Daily log. Individuals or companies that store baled or loose whole used or scrap tires, scrap tire pieces, or shredded tire pieces subject to control under this subchapter shall maintain a record of each individual delivery and removal. Such records shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum:

(A) the number of baled whole used or scrap tires and weight of loose whole used or scrap tires or scrap tire or shredded tire pieces received at the waste tire energy recovery facility,

(B) the number of baled whole used or scrap tires and loose whole used or scrap tires, scrap tire pieces, or shredded tire pieces thereof, removed from the waste tire energy recovery facility by disposal, resale, recycling, reuse or energy recovery;

(C) a description of specific events or occurrences at the facility relating to routine maintenance, on-site fires, nearby fires, theft, vandalism, spraying for vectors, or other similar events; and

(D) the name, signature and date of the facility representative acknowledging the truth and accuracy of the daily log.

(3) Manifests. The waste tire energy recovery facility operator shall retain all manifests received from a transporter of baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces delivered to the waste tire energy recovery facility. The waste tire energy recovery facility shall ensure that the top original of the five-part manifest shall be returned to the generator.

(4) Maintenance of records and reporting. The waste tire energy recovery facility operator shall retain all records showing the collection and disposition of the whole used or scrap tires, scrap tire pieces or shredded tire pieces. Such records shall be retained for three years and made available for review to the executive director upon request.

(e) Local ordinances. Where local ordinances require procedures, controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the waste tire energy recovery facility owner or operator shall use such procedures, controls and records to satisfy the commission's requirements, upon review and approval by the executive director.

§330.936. Registration as a Waste Tire Transfer Station or Recycling Collection Center.

(a) Waste tire transfer stations or recycling collection centers shall only be operated by government entities or registered waste tire processors, although a waste tire transfer station may be located at a waste tire generator site.

(b) Individuals or companies who receive or collect whole used or scrap tires, scrap tire pieces or shredded tire pieces from the general public or from specifically designated generators for shipment to a recycler for the purposes of recycling, regardless of whether or not they receive reimbursement from the waste tire recycling fund, shall be required to obtain a site specific waste tire transfer station or recycling collection center registration from the executive director.

(c) An application for a waste tire transfer station or recycling collection center registration shall be made in writing to the executive director on an approved form provided by the executive director.

§330 937. Requirements for a Waste Tire Transfer Station or Recycling Collection Center.

(a) Registration requirements

(1) Any site receiving whole used or scrap tires or scrap tire pieces from the general public or a specifically designated generator for shipment to a registered mobile tire processor, waste tire facility, waste tire baling facility, waste tire energy recovery facility, or waste tire recycling facility, shall register the site with the executive director as a waste tire transfer station or recycling collection center. Registration forms shall be provided by the executive director upon request.

(2) Individuals or companies who apply and receive a waste tire transfer station or recycling collection center registration from the executive director shall maintain a copy of the registration at the waste tire transfer station or recycling collection center

(3) A waste tire transfer station or recycling collection center registration shall expire 24 months from the date of issuance unless facility ownership changes, in which case the registration expires at the time of sale of the facility Applications to renew registrations shall be submitted prior to the expiration date. Failure to submit a renewal prior to the expiration date shall be considered a voluntary withdrawal of the registration by the applicant effective midnight of the expiration date.

(4) Waste tire transfer station or recycling collection center owners and/or operators shall submit a written amendment, by letter, to their application to the commission within 15 days of a change to their registration if any data submitted in the application for registration has changed

(5) A new waste tire transfer station registration application shall be submitted to the executive director within 15 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration Following the executive director's determination, the old registration number shall be cancelled.

(6) The commission shall suspend or revoke a waste tire transfer station or recycling collection center registration or deny an initial or renewal application for registration for cause as provided in §330.939 of this title (relating to Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities) The commission may suspend or revoke a waste tire transfer station or recycling collection center registration or deny an initial or renewal application for registration if the waste tire transfer station or recycling collection center is not in compliance with local zoning, building and fire codes. An opportunity for a formal hearing on the suspension or revocation may be requested by the applicant. The request for formal hearing shall be made within 20 days after receipt of the notice of suspension or revocation sent by the executive director to the last known address of the registrant or it shall be deemed waived. If the registration is suspended or revoked, and a formal hearing has been timely requested by the applicant, the waste tire transfer station or recycling collection center shall not accept additional whole used or scrap tires regulated under this subchapter until a final decision has been made by the commission as result of the hearing If the suspension or revocation of the waste tire transfer station or recycling collection center registration is approved by the commission, the owner or operator of the facility shall remove all whole used or scrap tires, scrap tire pieces and shredded tire pieces at the facility within 30 calendar days from the date of final approval of the suspension or revocation.

(7) Preparation and submission of an application to the executive director for a waste tire transfer station or recycling collection center shall be in accordance with the following procedures.

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director and shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated to protect the health, welfare, and physical property of the public, as well as the environment.

(B) The application for a registration of a waste tire transfer station or recycling collection center shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director

(C) Data presented in support of an initial or renewal application for a waste tire transfer station or recycling collection center shall consist of:

(i) the legal name, mailing address, telephone number and facsimile number, if applicable, of the responsible individual, partnership, corporation, city, county or other governmental entity making the application and accepting responsibility and liability for operations;

(ii) the physical location, including county and street address, if applicable, of the waste tire transfer station or recycling collection center,

(iii) the maximum number of whole used or scrap tires, scrap tire pieces and shredded tire pieces which will be allowed to accumulate on-site at the waste tire transfer station or recycling collection center at any given time;

(iv) the estimated number of whole used or scrap tires, scrap tire pieces, and shredded tire pieces to be received daily;

(v) the current status of the waste tire transfer station or recycling collection center (i.e. proposed or existing);

(vi) a witnessed and notarized certification by the applicant that the waste tire transfer station or recycling collection center is in accordance with all local codes and zoning ordinances;

(vii) when the applicant is not a city, county, state agency, federal agency, or other governmental entity, a property owner affidavit in a format as furnished by the executive director shall be submitted . The statement shall be witnessed and notarized. If the property owner does not sign the statement, the applicant shall provide the executive director with documentation that the property owner has been properly notified and advised of the responsibilities and potential liabilities in relation to the operation of a waste tire transfer station or recycling collection center on the owner's land;

(viii) a legible waste tire transfer station or recycling collection center site layout plan drawn to scale showing location of no more than ten totally enclosed and lockable tire storage containers which are to be locked during non-operational hours, any access roads, fire control facilities, facility security and fencing and other operational buildings to be located at the waste tire transfer station or recycling collection center; and

(ix) an applicant's statement and signature provided by the applicant, or the authorized representative empowered to make commitments for the applicant, stating that: the applicant is familiar with the application and all supporting data; is aware of all commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the waste tire transfer station or recycling collection center in accordance with the application and its supporting attachments, the sections in this subchapter.

(b) Design requirements for a waste tire transfer station or recycling collection center.

(1) A waste tire transfer station or recycling collection center registration shall be site specific and shall be designed to maintain the health, welfare and safety of the workers, the general public and the environment.

(2) A waste tire transfer station or recycling collection center shall be limited to a maximum of ten totally enclosed and lockable containers or buildings.

(3) There shall be no tires on the ground.

(4) Appropriate vector controls shall be used as necessary and in accordance with other applicable ordinances and regulations.

(5) Unless operated by a government entity and a variance has been requested and approved by the executive director, then the waste tire transfer station or recycling collection center shall have an operator present at all times when the site is open and the tire containers shall be securely locked whenever the operator is not present.

(6) The waste tire transfer station or recycling collection center shall be completely enclosed with at least a six-foot high chain-link type security fence with no less than three strands of taut barbed wire encircling the top of the fence and with lockable gates of the same design as the fence. In the event that local zoning ordinances prohibit such a fence, proof of such ordinances shall be submitted to the executive director in order to obtain approval of an alternative fence design. Storage buildings or enclosures not enclosed within a chain-link type security fence shall be secured by lockable doors. Waste tire transfer stations or recycling collection centers shall be kept locked during all non-operational hours.

(7) The waste tire transfer station or recycling collection center shall have an adequate fire protection system and shall be in conformance with all local and state fire, building and zoning code requirements.

(8) Each waste tire transfer station or recycling collection center shall conspicuously display a sign with clear, legible letters at least two inches in height stating the name of the waste tire transfer station or recycling collection center using the words "waste tire transfer station" or "waste tire recycling collection center", the registration number prefixed by "Texas Natural Resource Conservation Commission Registration Number MSW____", the facility's normal and emergency telephone numbers, and operating hours.

(9) No tire shall be allowed to remain at a waste tire transfer station or recycling collection center longer than 90 days.

(10) The Type VIII-WT restrictions on the maximum number of tires on a site do not apply to waste tire transfer stations or recycling collection centers.

(c) Waste tire transfer station or recycling collection centers recordkeeping.

(1) General requirements.

(A) A legible copy of the complete waste tire transfer station or recycling collection center registration application including attachments as approved by the executive director shall be maintained at the waste tire transfer station or recycling collection center facility for review by all authorized personnel.

(B) The facility owner or operator shall be knowledgeable of current applicable commission rules.

(2) Manifests. The waste tire transfer station or recycling collection center owner or operator shall ensure that all manifests are properly initiated for all whole used or scrap tires or scrap tire pieces removed from the waste tire transfer station or recycling collection center facility.

(3) Maintenance of records and reporting. The waste tire transfer station or recycling collection center owner or operator shall retain all manifests showing the collection and disposition of the whole used or scrap tires or scrap tire pieces. Such original manifests shall be retained for three years and made available for review to the executive director upon request.

(e) Local ordinances. Where local ordinances require controls substantially equivalent to or more stringent than the requirements of this subchapter, the waste tire transfer station or recycling collection center owner or operator shall use such controls to satisfy the commission's requirements, upon review and approval by the executive director.

§330.938. Requirements for a Transportation Facility. Any transportation facility storing baled or loose whole used or scrap tires or scrap tire pieces or shredded tire pieces for periods longer than 30 calendar-days at transportation facilities such as marine terminals, rail yards or trucking facilities, shall register the facility with the executive director pursuant to §330.934 and §330.935 of this title (relating to Waste Tire Energy Recovery Facility Registration and Requirements for a Waste Tire Energy Recovery Facility).

§330.939. Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities. An owner or operator of a registered waste tire recycling facility, waste tire energy recovery facility, waste tire transfer

station or recycling collection center, or a transportation facility that violates the requirements of this subchapter or of Subchapter R of this title shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

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 April 13, 1994.

TRD-9439046 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 20, 1994

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

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Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Undesignated Head: Claims Processing–Payroll

- **34 TAC §5.48**

The Comptroller of Public Accounts proposes new §5.48, concerning deductions for contributions to charitable organizations. The new section is necessary to implement and administer the payroll deduction for state employees to make voluntary contributions to charitable organizations.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding payroll deductions for state employees to make voluntary contributions to charitable organizations. There will be no fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Stephanie Muller, Director, Systems Development, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Texas Civil Statutes, Article 6813h, which require the comptroller to adopt necessary rules for the administration of the payroll deduction for state employees to make voluntary contributions to charitable organizations.

The new section implements Texas Civil Statutes, Article 6813h.

§5.48. Deductions for Contributions to Charitable Organizations.

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

(1) Campaign material–A logo identifying the state employee charitable campaign, a campaign slogan, a campaign film, a campaign donor brochure, a donor authorization form, and other materials as approved by the state policy committee.

(2) Campaign year–The payroll periods from December 1st through November 30th, which correspond to the paydays on the first workday of each month from January through December.

(3) Charitable organization–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(4) Comptroller–The comptroller of public accounts for the State of Texas.

(5) Comptroller's electronic funds transfer system–The system authorized by the Government Code, §403.016, that the comptroller uses to initiate payments instead of issuing warrants.

(6) Deduction–The amount subtracted from a state employee's salary or wages to make a contribution to a local campaign manager or a statewide federation or fund that has been assigned a payee identification number by the comptroller.

(7) Designated representative–A state employee volunteer or other individual named by a local campaign manager or a statewide federation or fund as its representative.

(8) Direct services–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(9) Eligible charitable organization–A charitable organization that is determined to be eligible to participate in the state employee charitable campaign as provided by this section and Texas Civil Statutes, Article 6813h.

(10) Eligible local charitable organization–A local charitable organization that has been approved for local participation in the state employee charitable campaign.

(11) Employer–A state agency that employs at least one state employee.

(12) Federated community campaign organization–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(13) Federation or fund–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(14) Generic campaign materials–Campaign materials that have not been modified to reflect a particular local campaign area's participants or a local employee committee.

(15) Health and human services–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(16) Holiday–A state or national holiday as specified by the General Appropriations Act or the Government Code, §§662.001-662.010.

(17) Include–A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(18) Indirect services–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(19) Institution of higher education–Has the meaning assigned by the Education Code, §61.003.

(20) Local campaign area–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(21) Local campaign manager–A federated community campaign organization that is selected by a local employee committee as provided by this section and Texas Civil Statutes, Article 6813h.

(22) Local campaign materials–Campaign materials that have been modified to reflect a particular local campaign area's participants and the local employee committee for the area if the state policy committee has approved the modifications, and additional materials that the state policy committee has approved because they are based on and consistent with the campaign materials approved by the committee.

(23) Local charitable organization–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(24) Local employee committee–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(25) May not–A prohibition. The term does not mean "might not" or its equivalents

(26) Payee identification number–The 14digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller for the State of Texas.

(27) Salary or wages–Base salary or wages, longevity pay, or hazardous duty pay.

(28) State advisory committee–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(29) State agency–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(30) State campaign manager–A federated community campaign organization that is selected by the state policy committee to coordinate state employee charitable campaign operations with local campaign managers.

(31) State employee–An employee of a state agency.

(32) State employee charitable campaign–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(33) State policy committee–Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(34) Statewide federation or fund–A federation or fund that has been approved for statewide participation in the state employee charitable campaign.

(35) Uniform statewide payroll/personnel system–A system in which uniform statewide payroll procedures are followed.

(36) Workday–A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions.

(A) A state employee may authorize not more than three monthly deductions from the employee's salary or wages. A state employee may authorize only one deduction to any particular statewide federation or fund or local campaign manager.

(B) A state employee may authorize a deduction only if the employee:

(i) properly completes an authorization form; and

(ii) submits the form to a designated representative of the statewide federation or fund or the local campaign manager to which the deduction will be paid.

(C) Except as provided in this subparagraph, a state employee may authorize a deduction only during a state employee charitable campaign.

(i) State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system. A state agency covered by that law shall permit its state employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. Those authorizations may be made even if a state employee charitable campaign is not occurring when the authorizations are made.

(ii) A state employee who begins employment with the state may authorize a deduction if the employee's employer receives the employee's properly completed authorization form not later than the 30th day after the employee's first day of employment with the agency. A new state employee may authorize a deduction even if a state employee charitable campaign is not occurring when the employment begins or the form is provided. This clause does not apply to a state employee who transfers from one state agency to a second state agency.

(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee authorizing an incorrect amount of a deduction.

(2) Minimum amount of deductions. If a state employee authorizes a deduction, the minimum amount of the deduction is two dollars per month. This minimum applies to each deduction authorized by the employee. For example, if the employee authorizes two deductions, then the amount of each of those deductions must be at least two dollars per month.

(3) Changes in the amount of deductions.

(A) At any time during a campaign year, a state employee may authorize a change in the amount to be deducted from the employee's salary or wages during that year.

(B) A state employee may authorize a change only if the employee:

(i) properly completes an authorization form; and

(ii) submits the form to the employee's employer.

(C) A state employee may not change the statewide federation or fund or the local campaign manager that receives deducted amounts if the change would be provided outside the time a state employee charitable campaign is being conducted.

(D) A state employee may not change the eligible charitable organizations designated to receive deducted amounts paid to a statewide federation or fund if the change would be provided outside the time a state employee charitable campaign is being conducted.

(E) A state employee may not change the eligible local charitable organizations designated to receive deducted amounts paid to a local campaign manager if the change would be provided outside the time a state employee charitable campaign is being conducted.

(4) Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction, then no part of the deduction may be made.

(C) If a state employee has multiple deductions and the employee's salary or wages are insufficient to support all the deductions, then none of the deductions may be made.

(D) The amount that may not be deducted from a state employee's salary or wages because they are insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages.

(5) Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction may be made only from the salary or wages that are paid on the first workday of a month.

(B) If a state employee is not entitled to receive a payment of salary or wages on the first workday of a month, then the employee's employer may designate the payment of salary or wages during the month from which a deduction will be made. A deduction may be made only once each month.

(6) Cancellation of deductions. A state employee may cancel a deduction at any time. A cancellation is effective only if the employee properly completes an authorization form and submits the form to the employee's employer.

(7) Interagency transfers of state employees.

(A) A deduction that started while a state employee was employed by a state agency may resume after the employee transfers to a second state agency only if:

(i) the employee requests a copy of the employee's authorization form from the first state agency and submits the copy to the second state agency;

(ii) the employee properly completes and submits an additional authorization form to the second state agency; and

(iii) the second state agency receives the copy of the employee's authorization form and the additional authorization form not later than the 30th day after the employee's first day of employment by the second state agency.

(B) A deduction that may resume under subparagraph (A) of this paragraph shall become effective at the second state agency not later than with the salary and wages paid on the first workday of the second month following the later of:

(i) the month in which the agency receives the copy of the authorization form to which subparagraph (A)(i) of this paragraph refers; or

(ii) the month in which the agency receives the additional authorization form.

(C) The statewide federation or fund or the local campaign manager named on the additional authorization form submitted under subparagraph (A)(ii) of this paragraph must be the same as that named on the original authorization form. The additional authorization form may not make any changes other than those that a state employee who has not changed employers may make after a state employee charitable campaign has ended.

(c) Designation of charitable organizations to receive deducted amounts.

(1) Receiving deducted amounts through local campaign managers.

(A) A state employee's authorization of a deduction to a local campaign manager may designate not more than three eligible local charitable organizations to receive the deducted amounts through the manager.

(i) If a state employee's authorization designates only one eligible local charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the local campaign manager.

(ii) If an authorization designates more than one eligible local charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

(B) If an eligible local charitable organization that a state employee designates under subparagraph (A) of this paragraph is a federation or fund, then the federation or fund shall distribute the deducted amounts it receives to its affiliated eligible charitable organizations according to its policy.

(C) This subparagraph applies if a state employee's authorization of a deduction to a local campaign manager does not contain a valid designation. The undesignated initial distribution amounts with respect to the employee for eligible local charitable organizations and statewide federations or funds shall be determined according to this subparagraph.

(i) Only an eligible local charitable organization that has been approved to participate in the local campaign area may have an undesignated initial distribution amount. Only a statewide federation or fund to which state employees in the local campaign area have authorized deductions may have an undesignated initial distribution amount.

(ii) The undesignated initial distribution amount for an eligible local charitable organization is equal to the distribution percentage for the organization multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the organization's total designated initial distribution amount as determined or specified under subparagraph (A) of this paragraph for all state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraph (A) of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(iii) The undesignated initial distribution amount for a statewide federation or fund is equal to the distribution percentage for the federation or fund multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the total amount of deductions authorized to the federation or fund by state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraph (A) of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(D) The following example illustrates the calculation of undesignated initial distribution amounts according to subparagraph (C) of this paragraph.

(i) The following assumptions apply in this example.

(I) State employees in the Austin local campaign area have authorized $15,000 in deductions to the Austin local campaign manager. Of that amount, state employees have designated $10,000 for distribution to the following eligible local charitable organizations. Organization 1 has been designated to receive $5,000. Organization 2 has been designated to receive $3,000. And Organization 3 has been designated to receive $2,000.

(II) Of the $15,000 in authorized deductions to the Austin local campaign manager, $5,000 is undesignated.

(III) State employees in the Austin local campaign area have authorized total deductions of $10,000 to the following statewide federations or funds. Organizations 4 and 5 have each been authorized to receive $5,000.

(ii) The calculation of undesignated initial distribution amounts in this subparagraph relates only to the $5,000 in undesignated deductions to the Austin local campaign manager. This is because an eligible local charitable organization or a statewide federation or fund has an undesignated initial distribution amount only with respect to undesignated deductions.

(iii) The first step is to determine the designated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. That amount for each organization is the total amount of deductions that state employees have designated to the organization. Therefore, the designated initial distribution amount for Organization 1 is $5,000, Organization 2 is $3,000, and Organization 3 is $2, 000.

(iv) The second step is to determine the distribution percentage for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. The distribution percentage must be determined according to subparagraph (C)(ii) of this paragraph. The distribution percentage for each organization is as follows:

(I) Organization 1-25%;

(II) Organization 2-15%;

(III) Organization 3-10%.

(v) The third step is to determine the distribution percentage for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The distribution percentage must be determined according to subparagraph (C)(iii) of this paragraph. The distribution percentage for each federation or fund is as follows.

(I) Organization 4-25%;

(II) Organization 5-25%.

(vi) The fourth step is to determine the undesignated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph The amount must be determined by multiplying the organization's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows.

(I) Organization 1-$1,250,

(II) Organization 2-$750;

(III) Organization 3-$500.

(vii) The fifth and final step is to determine the undesignated initial distribution amount for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The amount must be determined by multiplying the federation or fund's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows:

(I) Organization 4-$1,250,

(II) Organization 5-$1,250.

(E) Notwithstanding anything in this paragraph, a local campaign manager shall distribute deducted amounts to an eligible local charitable organization or a statewide federation or fund according to the percentage method required by subsection (j) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

(2) Receiving deducted amounts through statewide federations or funds.

(A) A state employee's authorization of a deduction to a statewide federation or fund may designate not more than three eligible charitable organizations to receive the deducted amounts through the federation or fund

(i) If a state employee's authorization designates only one eligible charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the statewide federation or fund

(ii) If a state employee's authorization designates more than one eligible charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

(B) This subparagraph applies if a state employee's authorization of a deduction to a statewide federation or fund does not contain a valid designation. The statewide federation or fund shall determine the undesignated initial distribution amount with respect to the employee for each eligible charitable organization affiliated with the federation or fund. The determination must be accomplished according to the federation or fund's policy

(C) Notwithstanding anything in this paragraph, a statewide federation or fund shall distribute deducted amounts to an eligible charitable organization according to the percentage method required by subsection (k) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

(d) State employee charitable campaign

(1) Time of the state employee charitable campaign The state employee charitable campaign shall be conducted annually during the period after August 31st and before November 1st.

(2) Reimbursement of expenses incurred by state employees while representing charitable organizations. A state agency may not reimburse a state employee for expenses incurred while acting as a representative of a charitable organization.

(3) Participation by state employees. Participation by a state employee in the state employee charitable campaign is voluntary.

(e) Effective dates of authorization forms.

(1) Effective date of authorization forms provided during a state employee charitable campaign. A state employee's authorization form that is provided during a state employee charitable campaign is effective for the following campaign year if the employee's employer receives the form not later than November 15th before the start of that year The deductions may not start before the beginning of that year.

(2) Effective date of authorization forms provided immediately after a state agency is converted to the uniform statewide payroll/personnel system. State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system A state agency covered by that law shall permit its employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. To be effective by that date, a properly completed authorization form must be received by the agency not later than the tenth workday before the first day of the agency's first full monthly payroll period after conversion.

(3) Effective date of authorization forms provided by new state employees.

(A) Paragraph (1) of this subsection applies to a new state employee's authorization form if it.

(i) is received by the employee's employer during a state employee charitable campaign; and

(ii) authorizes a deduction to begin during the campaign year following the campaign year in which the form is received.

(B) This subparagraph applies to a new state employee's authorization form only if the form authorizes a deduction to begin during the same cam-

paign year as the campaign year in which the employee's employer receives the form. The employer may decide when the deduction will take effect, subject to the following limitations.

(i) Except as provided in clause (ii) of this subparagraph, the deduction must begin not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(ii) If the employer receives the form during October or November, then the employer may decide whether and when to give effect to the form.

(4) Effective date of authorization forms that request changes in deductions.

(A) This paragraph applies only to a state employee's authorization form that requests a change to a deduction.

(B) The employer of the employee may decide when the change will take effect, subject to the following limitations.

(i) Except as provided in clause (ii) of this subparagraph, the change must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(ii) If the employer receives the form during October or November of a campaign year and the form requests a change in a deduction for the year, then the employer may decide whether and when to give effect to the form

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form on July 2, 1994, and that the form requests a decrease in the amount of a deduction. The agency may make the decrease effective with the deduction that occurs on the August 1, 1994, salary payment. If the agency does not, then the agency must make the decrease effective with the deduction that occurs on the September 1, 1994, salary payment.

(5) Effective date of authorization forms that request cancellations of deductions.

(A) This paragraph applies only to a state employee's authorization form that requests the cancellation of a deduction.

(B) The employer of the employee may decide when the cancellation will take effect. However, the cancellation must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form on July 2, 1994, and that the form requests the cancellation of a deduction. The agency may make the cancellation effective with the August 1, 1994, salary payment. If the agency does not, then the agency must make the cancellation effective with the September 1, 1994, salary payment.

(f) Requirements for the content and format of authorization forms.

(1) Prohibition against distributing or providing authorization forms. A local campaign manager or a statewide federation or fund may distribute or provide an authorization form to a state employee only if both the comptroller and the state policy committee have approved the form.

(2) Requirement to produce authorization forms. A local campaign manager or a statewide federation or fund must produce an authorization form that complies with the comptroller's requirements and this section.

(3) Restrictions on approval of authorization forms. Neither the comptroller nor the state policy committee may approve the authorization form of a local campaign manager or a statewide federation or fund unless the form:

(A) is at least 8 1/2 inches wide and 11 inches long;

(B) states that statewide federations or funds and local campaign managers are required to use the percentage method to distribute a state employee's deducted amounts to eligible charitable organizations designated by the employee instead of matching deducted amounts received to actual designations;

(C) accurately describes the percentage method; and

(D) complies with the comptroller's requirements for format and substance

(g) Procedure for federations or funds to apply for statewide participation.

(1) Request for statewide participation. A federation or fund may not be a statewide federation or fund unless the federation or fund applies to the state policy committee for that status in accordance with this section, Texas Civil Statutes, Article 6813h, and the committee's procedures.

(2) Requirements for the application. The application of a federation or fund to be a statewide federation or fund must include:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of Texas Civil Statutes, Article 6813h;

(B) a copy of a letter from each affiliate of the federation or fund certifying that the federation or fund serves as the affiliate's representative and fiscal agent in the state employee charitable campaign;

(C) a copy of the conflict of interest policy approved by the federation or fund's board of directors, which prohibits its board members, executive director, and staff from engaging in business transactions in which they have material conflicting interests;

(D) if the executive director of the federation or fund receives material compensation for services rendered to any organization other than the federation or fund, a full disclosure of:

(i) the name of the organization;

(ii) the nature and amount of the compensation; and

(iii) the relationship of the organization to the federation or fund;

(E) a copy of the federation or fund's current operating budget, signed by the presiding officer of the federation or fund's board of directors; and

(F) an acknowledgment that the federation or fund is responsible for filing any appeals from its affiliated agencies that have not secured approval for statewide or local participation in the state employee charitable campaign.

(3) Notification of the comptroller. Upon approval of a federation or fund for statewide participation in the state employee charitable campaign, the state policy committee shall submit to the comptroller:

(A) the complete name of the federation or fund;

(B) the mailing address of the federation or fund;

(C) the full name, title, telephone number, and mailing address of the federation or fund's primary contact;

(D) the payee identification number of the federation or fund, when available; and

(E) the other information deemed necessary by the comptroller.

(4) Payee identification numbers. A federation or fund that has been approved for statewide participation and that does not have a payee identification number shall submit a request for one to the comptroller.

(5) Electronic funds transfers. A federation or fund that has been approved for statewide participation in the state employee charitable campaign shall submit a request to be paid through electronic funds transfers under rules adopted by the comptroller.

(6) Beginning of deductions. The first payment of deducted amounts to a statewide federation or fund shall occur the first month of the first campaign year that begins after the federation or fund is approved for statewide participation in the state employee charitable campaign.

(h) Procedure for charitable organizations to apply for local participation.

(1) Request for local participation.

(A) A charitable organization may not be an eligible local charitable organization unless it applies to the appropriate local employee committee for that status in accordance with this section, Texas Civil Statutes, Article 6813h, and the committee's procedures.

(B) A federation or fund that wants to be an eligible local charitable organization may apply on behalf of its affiliated agencies.

(2) Requirements for applications from federations or funds. If a charitable organization applying to be an eligible local charitable organization is a federation or fund, then the organization must provide to the appropriate local employee committee:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of Texas Civil Statutes, Article 6813h;

(B) a copy of a letter from each affiliate of the federation or fund certifying that the federation or fund serves as the affiliate's representative and fiscal agent in the state employee charitable campaign;

(C) a copy of the conflict of interest policy approved by the federation or fund's board of directors, which prohibits its board members, executive director, and staff from engaging in business transactions in which they have material conflicting interests;

(D) if the executive director of the federation or fund receives material compensation for services rendered to any organization other than the federation or fund, a full disclosure of:

(i) the name of the organization;

(ii) the nature and amount of the compensation; and

(iii) the relationship of the organization to the federation or fund;

(E) a copy of the federation or fund's current operating budget, signed by the presiding officer of the federation or fund's board of directors; and

(F) an acknowledgment that the federation or fund is responsible for filing any appeals from its affiliated agencies that have not secured approval for statewide or local participation in the state employee charitable campaign.

(3) Beginning of deductions. The first deduction to pay an eligible local charitable organization shall occur the first month of the first campaign year that begins after the charitable organization is approved for local participation in the state employee charitable campaign.

(i) Payments of deductions.

(1) Prohibited payments to eligible local charitable organizations.

(A) Neither the comptroller nor an institution of higher education may pay deducted amounts directly to an eligible local charitable organization.

(B) Except as otherwise provided in this subparagraph, deducted amounts shall be paid directly to the appropriate local campaign manager. If the eligible local charitable organization involved is an affiliate of a statewide federation or fund, then the deducted amounts shall be paid directly to the federation or fund.

(2) Payments by the comptroller through electronic funds transfers. If feasible, the comptroller shall pay deducted amounts to a local campaign manager or a statewide federation or fund by electronic funds transfer.

(3) Payments through warrants issued by the comptroller.

(A) This paragraph applies only if it is infeasible for the comptroller to pay deducted amounts by electronic funds transfer.

(B) The comptroller shall pay deducted amounts by warrant and make the warrant available for pick up by the state agency whose employees' deductions are being paid by the warrant.

(C) A state agency shall mail or hand deliver a warrant picked up under subparagraph (B) of this paragraph to the payee of the warrant.

(D) Except as provided in subparagraph (E) of this paragraph, the deadline for mailing or hand delivering a warrant is the tenth workday of the month following the month when the salary or wages from which the deductions are made were earned.

(E) This subparagraph applies only to a deduction that occurs after the tenth workday of the month following the month when the salary or wages from which the deduction is made were earned. The deadline for a state agency to mail or hand deliver a warrant to pay the deduction is the second workday after the agency receives the warrant.

(4) Payments by institutions of higher education.

(A) This paragraph applies to deducted amounts from the salary or wages of a state employee of an institution of higher education only if the comptroller does not pay those amounts directly to a local campaign manager or a statewide federation or fund.

(B) If feasible, an institution of higher education shall pay deducted amounts to a local campaign manager or a statewide federation or fund by electronic funds transfer

(C) If it is infeasible for an institution of higher education to pay deducted amounts by electronic funds transfer, then the institution shall make the payment by check.

(D) This subparagraph applies only if an institution of higher education pays deducted amounts by check.

(i) This clause applies only to deductions from salary or wages that are paid on the first workday of a month. An institution of higher education shall mail or hand deliver its check to the payee of the check not later than the 10th workday of the month.

(ii) This clause applies only to deductions from salary or wages that are paid on a day other than the first workday of a month. An institution of higher education shall mail or hand deliver its check to the payee of the check not later than the 10th workday of the month following the month in which the salary or wages were earned.

(j) Distributions of deductions by local campaign managers.

(1) Requirement to use the percentage method. A local campaign manager shall use the percentage method to distribute deducted amounts to eligible local charitable organizations and statewide federations or funds.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a local campaign manager shall calculate the contribution percentage for:

(i) each eligible local charitable organization that has been approved to participate in the local campaign area under the manager's responsibility; and

(ii) each statewide federation or fund to which state employees in the local campaign area have authorized deductions.

(B) The contribution percentage for an eligible local charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(A) of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(C)(ii) of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms completed during the campaign.

(C) The contribution percentage for a statewide federation or fund is the ratio of:

(i) the federation or fund's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(C)(iii) of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms completed during the campaign.

(D) The contribution percentage for an eligible local charitable organization or a statewide federation or fund may not be recalculated before the conclusion of the next state employee charitable campaign.

(E) The amount of deductions that a local campaign manager distributes to an eligible local charitable organization or a statewide federation or fund is equal to the product of:

(i) the contribution percentage of the organization or federation or fund; and

(ii) the total amount of deductions the manager is distributing.

(3) Example of the percentage method. This paragraph illustrates the percentage method described in paragraph (2) of this subsection.

(A) The following assumptions apply in this example.

(i) Organization 1, an eligible local charitable organization, has a designated initial distribution amount of $5,000 and an undesignated initial distribution amount of $1,250.

(ii) Organization 2, an eligible local charitable organization, has a designated initial distribution amount of $3,000 and an undesignated initial distribution amount of $750.

(iii) Organization 3, an eligible local charitable organization, has a designated initial distribution amount of $2,000 and an undesignated initial distribution amount of $500.

(iv) Organization 4, a statewide federation or fund, has an undesignated initial distribution amount of $1,250.

(v) Organization 5, a statewide federation or fund, has an undesignated initial distribution amount of $1,250.

(vi) The total amount of deductions authorized to the local campaign manager is $15,000.

(vii) The local campaign manager has actually received $10,000 in deducted amounts.

(B) The first step is to calculate the contribution percentage for each organization according to paragraph (2)(B)-(C) of this subsection. The contribution percentage for each organization is as follows:

(i) Organization 1-41.67%;

(ii) Organization 2-25%;

(iii) Organization 3-16.67%;

(iv) Organization 4-8.33%;

(v) Organization 5-8.33%.

(C) The second and final step is to calculate the amount that the local campaign manager distributes to each organization according to paragraph (2)(E) of this subsection. The amount for each organization is as follows:

(i) Organization 1-$4,167;

(ii) Organization 2-$2,500;

(iii) Organization 3-$1,667;

(iv) Organization 4-$833;

(v) Organization 5-$833.

(4) Prohibition of distributions until payment reports reconciled. A local campaign manager may not make a distribution before the manager reconciles the payment reports received from the comptroller or an institution of higher education with the payments received by electronic funds transfer or by warrant or check.

(5) Frequency of distributions. A local campaign manager shall make distributions quarterly or more frequently than quarterly.

(k) Distributions of deductions by statewide federations or funds.

(1) Requirement to use the percentage method. A statewide federation or fund shall use the percentage method to distribute deducted amounts to eligible charitable organizations.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a statewide federation or fund shall calculate the contribution percentage for each eligible charitable organization that is an affiliate of the federation or fund.

(B) The contribution percentage for an eligible charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(A) of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(B) of this section; to

(ii) the total amount of deductions authorized to the statewide federation or fund on authorization forms completed during the campaign.

(C) The contribution percentage for an eligible charitable organization may not be recalculated before the conclusion of the next state employee charitable campaign.

(D) The amount of deductions that a statewide federation or fund distributes to an eligible charitable organization is equal to the product of:

(i) the contribution percentage of the organization; and

(ii) the total amount of deductions the federation or fund is distributing.

(3) Example of the percentage method. This paragraph illustrates the percentage method described in paragraph (2) of this subsection.

(A) The following assumptions apply in this example.

(i) Eligible charitable organization 1 has a designated initial distribution amount of $5,000 and an undesignated initial distribution amount of $1,250.

(ii) Eligible charitable organization 2 has a designated initial distribution amount of $3,000 and an undesignated initial distribution amount of $750.

(iii) Eligible charitable organization 3 has a designated initial distribution amount of $2,000 and an undesignated initial distribution amount of $500.

(iv) The total amount of deductions authorized to the statewide federation or fund is $12,500.

(v) The statewide federation or fund has actually received $10,000 in deducted amounts.

(B) The first step is to calculate the contribution percentage for each eligible charitable organization according to paragraph (2)(B) of this subsection. The contribution percentage for each organization is as follows:

(i) Organization 1-50%;

(ii) Organization 2-30%;

(iii) Organization 3-20%.

(C) The second and final step is to calculate the amount that the statewide federation or fund distributes to each organization according to paragraph (2)(D) of this subsection. The amount for each organization is as follows:

(i) Organization 1-$5,000;

(ii) Organization 2-$3,000;

(iii) Organization 3-$2,000.

(4) Prohibition of distributions until payment reports reconciled. A statewide federation or fund may not make a distribution before the federation or fund reconciles the payment reports received from the comptroller or an institution of higher education with the payments received by electronic funds transfer or by warrant or check.

(5) Frequency of distributions. A statewide federation or fund shall make distributions quarterly or more frequently than quarterly.

(l) Charging administrative fees to cover costs incurred to make deductions. The comptroller intends to adopt at a later date provisions about charging administrative fees to cover costs incurred by the comptroller and employers in the implementation and administration of Texas Civil Statutes, Article 6813h.

(m) Refunding excessive payments of deductions

(1) Authorization of refunds. If the amount of deductions paid to a local campaign manager or a statewide federation or fund exceeds the amount that should have been paid, then the excess may be refunded to the state agency on whose behalf the payment was made.

(2) Methods for accomplishing refunds. If a refund is authorized by paragraph (1) of this subsection, then the refund shall be accomplished by:

(A) the state agency on whose behalf the payment was made subtracting the amount of the refund from a subsequent payment of deductions to the local campaign manager or statewide federation or fund; or

(B) the local campaign manager or the statewide federation or fund issuing a check in the amount of the refund to the state agency on whose behalf the payment was made, if authorized by paragraph (3) of this subsection.

(3) Paying refunds by check. A local campaign manager or a statewide federation or fund may issue a refund check only if the payee of the check first submits a written request for the refund to be made by check.

(4) Deadline for paying refunds by check. This paragraph applies only if a local campaign manager or a statewide federation or fund is authorized by paragraph (3) of this subsection to make a refund by check. The local campaign manager or the statewide federation or fund shall ensure that the refund check is received by the payee not later than the 30th day after the date on which the written request for the refund to be made by check is received.

(n) Responsibilities of the state policy committee.

(1) Statutory responsibilities. The state policy committee shall fulfill its statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to its statutory responsibilities, the state policy committee:

(A) shall establish an annual application, eligibility determination, and appeals period for statewide or local participation in the state employee charitable campaign;

(B) shall determine the eligibility of a federation or fund and its affiliated agencies for statewide participation in the state employee charitable campaign;

(C) shall review and resolve the appeals of entities not accepted for statewide or local participation in the state employee charitable campaign under proce-

dures that comply with paragraph (3) of this subsection;

(D) shall disqualify a federation or fund from statewide participation in the state employee charitable campaign if the committee determines that the federation or fund intentionally filed an application that contains false or misleading information;

(E) shall establish penalties for non-compliance with this section by a statewide federation or fund, an eligible local charitable organization, the state campaign manager, or a local campaign manager;

(F) shall establish procedures for the selection and oversight of the state campaign manager and local campaign managers;

(G) shall select a federated community campaign organization to act as the state campaign manager in accordance with the criteria contained in paragraph (4) of this subsection;

(H) shall contract with the federated community campaign organization selected as the state campaign manager;

(I) may establish policies and procedures for the operation and administration of the state employee charitable campaign, including policies and procedures about the hearing of any grievance concerning the operation and administration of the campaign;

(J) shall consult with the state campaign manager and the state advisory committee before approving the campaign plan, budget, and materials;

(K) may not approve campaign materials if:

(i) they do not state that statewide federations or funds may or may not provide services in all local campaign areas;

(ii) they list a charitable organization as both a statewide federation or fund and an eligible local charitable organization;

(iii) they list a charitable organization as an affiliate of two or more statewide federations or funds unless the organization serves separate and distinct populations as part of each statewide federation or fund;

(iv) they list similarly named eligible local charitable organizations in the same local campaign area unless the appropriate local employee committee has determined that each organization delivers services in different geographical areas within the local campaign area;

(v) they list a charitable organization as an affiliate of more than one federation or fund certified as an eligible local charitable organization unless the appropriate local employee committee has determined that the charitable organization delivers services to separate and distinct populations in the local campaign area as part of its membership in the federations or funds;

(vi) they do not state that a local campaign manager or a statewide federation or fund may distribute quarterly a state employee's deductions;

(vii) they do not state that a local campaign manager or a statewide federation or fund is required to distribute a state employee's deductions based on the percentage method instead of matching deducted amounts received by the local campaign manager or statewide federation or fund to the employee's designations; or

(viii) they do not accurately describe the percentage method;

(L) shall review and approve or disapprove the generic materials used by the state campaign manager and local campaign managers;

(M) shall ensure that local campaign areas do not overlap;

(N) shall ensure that only one local campaign manager is responsible for solicitation of all state employees in the local campaign area for which the manager has responsibility;

(O) shall submit to the comptroller the name and boundaries of each local campaign area not later than the 30th day after the end of the annual application period;

(P) shall compile and submit to the comptroller not later than the 30th day after the end of the annual application period a list of the local campaign managers and the name, address, and telephone number of each manager's primary contact;

(Q) shall notify the comptroller immediately after a change occurs to the name or mailing address of a statewide federation or fund or local campaign manager;

(R) shall notify the comptroller immediately after a change occurs to the name, title, telephone number, or mailing address of the primary contact of a local campaign manager or a statewide federation or fund; and

(S) shall represent all statewide federations or funds and local campaign managers for the purposes of:

(i) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(ii) disseminating information, including information about the requirements of this section, to representatives of federations or funds, local employee committees, and local campaign managers.

(3) Appeals procedures. The procedures that the state policy committee adopts to review and resolve the appeal of an entity that was not accepted for statewide or local participation in the state employee charitable campaign must:

(A) prohibit the consideration of information that the committee has considered previously;

(B) provide sufficient time for a federation or fund to reapply for participation in that campaign; and

(C) permit a federation or fund that was not accepted for statewide participation to apply for participation in a local campaign area during the campaign.

(4) Criteria for selection of a state campaign manager. The state policy committee shall consider the following criteria when evaluating the application of a federated community campaign organization to act as the state campaign manager:

(A) the number and diversity of voluntary health and human services agencies or affiliates that rely on the organization for financial support;

(B) the capability of the organization to conduct employee campaigns, as demonstrated by records of the amount of funds raised during the organization's last completed annual public solicitation of funds;

(C) the percent of solicited funds received by the organization during its last completed annual public solicitation of funds that were distributed to voluntary health and human services agencies;

(D) the geographic area serviced by the organization; and

(E) the organization's capability and expertise to provide effective campaign counsel and management as demonstrated by staff and equipment resources and examples of past campaign management.

(5) Comptroller's reliance on decisions made by the state policy committee. The comptroller is entitled to rely on the state policy committee's:

(A) determination about the eligibility of a federation or fund and its affiliated agencies for statewide participation in the state employee charitable campaign;

(B) disqualification of a federation or fund from statewide participation in the state employee charitable campaign; and

(C) other decision unless the committee has no legal authority over the subject covered by the decision.

(o) Responsibilities of the state advisory committee. The state advisory committee shall fulfill its statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(p) Responsibilities of local employee committees.

(1) Statutory responsibilities. A local employee committee shall fulfill its statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to its statutory responsibilities, a local employee committee:

(A) shall determine the eligibility of a local charitable organization for local participation in the state employee charitable campaign;

(B) may call upon and use outside expertise and resources available to the committee to assess the eligibility of a local charitable organization;

(C) shall disqualify a local charitable organization from local participation in the state employee charitable campaign if the committee determines that the organization intentionally filed an application that contains false or misleading information;

(D) shall select a federated community campaign organization to act as the local campaign manager according to criteria contained in paragraph (3) of this subsection;

(E) shall contract with the federated community campaign organization selected as the local campaign manager;

(F) shall consult with the local campaign manager before approving the local campaign plan, budget, and materials; and

(G) shall submit to the state policy committee upon contracting with a federated community campaign organization:

(i) the name of the local campaign area;

(ii) the name of the federated community campaign organization with which the local employee committee has contracted; and

(iii) the name, address, and telephone number of the primary contact of the local campaign manager.

(3) Criteria for selection of a local campaign manager. A local employee committee shall consider the following criteria when evaluating the application of a federated community campaign organization to act as the local campaign manager:

(A) the number and diversity of voluntary health and human services agencies or affiliates that rely on the organization for financial support;

(B) the capability of the organization to conduct employee campaigns, as demonstrated by records of the amount of funds raised during the organization's last completed annual public solicitation of funds;

(C) the percent of solicited funds received by the organization during its last completed annual public solicitation of funds that were distributed to voluntary health and human services agencies;

(D) the geographic area serviced by the organization; and

(E) the organization's capability and expertise to provide effective campaign counsel and management as demonstrated by staff and equipment resources and examples of past campaign management.

(4) Comptroller's reliance on decisions made by a local employee committee. The comptroller is entitled to rely on a local employee committee's:

(A) determination about the eligibility of a local charitable organization for local participation in the state employee charitable campaign;

(B) disqualification of a local charitable organization from local participation in the state employee charitable campaign; and

(C) other decision unless the committee has no legal authority over the subject covered by the decision.

(q) Responsibilities of the state campaign manager.

(1) Statutory responsibilities. The state campaign manager shall fulfill the manager's statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to the state campaign manager's statutory responsibilities, the manager shall:

(A) develop the state employee charitable campaign plan in consultation with the state advisory committee;

(B) serve as liaison to the state policy committee, the state advisory committee, the local campaign managers, and the local employee committees on behalf of statewide federations or funds and eligible local charitable organizations;

(C) structure the state employee charitable campaign fairly and equitably according to the policies and procedures established by the state policy committee;

(D) provide for involvement of all statewide federations or funds, including the use of their resources, at all levels of the state employee charitable campaign;

(E) conduct the manager's responsibilities on behalf of the state employee participants in the state employee charitable campaign separately from the manager's internal operations;

(F) prepare and submit for review by the state advisory committee a single statewide campaign budget that has been prepared in cooperation with local campaign managers and that includes campaign materials, staff time, and other expenses incurred for the state employee charitable campaign;

(G) establish, after consulting with the state advisory committee, the state policy committee, and the local campaign managers, a uniform campaign reporting form to allow reporting of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager; and

(H) submit a statewide campaign report that complies with paragraph (3) of this subsection.

(3) Statewide campaign reports. A statewide campaign report shall represent a compilation of the local campaign managers' campaign reports. The state campaign manager shall submit the statewide campaign report to the state policy committee, the state advisory committee, and the comptroller not later than the 60th day after the day on which the campaign ended.

(r) Responsibilities of local campaign managers.

(1) Statutory responsibilities. A local campaign manager shall fulfill the manager's statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to a local campaign manager's statutory responsibilities, the manager shall:

(A) recruit, train, and supervise state employee volunteers;

(B) involve participating eligible local charitable organizations and statewide federations or funds in the training of state employee volunteers;

(C) consult with eligible local charitable organizations and statewide federations or funds about the operation of the state employee charitable campaign and the preparation of local campaign materials;

(D) provide eligible local charitable organizations and statewide federations or funds with the opportunity to participate in local state employee charitable campaign events and access to all records for the local campaign area;

(E) maintain campaign records for the local campaign area, including total pledges, total pledges by eligible local charitable organization and statewide federation or fund, state agencies contacted, and other records deemed necessary by the state policy committee for organization, control, and progress reporting;

(F) submit to the state campaign manager a final campaign report of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager not later than the 40th day following the close of the state employee charitable campaign;

(G) establish an account at a financial institution for the purpose of receiving payments from the comptroller and institutions of higher education by electronic funds transfer, warrant, or check;

(H) distribute accrued interest at the end of a campaign year to each eligible local charitable organization and statewide federation or fund in the same manner that undesignated deductions are distributed, subject to the limitation in paragraph (3) of this subsection;

(I) submit a request to the comptroller to be paid through electronic funds transfers under rules adopted by the comptroller;

(J) reconcile the payment report provided by the comptroller or an institution of higher education with the amount of deductions paid to the manager;

(K) report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received not later than the 30th day after the day on which the comptroller or the institution mailed or delivered the report;

(L) report to each eligible local charitable organization and statewide federation or fund the amount of its undesignated and designated initial distribution amounts as determined under subsection (c)(1) of this section; and

(M) report to each eligible local charitable organization and statewide federation or fund its contribution percentage as determined under subsection (j)(2) of this section.

(3) Limitation on distributions of accrued interest. A local campaign manager may not distribute accrued interest to:

(A) an eligible local charitable organization that did not receive deducted amounts through the manager during the campaign year; or

(B) a statewide federation or fund that did not receive deducted amounts through the manager during the campaign year, unless the only reason for not receiving the deducted amounts through the manager is the direct payment requirement of the second sentence of subsection (i)(1)(B) of this section.

(4) Prohibition against solicitation. A local campaign manager may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(s) Responsibilities of statewide federations or funds.

(1) Reconciliation of payment reports. A statewide federation or fund shall reconcile the payment report provided by the comptroller or an institution of higher education with the amount of deductions paid to the federation or fund.

(2) Reports of discrepancies.

(A) A statewide federation or fund shall report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received.

(B) A report of discrepancies is due not later than the 30th day after the day on which the comptroller or the institution of higher education mailed or delivered the report.

(3) Prohibition against solicitation. A statewide federation or fund may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(t) Prohibition against certain solicitation by eligible local charitable organizations. An eligible local charitable organization may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(u) Acceptance of authorization forms by state agencies.

(1) Prohibition against accepting certain authorization forms. A state agency may accept an authorization form only if it complies with the comptroller's requirements.

(2) Acceptance of altered authorization forms. A state agency is not required to accept an authorization form that contains an obvious alteration without the appropriate state employee's written consent to the alteration.

(v) Payment reports.

(1) Monthly submission of payment reports.

(A) An institution of higher education shall submit a payment report each month to each local campaign manager or statewide federation or fund that has received during the month deducted amounts from the institution's state employees.

(B) The comptroller shall submit a payment report each month to each local campaign manager or statewide federation or fund that has received during the month deducted amounts through the comptroller's electronic funds transfer system.

(2) Information included in payment reports.

(A) An institution of higher education's payment report must include the amount and date of each check written to or electronic funds transfer made to a local campaign manager or a statewide federation or fund by the institution.

(B) The comptroller's payment report must include the amount and date of each electronic funds transfer made to a local campaign manager or statewide federation or fund by the comptroller.

(3) Format of payment reports An institution of higher education's payment report must be in the format prescribed by the comptroller.

(4) Deadline for submission of payment reports.

(A) Except as otherwise provided in this subparagraph, an institution of higher education shall mail or deliver a payment report not later than the tenth workday of the month in which the institution paid the deducted amounts covered by the report. For deductions from salary or wages paid by an institution of higher education after the tenth workday of a month, the institution may include the deductions in the institution's payment report for the following month.

(B) Except as otherwise provided in this subparagraph, the comptroller shall mail or deliver a payment report not later than the fifth workday of the month in which the comptroller paid the deducted amounts covered by the report. For deductions from salary or wages paid by the comptroller after the first workday of a month, the comptroller may include the deductions in the comptroller's payment report for the following month.

(w) Complaints by state employees about coercive activity.

(1) Definition.

(A) In this section, "coercive activity" includes:

(i) a state agency or its representative pressuring a state employee to participate in a state employee charitable campaign;

(ii) a state agency or its representative inquiring about:

(I) whether a state employee has chosen to participate in a state employee charitable campaign; or

(II) the amount of a state employee's deduction except as necessary to administer the deduction;

(iii) a state agency or its representative establishing a goal for 100% of the agency's state employees to authorize a deduction;

(iv) a state agency or its representative establishing a dollar contribution goal or quota for a state employee;

(v) a state agency, a statewide federation or fund, a local campaign manager, or a representative of the preceding developing or using a list of state employees who did not complete an authorization form during a state employee charitable campaign;

(vi) a state agency, a statewide federation or fund, a local campaign manager, or a representative of the preceding using or providing to others a list of state employees who completed authorizations forms during a state employee charitable campaign, unless the purpose of the list is to make a deduction or transmit deducted amounts to a local campaign manager or a statewide federation or fund; and

(vii) a state agency or its representative using as a factor in a performance appraisal the results of a state employee charitable campaign in a particular section, division, or other level of the agency.

(B) Notwithstanding subparagraph (A) of this paragraph, "coercive activity" does not include:

(i) the head of a state agency's participation in the customary activities associated with a state employee charitable campaign, or

(ii) the head of a state agency's demonstration of support for the campaign in newsletters or other routine communications with state employees.

(2) Submission of complaints to the comptroller. A state employee may submit a written complaint to the comptroller when the employee believes that coercive activity has occurred in a state employe charitable campaign.

(3) Investigation by the comptroller of complaints.

(A) The comptroller shall investigate a state employee's written complaint about coercive activity. The comptroller shall mail or deliver a description of the comptroller's findings about the complaint to the employee not later than the 30th day after the comptroller receives the complaint

(B) If the comptroller finds that coercive activity has occurred, then the comptroller shall mail or deliver notice of the finding to the state policy committee not later than the 30th day after the comptroller makes the finding.

(4) Action by the state policy committee.

(A) If the state policy committee receives written notification that the comptroller has found that coercive activity has occurred, then the committee shall take appropriate action. Actions that the state policy committee may take include suspension of the person or entity that engaged in the coercive activity from participation in the state employee charitable campaign for one campaign year.

(B) A person or entity that has been suspended from the state employee charitable campaign for a campaign year may apply to the state policy committee for participation in the campaign for the next campaign year.

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 April 8, 1994.

TRD-9438835 Martin E Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption. May 20, 1994

For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 15. Drivers License Rules

Application Requirements Original, Renewal, Duplicate, Identification Certificates

• **37 TAC §15.44**

The Texas Department of Public Safety proposes new §15 44, concerning application requirements original, renewal, duplicate, identification certificates. Section 15 44 provides that a color photograph of a licensee may be obtained through any medium which produces a retrievable visual image including, but not limited to, film, video tape, digital or visual imagery, or any other technology which may be approved by the director.

Tom Haas, chief of fiscal affairs, has determined that there will be fiscal implications as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section is in effect will be an estimated additional cost of $6,523,651 in 1994, $2, 771,299 in 1995, $2,771,299 in 1996, $2,771,299 in 1997, and $2,771,299 in 1998.

There will be no effect on local government.

The new section is promulgated under the authority of the Texas Tax Code, Title 2; therefore no analysis of the effect on small businesses is required.

Judy Sibert, program specialist III, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that applicants will receive their drivers license or identification certificate within five to seven days, allows for correcting a drivers license or identification certificate without the applicant returning to the drivers license office, improves quality of the photograph, additional security features are added to drivers license or identification certificate to help prevent fraudulent reproduction, information on back of license will be specific to licensee, and addition of magnetic stripe will be beneficial to retailers in the future

The anticipated economic cost to persons who are required to comply with the section as proposed will be a fee for original or renewal of drivers license of $16 in fiscal years 1994-1998; a fee for original or renewal of identification certificate of $10 in fiscal years 1994-1998, and a fee for original or renewal of Commercial Drivers License of $40 in fiscal years 1994-1998

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000

The new section is proposed under Texas Civil Statutes, Article 6687b, §1A and Texas Government Code, §411.006(4), which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this Act.

§15.44. Drivers License Photograph. A color photograph of a licensee may be obtained through any medium which produces a retrievable visual image including, but not limited to, film, video tape, digital or visual imagery, or any other technology which may be approved by the director.

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 March 31, 1994

TRD-9438718 James R Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: May 20, 1994

For further information, please call. (512) 465-2000

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Part III. Texas Youth Commission

Chapter 87. Treatment

Program Planning

• **37 TAC §87.29**

The Texas Youth Commission (TYC) proposes an amendment to §87.29, concerning independent living preparation. The amendment will define how TYC youth receiving primary services or supplemental services are counted.

John Franks, director of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient documentation of TYC youth participation in independent living preparation programs provided by TYC. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to place youth in programs it deems appropriate.

The proposed rule implements the Human Resource Code, §61.034.

§87.29. Independent Living Preparation.

(a) (No change.)

(b) Rules.

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

(4) Documentation.

(A) Programs that only provide independent living preparation services are designated as providing primary services. Participation in primary service programs is automatically documented through location assignment. [Participation in independent living preparation by youth is documented on Form CCF-120, Supplemental Services.]

(B) Participation in independent living preparation in all locations not designated as primary service is documented on Supplemental Services, Form CCF-120.

(C)[(B)] Completion of independent living preparation by youth is documented on the Independent Living Preparation Completion Checklist form as required by the case management standard for independent living preparation programs.

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 April 7, 1994.

TRD-9438866 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption. May 20, 1994

For further information, please call: (512) 483-5244

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Part IX. Texas Commission on Jail Standards

Chapter 273. Medical Services in County Jails

• **37 TAC §273.6**

The Commission on Jail Standards proposes new §273.6 concerning Medical Services in County Jails to establish a rule for screening and treatment of tuberculosis in accordance with the Texas Department of Health rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Jack E. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be to provide inmates with proper screening and treatment of tuberculosis.

There will be no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new section is proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statutes that are affected by this rule are the Local Government Code, Chapter 351, §351.002 and §351 015.

§273.6. Tuberculosis Screening Plan.

(a) Each facility having a capacity of 100 or more inmates shall develop a plan for tuberculosis screening tests of employees, volunteers, and inmates. Inmates confined in the jail for more than 14 days shall be tested on or before the 14th day after the day of confinement Inmates may be exempt from the screening test when the test conflicts with the tenets of an organized religion to which the individual belongs or when the test is contraindicated based on an examination by a physician. An inmate is not required to be retested at each rebooking if the inmate is booked into the facility more than once during a 12 month period unless the inmate shows symptoms of TB or is known to have been exposed to tuberculosis.

(b) The tuberculosis screening plan shall be developed in accordance with 25 TAC §§97.171-97.180 (relating to Communicable Diseases) and the Texas Health and Safety Code, §§89.001-89.073, and shall be approved by the Tuberculosis Elimination Division, Texas Department of Health prior to use The approved plan shall be made available to the commission, upon request. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement shall accompany an inmate transferred from one correctional facility to another or to TDCJ-ID and be available for medical review upon arrival of the inmate.

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 April 4, 1994

TRD-9438816 Jack E Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 463-5505

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Chapter 300. Fees and Payments

Tuberculosis Screening Payment

- **47 TAC §§300.80-300.84**

The Commission on Jail Standards proposes new §§300.80-300.84 concerning Fees and Payments to establish rules for reimbursing counties for some expenses incurred in screening and treating inmates for tuberculosis.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules

Jack E. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be to provide counties with a method to receive monetary compensation for screening and treatment of tuberculosis for inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division.

There will be no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351 015.

§300.80 General. The commission is required by the Government Code, §499.123, to make payment to counties for inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division until September 1, 1995. Payment is contingent upon the transfer of funding to the Texas Commission on Jail Standards through inter-agency contract with TDCJ

§300.81. Method of Calculation Counties shall be paid based on the number of screenings, evaluations, and drugs administered during the previous month Payment shall be based on an agreed price arranged between TDCJ and TDH for each specific task performed.

§300.82. Reports. Each sheriff/operator shall submit to the commission a report for each month indicating name, date of birth, and date paper ready for each inmate tested during the previous month. The report shall be delivered to the commission no later than five days after the last day of the reporting month and shall be verified by the sheriff/operator that the information provided in the report is complete and accurate.

§300.83. Forms. The commission adopts, by reference, Form Pay-3 TB Payment Report. Copies of the form are available at the office of the Texas Commission on Jail Standards. Each sheriff/operator shall utilize the referenced form or similar form, approved by the executive director, for submission of monthly reports.

§300.84 Records Each sheriff/operator shall maintain complete information required in §300.82 of this title (relating to Reports) and make the records available to commission staff upon request for review.

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 April 4, 1994.

TRD-9438812 Jack E Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: May 20, 1994

For further information, please call (512) 463-5505

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter C. Basic Program Requirements

- **40 TAC §15.315**

The Texas Department of Human Services (DHS) proposes an amendment to §15 315, concerning Preadmission Screening and Annual Resident Review (PASARR), in its Medicaid Eligibility rule chapter. The purpose of the amendment is to ensure that all clients seeking long-term care services participate in the assessment/screening process, the assessment has been made the first step in receiving services, in pilot sites as determined by the Board of Human Services

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that clients in pilot sites will be screened for an assessment of their care needs and offered a choice of appropriate services. There will no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long-Term Care Unit Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-090, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendment is proposed 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.

The amendment implements the Human Resources Code, §§22 001-22.024

§15.315. Preadmission Screening and Annual Resident Review (PASARR).

(a)-(c) (No change)

(d) In sites, as designated by the Board of Human Services, for the Long-Term Care Assessment pilot project, the assessment is the first step in obtaining a PASARR decision for long-term care services.

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 March 7, 1994

TRD-9438811 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption June 1, 1994

For further information, please call: (512) 450-3765

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Part XI. Texas Commission on Human Rights

Chapter 321. General Provisions

• 40 TAC §§321.1, 321.2, 321.6

The Texas Commission on Human Rights proposes amendments to §§321 1, 321 2, and 321.6, concerning Definitions, Purpose, and Availability. The sections define terms commonly used in the industry, set forth the procedures established by the commission to administer and enforce the Act, and demonstrate availability of rules for public inspection, respectively.

William M Hale, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, other than reducing costs to the commission, complainants and respondents since more cases should be resolved before an investigation is completed

Mr. Hale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an increase in the voluntary resolution of employment discrimination complaints through the mediation process thus reducing costs to the commission, complainants and respondents.

There will be no cost to small businesses

The anticipated economic cost to persons who are required to comply with the rule as proposed will be minimal and may actually reduce costs to the commission, complainants and respondents since more cases should be resolved before an investigation is completed

Comments may be submitted to William M. Hale or Brooks Wm (Bill) Conover, III, Texas Commission on Human Rights, P O. Box 13493, Austin, Texas 78711, (512) 837-8534.

The amendments are proposed under Texas Civil Statutes, Article 5221k, §3 02(10), which provide authorization for the commission to modify or delete any of the definitions, purpose or availability sections

The statute affected by the rules is Texas Civil Statutes, Article 5221k, §1 01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993)

§321.1. Definitions The following words and terms, when used in these chapters, shall have the following meanings, unless the context clearly indicates otherwise

Act-The Texas Commission on Human Rights Act, **Texas Civil Statute, Article 5221k, as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993. The 1993 codification of the Act in the Texas Government and Labor Codes did not incorporate the 1993 legislative amendments to Article 5221k. Therefore, these rules refer to provisions of the amended Act rather than the unamended Government and Labor Codes. The use of references to the Act is preferred when conducting commission business.**

Age-"Because of" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older Nothing in this Act prohibits the compulsory retirement of any employee who has attained 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least $27,000. For purposes of the Act, §5.04(b), "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age. **Alternative dispute resolution Mediation in which an impartial person facilitates communications between parties to promote voluntary settlement of the dispute.**

Bona fide occupational qualification-A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no persons of the excluded group would be able to perform satisfactorily the duties of the job with safety and efficiency

Chairman-That member of the commission designated by the governor, pursuant to the Act, Article 3, §3.01(a).

Commission-The Texas Commission on Human Rights.

Commissioner-Any one of the duly appointed members of the commission, including the chairman, pursuant to the Act, Article 3, §3. 01(a).

Complainant-A person claiming to be aggrieved by an unlawful employment practice, or that person's agent, **who brings an action or proceeding under the Act.**

Complaint-A written statement made under oath or affirmation stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, including the dates, places, and circumstances of the alleged unlawful employment practice, and setting forth facts sufficient to enable the commission to identify the person charged.

Court-The district court in a county in which the alleged unlawful employment practice that is subject of the complaint occurred or in a county in which the respondent resides.

Deferral or referral-The same meaning pursuant to the Act, Article 4, §4.04.

Demonstrates-To meet the burdens of production and persuasion.

Designee-An employee of the commission authorized to execute such duties, powers, and authority as may be conferred by the executive director subject to the provisions of the Act or these sections

Disability-**With respect to an individual, a** [A] mental or physical impairment that substantially limits at least one major life activity **of that individual,** or a record of such a mental or physical impairment, **or being regarded as having such an impairment.**

(A) The term does not include a person with a current condition of addiction to the use of alcohol or any drug or illegal or federally controlled substance.

(B) The term does not include a person with a currently communicable disease or infection, including, but not limited to, acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment

(C) "Because of disability" or "on the basis of disability" refers to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

(D) Disabled is a person having a disability.

Employee-An individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state; except that the term employee does not include an individual elected [by the qualified voters] to public office in the state or a political subdivision of the state[, an individual chosen by the officer to be on the officer's personal staff, an appointee on the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of the public office]

Employer-A person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes **an individual elected to public office in this state or a political subdivision of this state, or** a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

Employment agency-A person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person

Executive director-The chief **executive** [administrative] officer employed by the commission to execute such duties, powers, and authority as may be conferred by the commission subject to the provisions of the Act or these rules.

Federal government-The United States Employment Opportunity Commission or any agency of the federal government enforcing the Rehabilitation Act of 1973.

Federal law-The Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972 **and the Civil Rights Act of 1991,** the Age Discrimination in Employment Act, **as amended,** [and] Rehabilitation Act of 1973, **as amended, and the Americans with Disabilities Act.**

Government Code-The Texas Government Code, Title 10, Subtitle A, Chapter 2001, §§2001.001-902, as enacted by Senate Bill 248, Acts 1993, 73rd Legislature, Chapter 268, effective August 30, 1993, relating to the codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act, Texas Civil Statutes, Article 5221k (1992).

Labor Code-The Texas Labor Code, Title 2, Subtitle A, Chapter 21, §§21.001-21.306, as enacted by House Bill 752, Acts 1993, 73rd Legislature, Chapter 269, effective August 30, 1993, relating to the codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act, Texas Civil Statutes, Article 5221k (1992).

Labor organization-A labor organization engaged in an industry affecting commerce and includes:

(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

Local commission-Created by a political subdivision or two or more political subdivisions acting jointly pursuant to the Act, Article 4, and recognized as a deferral agency by the United States Equal Employment Opportunity Commission pursuant to the United States Civil Rights Act, Title VII, §706(c) [606(c)], as amended by the Equal Employment Opportunity Act of 1972 **and the Civil Rights Act of 1991.**

Local ordinance-An ordinance adopted and enforced by a local political subdivision that prohibits practices designated as unlawful under the Act or otherwise declared unlawful under federal or state law.

National origin-The national origin of an ancestor.

Person-One or more individuals or an association, corporation, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

Political subdivision-A county or municipality.

Religion--All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer's business.

Respondent-**An employer, employment agency, labor organization, or joint labor-management committee that controls an apprenticeship or other training or retraining program, including on-the-job training programs, or other** [A] person who is alleged to have committed an unlawful employment practice in a complaint filed with the commission or deferred by the federal government or the federal government has deferral jurisdiction over the subject matter of the complaint.

Sex-"Because of' or "on the basis of sex" includes, but is not limited to, discrimination because of or on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other individuals not so affected but similar in their ability or inability to work. An employer is not required by this Act to pay for health insurance benefits for abortion, except if the life of the mother would be endangered were the fetus carried to term. This Act does not preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

§321.2. Purpose These sections set forth the procedures established by the commission for executing its responsibilities in the administration and enforcement of the Act. Based on its experience in the administration of the Act and upon its evaluation of suggestions for amendments submitted by interested **persons** [person], the commission may from time to time amend and rescind these rules in accordance with **Texas Government Code, Chapter 2001, Subchapter B, §§2001.021-2001.038.** [Texas Civil Statutes, Article 6252-13a, §4.]

§321.6. Availability. The rules of the commission shall be available to the public at ll offices of the commission and shall be on file with the offices of the attorney general, speaker of the house, and lieutenant governor [and] as required by **Texas Government Code, §2001.004(2) and §2001.032.** [Texas Civil Statutes, Article 6252-13a, §4(a).]

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 April 13, 1994.

TRD-9439027 William M. Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 837-8534

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Chapter 323. Commission

• 40 TAC §§323.1-323.4

The Texas Commission on Human Rights proposes amendments to §§323.1-323. 4, concerning General Description, Term of Office, Meetings, and Reimbursements. These sections describe the composition of the commission and appointment of commissioners designation of chairman; commissioners' terms of office, commission vacancies, reappointment and removal; constitution of a quorum, meeting notice requirements and procedures, and meeting minutes; and reimbursement of commissioners' expenses, respectively.

William M. Hale, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be negligible.

There will be no effect on small businesses.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to William M. Hale or Brooks Wm. (Bill) Conover, III, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

The amendments are proposed under Texas Civil Statutes, Article 5221k, §3.02(10), which provide authorization for the commission to modify or delete any of the General Description, Term of Office, Meetings, or Reimbursements sections.

The statute affected by the rules is Texas Civil Statutes, Article 5221k, §1.01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993).

§323.1. General Description. The appointment of the commissioners, the composition of the commission, and the designation of the chairman shall be in accordance with the Act, Article 3, §3.01(a) and (e).

§323.2. Term of Office. The term of office of commissioners, filling of vacancies on the commission, [and] reappointment, and removal shall be in accordance with the Act, Article 3, §3.01(b) and §3.011.

§323.3. Meetings.

(a) Four members of the commission constitute a quorum pursuant to the Act, Article 3, §3.01(c).

(b) Meetings of the commission shall be subject to the provisions of **Texas Government Code, Chapter 551, §§551.001-551.146** [Texas Civil Statutes, Article 6252-17], unless otherwise restricted by these rules, the Act, or federal law.

(c) A written meeting notice and agenda shall be mailed by regular mail to commissioners at least seven working days prior to the date of the meeting. Such notice requirements may be waived for emergency meetings [by an affirmative vote of at least four commissioners obtained by telephone]; notwithstanding this exception, commissioners shall be notified of such emergency meetings by telephone or by telegram at least 36 hours prior to the meeting

(d) Notices of the commission meetings may be sent by regular mail to newspapers of general circulation within the city in which the meeting is to take place. Such notices shall be posted in any location or furnished to any other person, organization, or publication as determined by the commission or required by these rules, and **Texas Government Code, Chapter 551, Subchapter C, §§551.041-551.054.** [Texas Civil Statutes, Article 6252-17.]

(e) Meetings of the commission shall be governed by Robert's Rules of Order except as otherwise required by these rules, the Act, or other applicable state laws and state regulations.

(f) Minutes of the regular or emergency commission meetings shall be recorded and open to public inspection Minutes of regular and emergency meetings need only reflect the general subject matter of discussions at such meetings.

§323.4. Reimbursements A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties pursuant to the Act, Article 3, §3.01(d) [(e)], and as authorized by the biennial legislative appropriations act. [Senate Bill 179, Article 5, §4.]

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 April 13, 1994.

TRD-9439028 William M Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 837-8534

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Chapter 325. Local Commissions

• 40 TAC §§325.2, 325.3, 325.5

The Texas Commission on Human Rights proposes amendments to §§325.2, 325.3, and 325.5, concerning Deferral Procedures, Final Determination of a Local Commission, and Eligibility. These sections describe procedures of deferral of complaints from the federal government, timeliness of complaints, communications between the commission and local commissions, notification requirements, and jurisdiction; final merit findings of deferred complaints, notification to the commission of appropriate action taken, and deferral jurisdiction, compliance requirements of complaints deferred to local commissions, 706 designation, and notification to local commission of commission's determination, respectively.

William M. Hale, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be negligible.

There will be no effect on small businesses.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to William M. Hale or Brooks William (Bill) Conover, III, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

The amendments are proposed under Texas Civil Statutes, Article 5221k, §3.02(10), which provide authorization for the commission to modify or delete any of the Deferral Procedures, Final Determination of a Local Commission, and Eligibility sections.

The following statutes affected by the rules is Texas Civil Statutes, Article 5221k, §1 01 et seq (as amended by House Bill 860, Acts

1993, 73rd Legislature, Chapter 276, effective September 1, 1993).

§325.2. Deferral Procedures.

(a) For a complaint filed with the commission over which the federal government has deferred jurisdiction, timeliness of the complaint shall be measured by the date on which the complaint is received by the commission for the purpose of satisfying the filing requirements of the Act, Article 6, §6 01(a).

(b) For a complaint deferred to the commission by the federal government, timeliness of the complaint shall be measured by the date on which the complaint is received by the federal government for the purpose of satisfying the filing requirements of the Act, Article 6, §6.01(a).

(c) For a complaint deferred to the commission by a local commission, timeliness of the complaint shall be measured by the date on which the complaint is received by the local commission for the purpose of satisfying the filing requirements of the Act, Article 6, §6.01(a).

(d) To encourage the maximum degree of effectiveness by local commissions, the commission shall endeavor to maintain close communication with respect to all matters forwarded to them and shall provide such assistance to local commissions as permitted by law and as is practicable.

(e) The Act grants a local commission the exclusive right to take appropriate action within the scope of its powers and jurisdiction to process a complaint deferred by the commission pursuant to the requirements of the Act, Article 4, §4 04, and this chapter.

(f) A local commission may waive its right to the period of exclusive processing of a complaint provided by the Act with respect to any complaint or category of complaints by deferring a matter under its jurisdiction to the commission pursuant to the Act, Article 4, §4.04(c). [§4(c).]

(g) All complaints received by the commission subject to deferral to a local commission shall be dated and time stamped upon receipt.

(h) The original complaint shall be retained in a suspense filed by the commission until the local commission has submitted a copy of its final determination to the commission; the commission has reassumed responsibility for the complaint after affording the local commission a reasonable time, but not less than 60 days, to remedy the practice alleged to be discriminatory in the deferred complaint; or the local commission has deferred the matter under its jurisdiction to the commission.

(i) A copy of a complaint received by the commission subject to deferral to a local commission shall be transmitted by registered mail, return receipt requested, to the appropriate local commission. Proceedings by the local commission are deemed to have commenced on the date such complaint is mailed

(j) A copy of a complaint deferred to a local commission by federal government over which the commission has deferral jurisdiction shall be transmitted by registered mail, return receipt requested, to the commission by the local commission

(k) The complainant and respondent shall be notified in writing that the complaint received by the commission has been forwarded to the local commission.

(l) For purposes of satisfying the requirements of the Act, Article 4, §4.04, the commission shall not assume jurisdiction over a complaint deferred to a local commission, except as follows:

(1) where the local commission may defer a complaint under its jurisdiction to the commission;

(2) where the complaint is received by the commission within 180 days of the alleged violation but beyond the period of limitation of the appropriate local commission;

(3) where the local commission has not acted on the complaint pursuant to the requirements of the Act, Article 4, §4.04(b), and this chapter

§325.3. Final Determination of a Local Commission.

(a) A local commission shall submit to the commission by registered mail, return receipt requested, a copy of the document stating the final finding of the local commission as to the merits of a deferred complaint or a copy of the document stating the appropriate action taken by the local commission to resolve the practice alleged as discriminatory in a deferred complaint.

(b) For purposes of satisfying the Act, Article 7, §7.01(a), a local commission shall submit to the commission by registered mail, return receipt requested, notification if a deferred complaint is dismissed, or shall submit, within 120 days of the date the complaint is deferred by the commission, written notification if the local commission has not filed a civil action or not successfully negotiated a conciliation agreement between the complainant and respondent. A local commission shall notify the commission within five working days[,] if the local commission does not intend to act on a complaint deferred by the commission or if it receives a complaint over which the commission has deferral jurisdiction.

§325.5. Eligibility.

(a) Notwithstanding any other rules of the commission, it shall defer complaints pursuant to the Act, Article 4, §4. 04, to local commissions which are in compliance with the following requirements:

(1) a political subdivision adopts and enforces an ordinance pursuant to the Act, Article 4, §4.01,

(2) a political subdivision or two or more political subdivisions acting jointly creates a local commission pursuant to the Act, Article 4, §4.02;

(3) the local commission can exercise the powers pursuant to the Act, Article 4, §4 03, and

(4) the local commission is designated as a 706 deferral agency by the United States Equal Employment Opportunity Commission and maintains 706 designation by complying with the performance standards established by the United States Equal Employment Opportunity Commission for 706 deferral agencies.

(b) To be certified by the commission as a local commission pursuant to this chapter and the Act, Article 4, the following materials and information shall be submitted to the commission.

(1) a letter of intent showing approval by the local commission and the governing authority of the political subdivision or subdivisions;

(2) a copy of the local ordinance that prohibits practices designated as unlawful under the Act;

(3) a copy of rules, policies, and procedures governing the operations of the local commission,

(4) a copy of an organizational chart of the internal structure of the local commission and its relationship to the governing authorities of the political subdivision or subdivisions of which it is a part;

(5) a copy of the local commission budget and resources;

(6) a letter from the United States Equal Employment Opportunity Commission verifying designation as a 706 agency.

(c) Upon examination of the materials and information provided by a local commission, the executive director shall on [in] behalf of the commission notify in writing the local commission as to determination of its eligibility.

(d) If the commission does not certify the local commission as subject to this chapter and the Act, Article 4, it shall identify in writing the reasons for noncertification and endeavor to provide the local commission the necessary assistance to comply with the requirements established by this chapter and the Act, Article 4.

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 April 13, 1994.

TRD-9439029 William M Hale
Executive Director
Texas Commission on Human Rights

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 837-8534

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Chapter 327. Administrative Review

Subchapter A. Administrative Investigation and Review

• 40 TAC §327.1

The Texas Commission on Human Rights proposes an amendment to §327.1, concerning Filing a Complaint. This section describes procedures of complaint filing

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

Mr. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be will be negligible

There will be no effect on small businesses

There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to William M. Hale or Brooks Wm (Bill) Conover, III, Texas Commission on Human Rights, P O Box 13493, Austin, Texas 78711, (512) 837-8534

The amendment is proposed under Texas Civil Statutes, Article 5221k, §3 02(10), which provide authorization for the commission to modify or delete any of the Filing a Complaint section

The following statute affected by this rule is Texas Civil Statutes, Article 5221k, §1 01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993).

§327 1. Filing a Complaint.

(a) A complainant may telephone, write, or visit the commission office or a local commission office to obtain information about filing a complaint with the commission

(b) The executive director or his or her designee may counsel with the complainant about the facts and circumstances which constitute the alleged unlawful employment practice. If the facts and circumstances do not constitute an unlawful employment practice, the executive director of his or her designee shall so advise the complainant. If the facts and circumstances constitute an alleged unlawful employment practice, the executive director or his or her designee shall assist the complainant in perfecting the complaint.

(c) The complaint shall be filed at the commission office in writing or in person with the executive director or his or her designee on a form provided by the commission, or filed in writing at an office of a local commission, or at an office of the federal government

(d) Notwithstanding any other rule of the commission, the complaint shall identify personal harm, respondent's reasons for the actions taken, and a discrimination statement

(e) A complaint shall be filed within 180 days after the date the alleged unlawful employment practice occurred

(f) A complaint may be withdrawn by a complainant only with the consent of the commission. The commission hereby delegates authority to the executive director or his or her designee to grant consent to a request to withdraw a complaint where the withdrawal of the complaint shall not defeat the purposes of the Act.

(g) A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint and to clarify and amplify allegations made therein Such amendment or amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first received. The respondent shall receive a copy of the amended complaint. An amended complaint shall be subject to the procedures set forth in these rules

(h) Upon receipt of a complaint to be processed by the commission, the complaint shall be docketed to include all pertinent information, assigned a complaint number, and assigned for processing to a commission employee.

(i) Within 10 days after the receipt of the perfected complaint, the executive director or his or her designee shall serve the respondent with a copy of the complaint by registered mail, return receipt requested. **If a perfected complaint is not received by the commission within 180 days of the alleged unlawful employment practice, the commission shall notify the respondent that a complaint has been filed and that the process of perfecting the complaint is in progress.**

(j) On behalf of the commission, the executive director or his or her designee shall notify the parties to a complaint of the status of the complaint at least quarterly and until the final disposition of the complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

(k) If a complaint as referenced in the subsection (c) of this section is filed within 180 days after the date the alleged unlawful employment practice occurred, it may be amended in accordance with subsection (g) of this section to comply with the definition of a complaint as referenced in §321.1 of this title (relating to Definitions). If the complaint is not amended within 180 days after the date the alleged unlawful employment practice occurred, the amended complaint shall relate back to the date the original complaint was filed as required by subsection (e) of this section.

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 April 13, 1994.

TRD-9439031 William M Hale
Executive Director
Texas Commission on Human Rights

Earliest possible date of adoption. May 20, 1994

For further information, please call. (512) 837-8534

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• 40 TAC §§327.2-327.14

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

The Texas Commission on Human Rights proposes the repeal of §§327.2-327. 14, concerning Voluntary Resolution, Investigation of a Complaint, Subpoena, Dismissal of Complaint, Reasonable Cause Determination, Conciliation, Notice to Complainant, Failure to Issue Notice, Access to Commission Records, Confidentiality, Disposal of Case Files and Related Documents, Temporary Injunctive Relief and Legal Representations. These sections are repealed for the reason that they are being submitted as proposed sections which are renumbered and, in part, amended.

William M. Hale, executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Hale also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be negligible because the provisions are being submitted as proposed sections which are renumbered and, in part, amended

There will be no effect on small businesses.

The anticipated economic cost to persons who are required to comply with the repeals as proposed will be negligible because the provisions are being submitted as proposed sections which are renumbered and, in part, amended.

Comments may be submitted to William M. Hale or Brooks Wm. (Bill) Conover, III, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

The repeals are proposed under Texas Civil Statutes, Article 5221k, §3. 02(10), which provide authorization for the commission to modify or delete any of these sections.

The statutes that is affected by the repeals is Texas Civil Statutes, Article 5221k, §1.01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993).

§327.1. Filing a Complaint.

§327.2. Voluntary Resolution.

§327.3. Investigation of a Complaint

§327.4. Subpoena.

§327.5. Dismissal of a Complaint.

§327.6. Reasonable Cause Determination.

§327.7. Conciliation

§327.8. Notice to Complainant.

§327.9. Failure to Issue Notice.

§327.10. Access to Commission Records.

§327.11. Confidentiality.

§327.12. Disposal of Case Files and Related Documents.

§327.13. Temporary Injunctive Relief.

§327.14. Legal Representation.

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 April 13, 1994

TRD-9439030 William M Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption. May 20, 1994

For further information, please call: (512) 837-8534

• 40 TAC §§327.2-327.13

The Texas Commission on Human Rights proposes new §§327.2-327.13, concerning Investigation of a Complaint, Subpoena, Dismissal of Complaint, Reasonable Cause Determination, Conciliation, Notice of Complainant, Failure to Issue Notice, Access to Commission Records, Confidentiality, Disposal of Case Files and Related Documents, Temporary Injunctive Relief, and Legal Representation These sections describe procedures of deferral of complaints from the federal government, timeliness of complaints, communications between the commission and local commissions, notification requirements, and jurisdiction; final merit findings of deferred complaints, notification to the commission of appropriate action taken, and deferral jurisdiction; compliance requirements of complaints deferred to local commissions, 706 designation, and notification to local commission of commission's determination, respectively.

William M. Hale, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be negligible.

There will be no effect on small businesses.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to William M. Hale or Brooks Wm. (Bill) Conover, III, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

The new sections are proposed under Texas Civil Statutes, Article 5221k, §3.02(10), which provide authorization for the commission to modify or delete any of the sections.

The statute affected by the rules is Texas Civil Statutes, Article 5221k, §1.01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993).

§327.2 Investigation of a Complaint.

(a) After attempting alternative dispute resolution pursuant to §§327.21-327.31 of this title (relating to Alternative Dispute Resolution), the executive director or his or her designee shall promptly investigate a complaint filed with the commission.

(b) The executive director or his or her designee shall promptly investigate the allegations set forth in a complaint if the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission.

(c) During the course of such investigation, the commission may utilize the services of local commissions or the federal government and may utilize the information gathered by such authorities or agencies.

(d) As part of each investigation, the commission may accept any statement of position or evidence with respect to the allegations of the complaint which the complainant or the respondent wishes to submit

(e) As part of each investigation, the commission may require a fact-finding conference with the complainant and the respondent prior to a determination on a complaint.

(f) A fact-finding conference is primarily an investigative forum intended to define the issues, to determine which elements are undisputed, to solicit information and evidence with respect to the allegations in the complaint.

(g) The executive director or his or her designee shall conduct the fact-finding conference and determine who shall present information and evidence for the respondent and the complainant during the conference

(h) In connection with the investigation of a complaint, the executive director or his or her designee may request from any person evidence relevant to the investigation of alleged violations of this Act. Requests for evidence may be made in the following manner:

(1) oral and video interviews and depositions;

(2) written interrogatories;

(3) production of documents and records;

(4) requests for admissions;

(5) on-site inspection of respondent's facilities;

(6) written statements on affidavits; or

(7) other forms of discovery authorized by Texas Government Code, §§2001. 081-2001.103 or the Texas Rules of Civil Procedure.

(i) In connection with a request for evidence relevant to an investigation of alleged violations of this Act, the commission may establish time requirements for any person responding to such request for evidence. For good cause shown, the executive director or his or her designee may extend such time requirements for a reasonable time

(j) The executive director or his or her designee shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint or amended complaint.

(k) In connection with the investigation of a complaint, the executive director or his or her designee shall at all reasonable times have access to necessary witnesses for examination under oath or affirmation, and the production of records, documents, and other evidence relevant to the investigation of alleged violations of this Act, for inspection and copying.

(l) In connection with an investigation of a complaint, any written statement of position submitted by the respondent to the commission setting forth the facts and circumstances relevant to an investigation of alleged violations of this Act shall be under oath or affirmation.

§327.3. Subpoena.

(a) To effect the purposes of this Act pursuant to the Act, Article 3, §3.02(a)(7), any commissioner, the Executive Director, or his or her designee, shall have the authority to sign and issue a subpoena to compel attendance of necessary witnesses for examination or testimony under oath or affirmation, and the production of records, documents, and other evidence relevant to the investigation of alleged violations of this Act, for inspection and copying. The issuance of subpoenas shall be governed by Texas Government Code, Chapter 268, Subchapter D, §2001.089 and §2001. 103. The commission authorizes the executive director, or his or her designee, or a commissioner to exercise this power on behalf of the commission.

(b) Notwithstanding the requirements pursuant to any other state law, the subpoena shall state the name and address of its issuer, identify the person or evidence subpoenaed, the person to whom and the place, date, and the time at which it is returnable, or the nature of the evidence to be examined or copied and the date and time when access is requested. A subpoena shall be returnable to the executive director Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued.

(c) Notwithstanding the requirements of any other state law, any person served with a subpoena issued by the commission who intends not to comply therewith shall petition in writing the commission to revoke or modify the subpoena within five working days after receipt of the subpoena. Such petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply, and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached. The commission or its designee shall review the petition and make a final determination on revoking or modifying the subpoena. The commission or its designee shall serve a copy of the final determination of the petition upon the petitioner by registered mail, return receipt requested.

(d) On a failure to comply with a subpoena, the commission shall apply to the district court of the county in which the person is found, resides, or transacts business, for an order directing compliance pursuant to the Act, §8.02(b).

§327.4. Dismissal of Complaint.

(a) Where a complaint, on its face or as amplified by statements of the complainant, discloses, or where the investigation reveals that the complaint and every portion thereof is not timely filed or otherwise fails to state a claim under this Act, the commission shall dismiss the complaint. This authority shall be delegated to the executive director or his or her designee by the commission.

(b) Where the executive director or his or her designee after an investigation has determined that there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the complaint, the executive director or his or her designee shall dismiss the complaint. The executive director or his or her designee shall issue a written determination in the form of a letter of determination incorporating the finding that the evidence does not support the complaint and shall serve a copy of the letter of determination on the complainant, the respondent, and other agencies as required by law and by registered mail, return receipt requested.

(c) Where complainant fails to provide requested necessary information, fails or refuses to appear or to be available for interviews or conferences as necessary, or fails or refuses to provide requested necessary information for completing the complaint, the executive director or his or her designee may dismiss the complaint. Prior to dismissing the complaint, the complainant shall be notified and be given a reasonable time to respond

(d) Where the complainant fails or refuses to cooperate to the extent that the commission is unable to resolve the complaint, and after due notice to which the complainant has had a reasonable time to respond, the executive director or his or her designee may dismiss the complaint.

(e) Where reasonable efforts have been made to locate the complainant, and the complainant has not responded in a reasonable time, the executive director or his or her designee may dismiss the complaint.

(f) Where a respondent has made a resolution offer which is in writing and specific in its terms, the executive director may dismiss the complaint if the complainant refuses to accept the offer, provided that the offer would afford full relief for the harm alleged by the complainant and the complainant fails to accept such an offer within a reasonable time after actual notice of the offer.

(g) Where the commission dismisses a complaint filed with it, the commission shall so notify in writing the complainant and the respondent by registered mail, return receipt requested. Such notification shall inform the complainant of his or her right to file a civil action against the respondent named in the complaint pursuant to the Act, Article 7, §7.01(a). The commission shall delegate authority to issue such notifications to the executive director or his or her designee.

§327.5. Reasonable Cause Determination.

(a) Upon completion of the investigation, if a complaint has not been dismissed or voluntarily resolved, the commission employee conducting the investigation shall prepare a record of the evidence, including an investigative report with recommendations in the form of a complaint file for review by the executive director.

(b) If, after review, the executive director determines that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the complaint, the executive director shall review the complaint file with a panel of three commissioners.

(c) If, after review, at least two of the three commissioners determine that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, the executive director shall issue a written determination in the form of a letter of determination This letter of determination shall incorporate the executive director's finding that the evidence supports the complaint and include an invitation to participate in conciliation

(d) The executive director shall serve a copy of the letter of determination to the complainant and respondent and other agencies as required by law by registered mail, return receipt requested.

§327 6 Conciliation

(a) Where the commission determines that there is reasonable cause to believe that an unlawful employment practice

has occurred or is occurring, it shall endeavor to eliminate such unlawful employment practice by informal methods of conference, conciliation, and persuasion. This authority shall be delegated to the executive director or his or her designee by the commission.

(b) Where a determination of reasonable cause has been made, the commission shall attempt to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief to the complainant.

(c) The executive director or his or her designee shall prepare a written draft of a conciliation agreement that incorporates provisions eliminating the unlawful employment practices and providing appropriate relief for the complainant. The commission shall provide a copy of the draft conciliation agreement to the complainant and respondent.

(d) Where practical, the executive director or his or her designee shall conduct the conciliation conference in person with the respondent, but this does not preclude conducting such conciliation conferences by telephone with the respondent or complainant.

(e) Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the respondent, complainant, and the executive director on behalf of the commission.

(f) The executive director shall report to the commission the results of successful and unsuccessful conciliation attempts.

(g) Where the commission has not successfully negotiated a conciliation agreement between the respondent and complainant, the commission shall so notify in writing the complainant and respondent by registered mail, return receipt requested. Such notification shall inform the complainant or his or her right to file a civil action against the respondent named in the complaint pursuant to the Act, Article 7, §7.01(a). The executive director is authorized to issue this notification behalf of the commission.

(h) Proof of compliance with the terms of the conciliation agreement by the respondent shall be obtained by the executive director before the case is closed.

§327.7. Notice to Complainant.

(a) If the complaint filed with the commission pursuant to the Texas Commission on Human Rights Act, §6. 01(a), is dismissed by the commission or is not resolved before the expiration of the 180th day after the date of filing of the complaint, the commission shall so inform the complainant in writing by certified mail, return receipt requested. Any complainant who is so informed may request the commission's notice of right to file a civil action The complainant shall request the notice in writing and identify the respondent, the commission's complaint number, and the United States Equal Employment Opportunity Commission's complaint number, if the complaint has been deferred by the federal government

(b) On receipt of a written request by a complainant, the commission shall issue within five business days the notice of right to file a civil action before the expiration of the 180th day after the date the complaint was filed under the following conditions:

(1) the complainant has a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state; or

(2) executive director certifies that the administrative processing of the complaint cannot be completed before the expiration of the 180th day after the complaint was filed The executive director's certification shall take into account the exigent circumstances of the complainant. The complainant's written request shall include the name of the respondent, the commission's complaint number, and the United States Equal Employment Opportunity Commission's complaint number, if the complaint has been deferred by the federal government. The commission shall issue an expedited notice by certified mail not less than the fifth business day after receipt of the complainant's request.

(c) The commission shall delegate authority to issue notices of right to file civil actions to the executive director or his or her designee

§327.8. Failure to Issue Notice The commission's failure to issue a notice of right to file civil action after 180 days from the date the complaint is received by the commission does not affect the complainant's right under Texas Commission on Human Rights Act, Article 7, §7.01(a), to bring a civil action against the respondent.

§327.9. Access to Commission Records. Pursuant to the limitations established by the Texas Commission on Human Rights Act, §8 02(a) , the executive director shall, on written request of a party to a complaint filed under the Act, §6 01(a), allow the party access to the commission records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if

(1) following the final action of the commission. a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or

(2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law

§327 10 Confidentiality.

(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the Texas Commission on Human Rights Act, Article 6, §6. 01, except as necessary to the conduct of a proceeding under this Act

(b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

§327 11 Disposal of Case Files and Related Documents. The commission shall retain case files and related documents which have not been forwarded to EEOC for a period of one year after the administrative review procedures have been completed, except when a civil action has been filed in state court under the Texas Commission on Human Rights Act. At the conclusion of the one year, the case file and related documents shall be disposed of by the commission. When a civil action has been filed in state court, case files and related documents shall be retained until the final disposition of the lawsuit. Prior to disposing of case files and related documents, authorization shall be obtained from the state auditor's office and the state librarian. In a private cause of action under the Texas Commission on Human Rights Act, the commission shall be held harmless for disposing of case files and related documents when the parties to the lawsuit or their attorneys of record fail to notify the commission by certified letter that a lawsuit has been filed in state court

§327 12 Temporary Injunctive Relief Based on a preliminary investigation of a complaint, the commission may seek temporary injunctive relief pursuant to the Texas Commission on Human Rights Act, Article 6, §6 01(g).

§327.13. Legal Representation. The respondent and the complainant may be represented by an attorney or designated agent.

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 April 13, 1994.

TRD-9439032 William M Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption: May 20, 1994

For further information, please call (512) 837-8534

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Subchapter B. Alternate Dispute Resolution

• 40 TAC §§327.21-327.31

The Texas Commission on Human Rights proposes new §§327 21-327.31, concerning Policy, Office of Alternative Dispute Resolution, Voluntary Settlement Through Alternative Dispute Resolution, Referral of Pending Complaints for Alternative Dispute Resolution, Notification and Objection, Appointment of Impartial Mediators, Standards and Duties of Impartial Mediators, Compensation of Impartial Mediators, Conduct and Decorum, Effect of Written Settlement Agreement and Confidentiality of Communications During Alternative Dispute Resolution The new sections define procedures and the process of alternative methods of complaint resolution.

William M Hale, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, other than reducing costs to the commission, complainants and respondents since more cases should be resolved before an investigation is completed

Mr. Hale also has determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules as proposed will be an increase in the voluntary resolution of employment discrimination complaints through the mediation process thus reducing costs to the commission, complainants and respondents. There will be no effect on small businesses

The anticipated economic cost to persons who are required to comply with the rule as proposed will be minimal and may actually reduce costs to the commission, complainants and respondents since more cases should be resolved before an investigation is completed.

Comments may be submitted to William M. Hale or Brooks William (Bill) Conover, III, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534

The new sections are proposed under the Texas Civil Statutes, Article 5221k, §3. 02(10), which provides authorization for the commission to modify or delete any of these sections.

The statutes affected by the rules is Texas Civil Statutes, Article 5221k, §1.01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993).

§327.21. Policy. It is the policy of this state to encourage the peaceable resolution of alleged unlawful employment practices, including alternative dispute resolution of issues and the early settlement of complaints through voluntary settlement procedures.

§327.22. Office of Alternative Dispute Resolution. It is the responsibility of the commission to carry out the policy under §327.21 of this title (relating to Policy) by establishing an office of alternative dispute resolution.

§327.23. Voluntary Settlement Through Alternative Dispute Resolution.

(a) Within ten days of the commission's receiving a perfected complaint and prior to the completion of an investigation, the executive director or his or her designee shall invite both the complainant and the respondent to attempt voluntarily to resolve their dispute through alternative dispute resolution. if alternative dispute resolution efforts are not successful within 30 days of the complaint being referred to the office of alternative dispute resolution, the case will be forwarded to appropriate commission personnel for completion of an investigation.

(b) The executive director or his or her designee shall have the authority to sign in behalf of the commission any voluntary agreement to resolve the dispute which is agreeable to both the complainant and the respondent.

(c) Any voluntary agreement to resolve the dispute to which the commission is a party shall contain a provision that the commission has made no judgment on the merits of the complaint and that such agreement shall not affect the processing of any other complaint, including, but not limited to, allegations which are like or related to the individual allegations resolved

(d) The commission shall limit its undertaking in such voluntary agreement to an agreement not to process that complaint further

§327.24 Referral of Pending Complaints for Alternative Dispute Resolution The commission or its designee may, on its own motion or the motion of a party to the complaint, refer a pending complaint to the office of alternative dispute resolution for mediation within ten days of receiving a perfected complaint.

§327.25. Notification and Objection.

(a) If the commission or its designee determines that a pending complaint is appropriate for mediation under §327 24 of this title (relating to Referral of Pending Complaints for Alternative Dispute Resolution), the commission or its designee shall mail notice to the parties of its determination within ten days of receiving a perfected complaint.

(b) Any party may, within five days after receiving the notice under subsection (a) of this section, file a written objection to the referral

(c) If the commission or its designee finds that there is a reasonable basis for an objection filed under subsection (b) of this section, the commission or its designee may not refer the dispute for mediation.

§327 26. Appointment of Mediators. The commission or its designee shall assign such impartial commission personnel to the office of alternative dispute resolution as are necessary to mediate the complaints referred to that unit.

§327 27. Standards and Duties of Mediators

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement Mediators shall·

(1) utilize the mediation process voluntarily to resolve complaints of employment discrimination filed with the commission;

(2) conduct on-site mediation of complaints pursuant to appropriate procedures, including phone and mail contact with the respondent and complainant regarding the dispute resolution process within 30 days from the date of referral to the office of alternative dispute resolution, and

(3) issue and maintain all appropriate documents during the 30-day period in accordance with all statutory and procedural requirements

(b) Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect

to communications relating to the subject matter of the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, except the Executive Director or his or her designee. Any evidence received by the commission from the complainant or respondent shall not be provided to the mediators assigned to the office of alternative dispute resolution

§327.28. Compensation of Mediators. Commission employees appointed as mediators for the office of alternative dispute resolution shall be compensated only by the commission. No party or representative of a party to a complaint shall offer or agree to offer a duly appointed commission mediator any compensation or other thing of value which would impair or substantially limit the mediator's independence, neutrality, or impartiality

§327.29. Conduct and Decorum.

(a) Whenever the parties have agreed to mediation they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement to mediate.

(b) The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties.

(c) The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties.

(d) Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

(e) The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the commission, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine

(f) Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

(g) There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

(h) No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

(i) The mediation shall be terminated·

(1) by the execution of a settlement agreement by the parties;

(2) by declaration of the mediator to effect that further efforts at mediation are no longer worthwhile; or

(3) after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

(j) The mediator is not a necessary or proper party in judicial proceedings relating to the mediation. Neither the mediator nor the commission or its designees shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

(k) The mediator shall interpret and apply these rules.

§327.30. Effect of Written Settlement Agreement.

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is binding and enforceable in the same manner as any other written contract.

(b) The commission, or its designee in its discretion, may incorporate the terms of the agreement in its final decree, order, or agreement disposing of the case.

(c) A settlement agreement does not affect an outstanding commission or court order or agreement unless the terms of the agreement are incorporated into a subsequent decree, order, or agreement.

§327.31. Confidentiality of Communications During Alternative Dispute Resolution Procedures.

(a) Except as provided by subsections (d) and (e) of this section, a communication relating to the subject matter of any complaint made by a participant in an alternative dispute resolution procedure under this subchapter, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding

(1) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(2) admissions made by another party in the course of the mediation proceedings;

(3) proposals made or views expressed by the mediator; or

(4) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

(c) Any record made during a mediation procedure is confidential, and the participants or the mediator facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter or complaint in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter or complaint in dispute.

(d) An oral communication or written material used in or made a part of a mediation procedure is admissible or discoverable in a subsequent administrative or judicial proceeding if it is admissible or discoverable independent of the procedure.

(e) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or material sought to be disclosed 10 warrant a protective order of the court or whether the communications or materials are subject to disclosure.

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 April 13, 1994.

TRD-9439033 William M Hale
Executive Director
Texas Commission on Human Rights

Earliest possible date of adoption: May 20, 1994

For further information, please call: (512) 837-8534

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Chapter 329. Judicial Action

• 40 TAC §329.1

The Texas Commission on Human Rights proposes an amendment to §329.1, concerning Enforcement. This section describes the procedures in which the commission may bring civil actions against Respondents

William M. Hale, executive director, has determined that for the first five-year period the

ıction is in effect there will be no fiscal ɔlications for state or local government as esult of enforcing or administering the sec-

Hale also has determined that for each ear of the first five years the rule as pro-ıosed is in effect the public benefits antici-ıated as a result of enforcing he rule as ·oposed will be negligible. There will be no ıffect on small businesses.

here are no anticipated economic costs to ersons who are required to comply with the ule as proposed.

omments may be submitted to William M Hale or Brooks William (Bill) Conover, III, exas Commission on Human Rights, P O 3ox 13493, Austin, Texas 78711, (512) 37-8534

he amendment is proposed under the Texas ivil Statutes, Article 5221k, §3.02(10), which rovide authorization for the commission to nodify or delete any of the Enforcement sec-ion.

he statute that affected by this rule is Texas ivil Statutes, Article 5221k, §1 01 et seq (as amended by House Bill 860, Acts 1993, 73rd egislature, Chapter 276, effective Septem-ɔer 1, 1993).

329.1. Enforcement.

(a) The commission may bring a ivil action against the respondent named in complaint to **effect** [effectuate] the pur-ɔoses of the Act pursuant to the require-ments of the Act, Article 7, §7.01(a).

(b) Upon a determination by the commission to bring a civil action, it shall notify the complainant by registered mail, return receipt requested.

(c) Upon timely application, at the discretion of the court, the commission on a majority vote of the commissioners may intervene in any civil action pursuant to the requirements of the Act, Article 7, §7.01(a).

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 April 13, 1994

TRD-9439034 William M Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption. May 20, 1994

For further information, please call· (512) 837-8534

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Chapter 331. Reports and Recordkeeping

• 40 TAC §331.1

The Texas Commission on Human Rights proposes an amendment to §331.1, concerning Preservation and Use. This section describes the procedures regarding the making and keeping of records by the commission.

William M Hale, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Mr Hale also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be negligible. There will be no effect on small businesses.

There are no anticipated costs to persons who are required to comply with the rule as proposed

Comments may be submitted to William M Hale or Brooks William (Bill) Conover, III, Commission on Human Rights, P O Box 13493, Austin, Texas 78711, (512) 837-8534.

The amendment is proposed under the Texas Civil Statutes, Article 5221k, §3 02(10), which provide authorization for the commission to modify or delete any of the Preservation and Use section.

The statute affected by this rule is Texas Civil Statutes, Article 5221k, §1.01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effectve September 1, 1993).

§331 1 Preservation and Use The commission shall require a person under investigation in connection with a complaint filed under this Act or subject to this Act to [must] make and keep records pursuant to the requirements of the Act, Article 8, §8 01

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 April 13, 1994

TRD-9439035 William M Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption· May 20, 1994

For further information, please call. (512) 837-8534

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Chapter 333. Conformity

• 40 TAC §333.1

The Texas Commission on Human Rights proposes an amendment to §333 1, concerning Conformity This section describes the commission's authorization to administer the Act in order to qualify for 706 deferral agency designation and receive funds from the federal government

William M. Hale, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr Hale also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be negligible. There will be no effect on small businesses.

There are no anticipated economic costs to persons who are required to comply with the rule as proposed

Comments may be submitted to William M. Hale or Brooks William (Bill) Conover, III, Texas Commission on Human Rights, P.O. Box 12493, Austin, Texas 78711, (512) 837-8534

The amendment is proposed under the Texas Civil Statutes, Article 5221k, §3.02(10), which provide authorization for the commission to modify or delete any of the Conformity section.

The statute affected by this rule is Texas Civil Statutes, Article 5221k, §1 01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993)

§333 1 Conformity Pursuant to the Act, Article 10, **§10.05**, [§10.06] the commission is authorized to administer the provisions of this Act in a manner necessary to qualify for 706 deferral agency designation and the receipt of funds from **the** federal government

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 April 13, 1994

TRD-9439036 William M Hale
Executive Director
Texas Commission on
Human Rights

Earliest possible date of adoption. May 20, 1994

For further information, please call: (512) 837-8534

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1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register* Because of printing schedules, material receiv after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* ar Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week publication. No issues will be published on March 11, July 22, November 11, and November 29 An asterisk beside a publication date indicates th the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14

29 Friday, April 22	Monday, April 18	Tuesday, April 19
30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wedesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 18	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 6	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6

68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29
75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 26	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 34
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, Novmber 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
96 *Friday, December 30	Friday, December 23	Tuesday, December 27